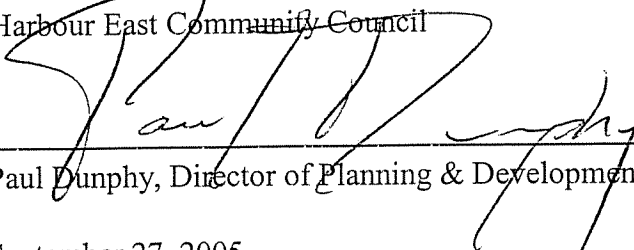


Harbour East Community Council
October 6, 2005

TO: Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Planning & Development Services

DATE: September 27, 2005

SUBJECT: Case 00635 - Site Specific MPS & LUB Amendment and Amendment to a Development Agreement - 3 Bruce Street

ORIGIN

February 03, 2005 motion by Harbour East Community Council for Regional Council to initiate a site specific amendment to the Dartmouth Municipal Planning Strategy (MPS) to permit a warehousing and distribution use at 3 Bruce Street.

February 22, 2005 motion by Regional Council directing staff to initiate a site specific MPS amendment to allow the current operations of 3 Bruce Street, Dartmouth, with conditions on the distribution, warehousing, lot maintenance and property improvements.

RECOMMENDATION

It is recommended that **Harbour East Community Council:**

1. **Recommend that Regional Council** give First Reading to the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as provided in Attachment C, and schedule a joint public hearing with Harbour East Community Council;
2. **Recommend that Regional Council** approve the amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as provided in Attachment C'; and
3. **Give Notice of Motion** to consider the proposed amendments to a development agreement provided as Attachment D and schedule a joint public hearing with Regional Council.

Contingent upon the adoption by Regional Council of the above Municipal Planning Strategy and Land Use By-law amendments and those becoming effective under the *Municipal Government Act*, it is further recommended that Harbour East Community Council:

1. Approve the proposed amendments to a development agreement provided as Attachment D; and
2. Require 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 of said agreement by Council and any other bodies as necessary, whichever is later, including applicable appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

In 1987, the City of Dartmouth and Michel Klayme entered into a development agreement to permit a neighbourhood convenience store and one residential dwelling unit at 3 Bruce Street (Map 1) in accordance with Policy C-2 (Attachment A) of the Dartmouth Municipal Planning Strategy (MPS). A development agreement was required as the property was zoned R-1 (Single Family Residential) and designated Residential.

In 2003, Michel Klayme made an application to amend the existing development agreement to permit an addition to the neighbourhood convenience store (1071 square feet) for the purpose of storing goods. In reviewing this application, staff determined the applicant delivers meats and pizza supplies throughout the region. The activity of storing and distributing products is a warehousing and distribution use in accordance with the Dartmouth Land Use Bylaw.

In applying for the addition, the applicant is in essence, applying to enable a “warehousing and distribution” use. Warehousing and distribution are not permitted uses in accordance with the existing development agreement, the R-1 (Single Family Residential) zone, or the Residential Designation of the Dartmouth MPS.

The application to amend the existing development agreement was evaluated by staff and presented to Harbour East Community Council on February 03, 2005. Staff recommended that Council *refuse* the proposed amendments as warehousing and distribution uses are not supported in this location by the MPS. Upon discussing the proposal, Community Council recommended that Regional Council consider a site-specific MPS amendment to permit a warehousing and distribution use on the property by development agreement.

The motion to initiate a site specific MPS amendment was brought before Regional Council on February 22, 2005 and Regional Council agreed to initiate the process to consider the MPS amendments for this property.

Public Information Meeting

A Public Information meeting concerning the proposal was held on March 31, 2005 at the Woodlawn Library. Area residents received notice of the meeting by direct mail (Map 1) and the meeting was advertised in the Chronicle Herald. Three individuals attended the meeting and voiced no serious concerns with the proposal. Minutes of the meeting are included in this report as Attachment B.

DISCUSSION

Amendments to the MPS are not considered routine and while Council has the ability to amend an MPS, it is under no obligation to do so. The decision to amend an MPS (or not) cannot be appealed.

Policy

The overall intent of the residential policies of the Dartmouth MPS is to protect and revitalize existing neighbourhoods. The commercial section of the Dartmouth MPS supports neighbourhood commercial establishments as significant parts of residential areas, however the intent is for these

types of uses to serve the immediate neighbourhood rather than the community as a whole (Policy C-2, Attachment A).

Warehouse facilities are also contemplated in the Commercial section of the Dartmouth MPS, however, these are intended for industrial or general commercial areas and not in close proximity to residential areas (Policy C-9, Attachment A).

Analysis

Although the policy direction appears clear, a public information meeting revealed no serious concerns with the proposed amendments to the development agreement to permit these types of uses on the subject property. The subject property is on the edge of the residential designation adjacent to a relatively large area designated commercial and zoned C-3 (Map 1). Furthermore, in keeping with Council's desire to include conditions on the distribution, warehousing, lot maintenance and property improvements, a development agreement can include site specific measures aimed at ensuring property maintenance standards are upheld and nearby residential properties protected. Such measures have been included in the proposed development agreement attached to this report.

Summary and Recommendation:

While the overall intent of the residential policies is to protect and revitalize existing neighbourhoods, MPS policy in support of a site specific development agreement to permit limited warehousing and distribution may be an appropriate means to provide reasonable development rights while controlling this use sufficiently to protect the existing neighbourhood. While there are concerns that a site specific amendment may set a precedent for further requests of this nature, Regional Council should be clear that other sites may not have similar characteristics or sufficient community acceptance to warrant a widespread policy change. Therefore, it is recommended that Council approve the site specific amendments to the Dartmouth Municipal Planning Strategy and Land Use Bylaw (Attachment C). Subject to the proposed MPS policy becoming effective, it is further recommended that the amended development agreement (Attachment D) to permit a warehousing and distribution use at 3 Bruce Street, Dartmouth, be approved by Community Council.

BUDGET IMPLICATIONS

None

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 amend the Dartmouth MPS and Land Use Bylaw, and approve the amendment to the existing development agreement. This is the staff recommendation.

2. Council may choose not to amend the Dartmouth MPS, Land Use Bylaw and development agreement. This is not recommended for reasons discussed above. A decision by Council to approve or refuse an application to amend its MPS is final and is not subject to appeal to the NS Utility and Review Board.

ATTACHMENTS

Map 1 Zoning and Location

Attachment A - Commercial Policies of the Dartmouth MPS

Attachment B - Public information meeting minutes

Attachment C - Proposed Amendments to the Dartmouth MPS and LUB

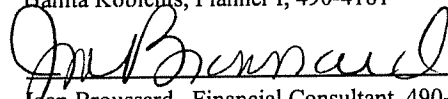
Attachment D - Proposed Amending Agreement

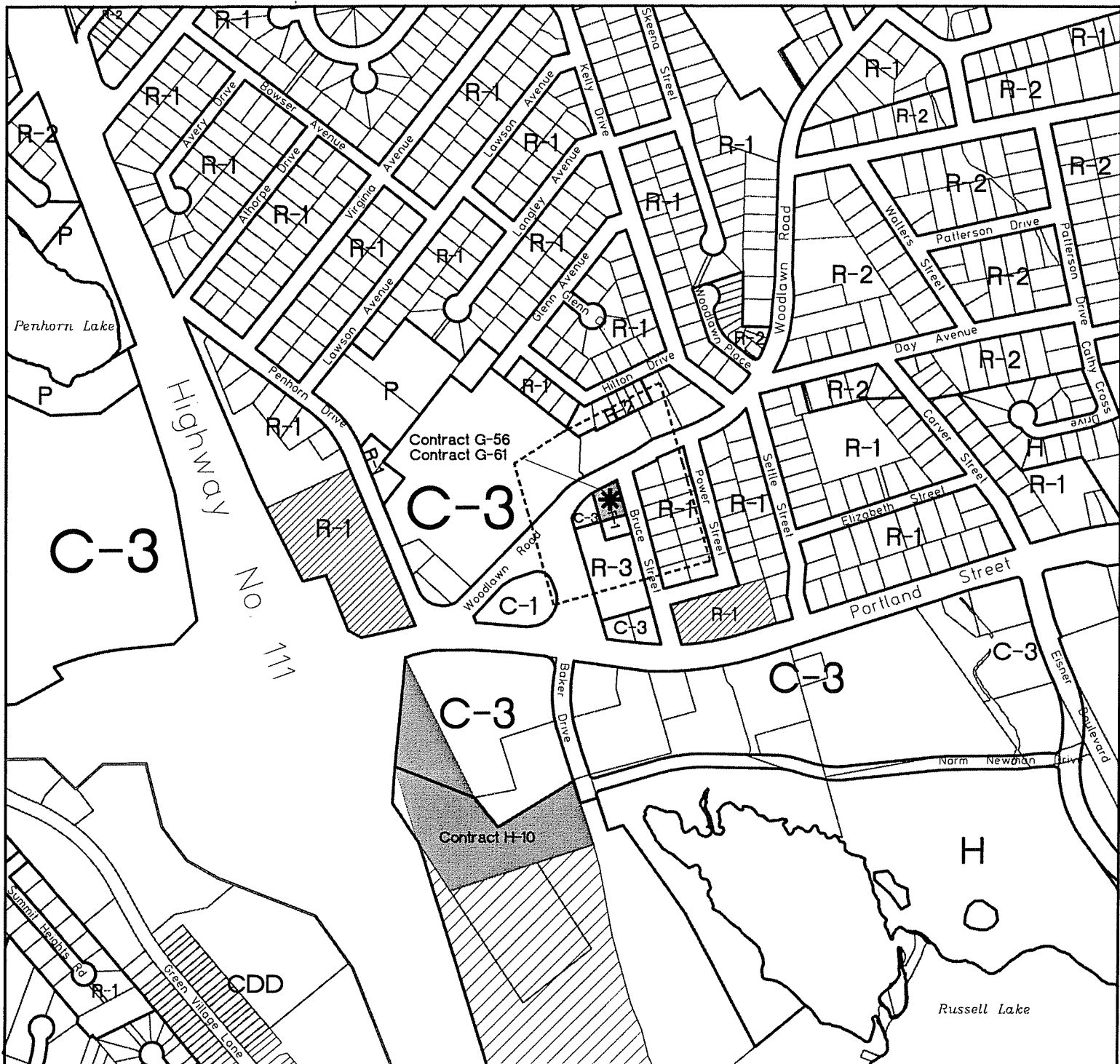
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> (choose the appropriate meeting date) or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:

Hanita Koblepts, Planner I, 490-4181

Financial Review:


Jean Broussard, Financial Consultant, 490-6267



Map 1
Zoning + Location
3 Bruce Street

*** Area of Proposed Amendment to Existing Contract**

Notification Area

HALIFAX
 REGIONAL MUNICIPALITY
 PLANNING SERVICES

R-1 Single Family Residential Zone
 R-2 Two Family Residential Zone
 R-3 Multiple Family Residential Zone
 CDD Comprehensive Development District

C-1 Local Business Zone
 C-3 General Business Zone
 P Park Zone
 H Holding Zone

Contract

Development Agreement

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



100 0 100 200 metres

Attachment A
Commercial Policies of the Dartmouth Municipal Planning Strategy

(1) Retail Facilities

(c) Neighbourhood Convenience Store: This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life. To date there are approximately 50 of these sorts of facilities within Dartmouth totalling approximately 25,000 square feet in floor area. There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. There are several concerns related to these uses (location, siting) that criteria should be established for reviewing any proposal of such a use.

To enable neighbourhood convenience outlets to operate in residential areas, they should be reviewed individually on their own merits and handled through the contract zoning provisions of Section 33 (2) (b), 34 (1) of the Planning Act¹.

Policy C-2 It shall be the intention of City Council to deal with neighbourhood convenience outlets through the contract zoning provisions of the Planning Act - Section 33 (2) (b).

(3) Storage and Warehouse Facilities - This category includes warehousing, moving and storage facilities, storage associated with construction, and other similar uses. There are presently two major concentrations of these uses: the North and South Dartmouth Industrial areas. There are a few scattered facilities elsewhere.

These uses usually require large amounts of storage space and considerable room for truck movement and parking. Due to the demands for space and the associated truck traffic, these uses should only be allowed in industrial areas or a general commercial area away from residential areas (Policy C-9).

Policy C-9 It shall be the intention of City Council to permit warehousing and distribution centres in industrial areas, major commercial areas and areas that may be determined to be suitable through a zoning amendment or contract zoning review process following the guidelines on page 61 and 62 of this plan.

¹ The Planning Act, Chapter 16, Statutes of N.S. 1969.

Attachment B
Public Information Meeting Minutes

7:00 p.m.
Thursday, March 31, 2005
Woodlawn Library, Program Room

STAFF: Jill Justason, Planner
Cara McFarlane, Administrative Support
APPLICANT: Michael Klayme, Applicant
OTHER: Councillor Andrew Younger, District 6
MEMBERS OF
THE PUBLIC: 3

1. Call to Order - Councillor Younger

The meeting was called to order at 7:03 p.m.

2. Introductions - Councillor Younger

Councillor Younger introduced Jill Justason as the planner assigned to this application; himself as the Councillor for District 6; Michael Klayme, the applicant and owner of Bailey's Meat Market; and Cara McFarlane, Recording Secretary, taking the minutes.

The proposal hasn't changed much from the last public meeting, but the reason for another public meeting is because the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) doesn't allow neighbourhood grocery stores. These stores have expanded over the years and now often involve distribution and warehousing.

Staff and the applicant would like to see if anyone has objections to the proposal. If there aren't any objections, Regional Council will decide if they want to enter into a development agreement with the applicant.

3. Presentations

i) Jill Justason

The subject property is located at 3 Bruce Street in Dartmouth (shown on overhead). The property is currently zoned R-1 and designated R (Residential) under the Dartmouth MPS and LUB. Ms. Justason went through the R-1 Zone as of right uses.

In 1987, Council entered into a development agreement with Mr. Klayme to permit a neighbourhood convenience store. This was considered through policy C-2 in the Dartmouth MPS. Ms. Justason went over Policy C-2.

Currently, Mr. Klayme has the neighbourhood convenience store with one dwelling unit in the basement and there is a warehousing and distribution use (meats and pizza supplies delivered throughout the region). The warehousing and distribution use is currently not permitted by way of the R-1 Zoning and there is no provision within the MPS which would allow council to consider this

by way of development agreement or rezoning. Therefore, a plan amendment to the MPS needs to be done to address this use on the site. This would be site specific and would not affect every meat market within the municipality.

Ms. Justason explained the plan amendment process.

ii) Michael Klayme

Mr. Klayme explained that two years ago he made an application to add more storage space to his building. The proposal did not meet the requirements of the Dartmouth LUB.

His proposal is still to add a storage space (like a garage) to the side of the existing building by the Money Mart.

Some landscaping is needed around the perimeter of the property to make it more appealing (location of shrubs, trees, planters were shown on overhead). He wants to be careful not to block the view of people coming out at the corner of Woodlawn Road and Bruce Street with trees.

Deliveries currently take place from the property which are not allowed under the existing development agreement.

Staff suggested a fence should be constructed around the store to allow for privacy (shown on overhead).

The store will be wheelchair accessible and have accessible parking in front of the building.

2. Public Participation: Questions and Answers

Ken Smith, 12 Bruce Street, asked how big the addition will be. Will the height be higher or lower than the existing building? Mr. Klayme said it is approximately 25' x 34' (maybe 36') and will not be higher than the existing building. He explained how the roof line will be constructed.

Mr. Smith asked if this additional space is going to be used for cleaning. Mr. Klayme said there will be no water used in there and no sewer line. It will only be used for storage.

Councillor Younger explained that originally Mr. Klayme brought forward this proposal a few years ago was to get rid of the storage containers on site (also not allowed). Mr. Klayme is hoping the addition has enough room to put in a walk-in fridge/freezer which will be self contained.

Lynn Taylor, 4 Bruce Street, is concerned about the corner at Woodlawn Road and Bruce Street as this is a bad corner with cars coming from Portland Street at a high speed. This proposal would eliminate the containers on the property which block the view of that intersection.

Ms. Taylor asked about the entrance to the property off of Woodlawn Road. Will it be closed off?

Mr. Klayme said staff would like him to decrease the traffic on Woodlawn Road. At one point it was suggested to close that entrance off. Ms. Justason explained that when the application was received

it was forwarded to various HRM departments. Because of the number of accesses onto Woodlawn Road and due to the business centre on the opposing side of Woodlawn Road, the actual access in accordance with By-law S-300, street services by-law in HRM, should be off of Bruce Street. It was decided that the entrance on Woodlawn Road would remain open.

Ms. Justason explained that staff is open to suggestions from the public regarding the landscaping on the property. The landscaping that is being proposed was suggested to Mr. Klayme by staff. Councillor Younger pointed out that any landscaping along the Money Mart side should be low.

Ms. Taylor said she would prefer two entrances as the traffic on Bruce Street is already very busy. Also, the two entrances would ensure maneuverability for the tractor trailers to make the deliveries and they will not block the view of the road.

Ms. Taylor sees this proposal as a positive thing.

Ms. Justason explained that the existing development agreement will probably be amended to allow the use and to address some of the illegal uses. Councillor Younger added that the development agreement will allow some controls on the property.

Councillor Younger will drop a note off to the Bruce Street residents letting them know when Regional Council will be holding the public hearing.

3. Adjournment

The meeting adjourned at approximately 7:34 p.m.

Attachment C

Proposed Amendment to the Dartmouth Municipal Planning Strategy and Land Use Bylaw

The Municipal Planning Strategy for Dartmouth is hereby amended by:

1. **Adding immediately after Policy C-9 (concerning warehousing and distribution):**

(i) Notwithstanding Policy C-9, Council may consider a warehousing and distribution use at 3 Bruce Street by development agreement provided controls are placed in the agreement which serve to ensure adequate lot maintenance standards and protect nearby residential properties.

The Land Use By-law for Dartmouth is hereby amended by:

1. **Adding the following to Section 18 of the General Provisions:**

18(Q) Notwithstanding any other provisions of this By-law, on lands known as 3 Bruce Street, as identified on Schedule "Y" of this by-law, development may be considered by development agreement in accordance with Policy C 9 (i)

2. **Adding the attached Schedule "Y".**

Attachment D
Proposed Amendment to Development Agreement

THIS AMENDING AGREEMENT made this day of , 2005, BETWEEN:

MICHEL KLAYME
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

HALIFAX REGIONAL MUNICIPALITY,
a body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer and City of Dartmouth have previously entered into an Agreement to permit a neighbourhood grocery store in the City of Dartmouth and more particularly described in Schedule "A", the said Agreement being recorded at the Registry of Deeds at Halifax County in Book 71005, beginning at Page 239 (hereinafter called the "Existing Agreement").

AND WHEREAS the Developer has requested an amendment to the existing Agreement to allow for an addition to the existing neighbourhood grocery store.

AND WHEREAS the Harbour East Community Council of Halifax Regional Municipality at its meeting on ____ the day of _____, 2005, approved the requested amendment, referenced as Case 00635.

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

1. **The Existing Agreement be amended by deleting section 2 and replacing it with the following:**
2. (a) The Developer shall develop and use the Lands in conformance with the site plans attached as the following Schedule to this agreement:

Schedule "B" Site Plan

- (b) The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is substantially in conformance with the Schedule attached to this agreement and the plans filed in the Halifax Regional Municipality Planning Services Department as Case 00635, and the land shall not be used for any another use than:
 - a neighbourhood convenience store with a storage and distribution operation for meat and pizza supplies, and one dwelling unit.
- (c) An addition for the purposes of a freezer and storage area for the distribution operation may be constructed upon the land and shall be located as generally illustrated on Schedule "B". The total floor area used for retail purposes shall not exceed the existing floor area of 2609 square feet and the storage and freezer area shall not exceed 1071 square feet as illustrated on Schedule "B".
- (d) The maximum height of the addition shall not exceed 15 feet as defined by the Dartmouth Land Use Bylaw.

2. The Existing Agreement be amended to add section 14 as follows:

- 14. (a) A parking area shall be provided with a minimum of nine (9) off street parking spaces located as generally illustrated on Schedule "B". Individual parking spaces shall be a minimum of eight (8) feet by twenty (20) feet, except for three (3) spaces that may be reduced to seven (7) feet by sixteen (16) feet.
- (b) The parking area shall provide for ingress and egress of motor vehicles to a street or highway by means of driveways, aisles or maneuvering areas where no parking or storage of motor vehicles is permitted.
- (c) All parking areas including driveways and maneuvering areas shall be maintained with a permanent hard surface and shall be defined by a concrete curb, ornamental brick, planting or other landscaped feature(s).
- (d) The parking area shall have a curb or other appropriate method of delineating a pedestrian right of way and travel ways shall be provided to ensure safety between pedestrian and vehicular movements.
- (e) The driveway access shall be a minimum of 7 metres and shall not exceed a maximum of 10 metres.
- (f) Furthermore, any existing driveways may remain, however, any proposed driveway accesses shall be in accordance with the requirements of 14(e).

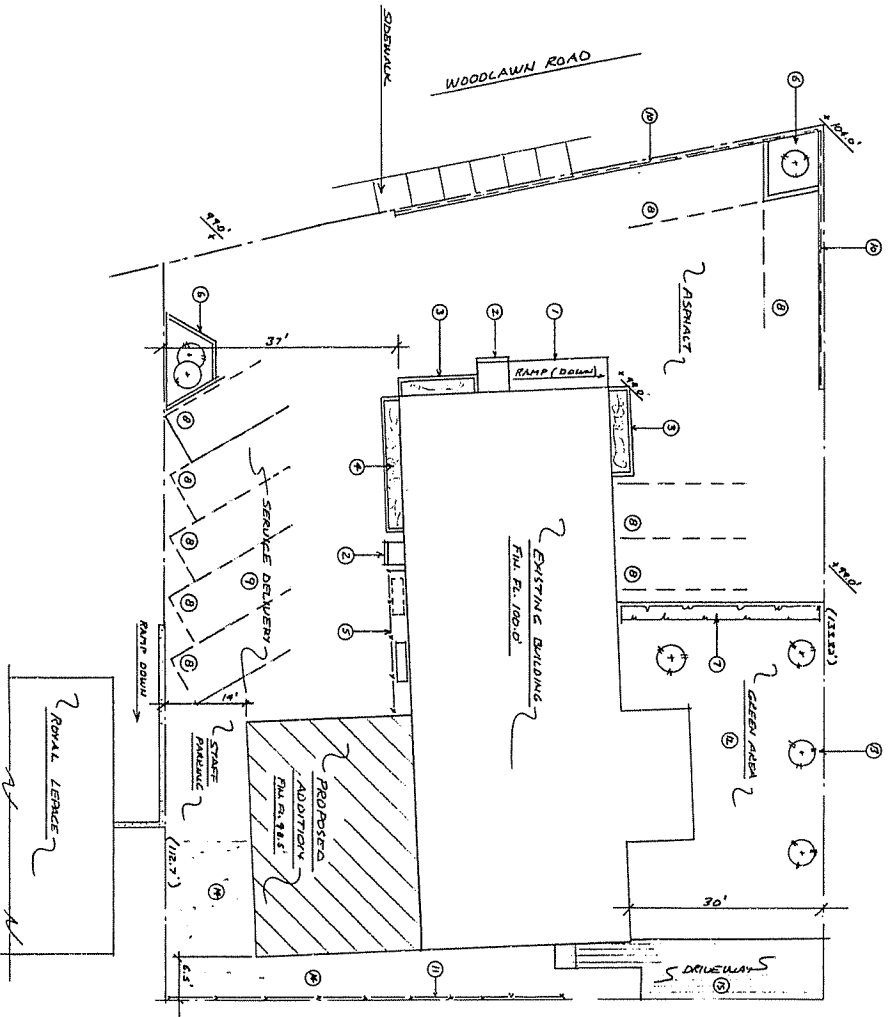
3. The existing agreement be amended to add section 15 as follows:

- 15 (a) The developer shall provide landscaping such as, wood planters, trees, sodding, and a green area as generally illustrated on Schedule "B".
- (b) The developer shall construct a wood fence that shall be a minimum of six (6') feet in height to a maximum of 6 feet and 6 inches (6'6") and shall be located on the southern boundary line as generally illustrated on Schedule "B". The placement of this fence shall not impede stopping sight distance as determined by the Development Engineer.
- (c) Any area which is not used for parking or vehicle access shall be landscaped and this shall include the reinstatement of all excavated areas.
- (d) No occupancy permit shall be issued for the addition until the landscaping has been completed, except that the occupancy permit may, at the discretion of the Municipality, be issued subject to security being provided to the Municipality in the amount of 120 per cent of the estimated cost of completion of all outstanding work. An estimate for the landscaping shall be submitted and signed by a professional landscape architect or landscaping company approved by the Development Officer. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or irrevocable, automatically renewable letter of credit in the Municipality's name issued by a chartered bank. The security shall be returned to the Developer only upon completion of all work, as described herein and illustrated on Schedule "B", and as approved by the Municipality. If outstanding work is not completed within 8 months from the date of the security, the Municipality may cash the cheque or letter of credit for the amount owing to complete the outstanding work. Should the eight month time frame expire during the winter months, the outstanding work will be completed in the spring season.
- (e) Pursuant to Sections 15 a) through c), all work shall be completed within a twelve month period from the date of registration of this agreement. If the developer fails to complete the outlined work, the Municipality may complete the work and charge the developer with all associated costs pursuant to section 264 of the *Municipal Government Act*.

4. The existing agreement be amended to add section 16 as follows:

16. (a) Not more than one commercial vehicle in conjunction with the business shall be kept on the lot. The registered weight of the vehicle shall not exceed 5 tons. The vehicle shall not encroach within the front yard setback. Additionally, no trailers shall be stored on the property.

Schedule B



SITE DEVELOPMENT PLAN
SCALE 1/8" = 10'-0"

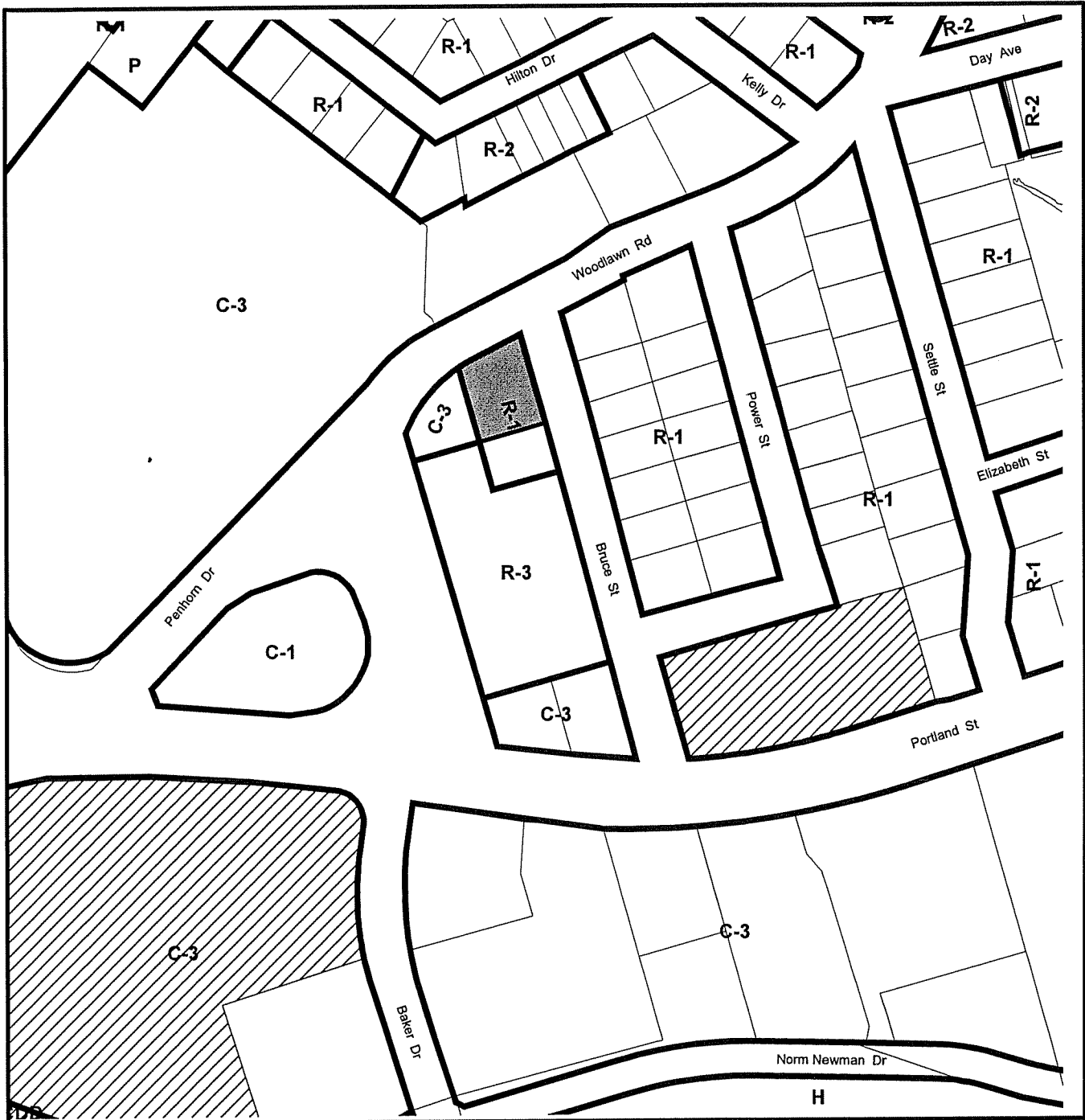
NOTES

- 1- EXISTING CONCRETE RAMP
- 2- EXISTING CONCRETE STEPS
- 3- NEW RANTER (APPROX 12.5' x 2' HIGH) - VULCANIZED 4x6 MATERIAL (2)
- 4- NEW RANTER (APPROX 20' x 3' x 2' HIGH) - VULCANIZED 4x6 MATERIAL (1)
- 5- WOOD FENCE TO SCREEN OIL TANK AND A.C. UNIT.
- 6- NEW RANTER (APPROX 8' x 3' HIGH)
- 7- NEW PILEY ALCOVE (APPROX 30' LONG)
- 8- DESIGNATED PARKING (APPROX 20' x 8')
- 9- OFF RANTS DELIVERY ACCESS TO STORAGE
- 10- EXISTING CONCRETE RETAINING WALL WITH PROTECTIVE RAILING
- 11- NEW VULCANIZED FENCE (APPROX 50' LONG x 4' HIGH)
- 12- REMOVE EXISTING FENCE IN THIS AREA
- 13- A MINIMUM OF FIVE TREES (14" x 2" CALIBER) TO BE PLANTED ON SITE (7.5' x 11' HIGH)
- 14- NEW GREEN AREA (500)
- 15- EXISTING GRABEL DRIVEWAY/WALK

GENERAL NOTES

- 1- ALL DIMENSIONS ARE TO BE SITE VERIFIED
- 2- ALL DISTURBED AREAS OF SITE ARE TO BE REFINISHED.

Schedule "Y"



Zoning & Location



Subject Property

3 Bruce Street

Zone

- R-1 Single Family Residential Zone
- R-2 Two Family Residential Zone
- C-1 Local Business Zone
- C-3 General Business Zone
- H Holding Zone

Dartmouth Land Use By-Law Area



HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

50 25 0 50 100 150 200 250 300 Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-Law area.

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