

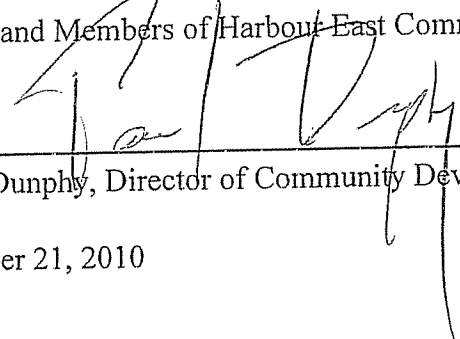


PO Box 1749  
Halifax, Nova Scotia  
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Harbour East Community Council  
November 4, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:   
Paul Dunphy, Director of Community Development

DATE: October 21, 2010

SUBJECT: Case 16161: Land Use By-law Amendment, 95 Circassion Drive

### ORIGIN

An application by WM Fares Group to amend the Cole Harbour/Westphal Land Use By-law to permit several additional business uses on the lands of George Amyoony, located at 95 Circassion Drive in Cole Harbour.

### RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading to the proposed amendments to the Cole Harbour/Westphal Land Use By-law, as set out in Attachment A of this report, and schedule a public hearing; and
2. Approve the proposed amendments to the Cole Harbour/Westphal Land Use By-law, as set out in Attachment A of this report, to permit several additional neighbourhood business uses at 95 Circassion Drive.

## **BACKGROUND**

### **Overview**

The subject property is located at 95 Circassion Drive in Cole Harbour (PID 40143646) and is the site of the former Triple AAA Convenience store which contains a second floor dwelling unit above the commercial use. Although the building and signage from the former convenience store use are still in place on the property the business is no longer in operation. The surrounding area is comprised of a combination of one and two unit dwellings, townhouse dwellings and Robert Kemp Turner Elementary School.

The subject property is zoned C-1 (Neighbourhood Business) and is located within an area designated Urban Residential under the Municipal Planning Strategy (MPS) as illustrated on Maps 1 and 2. The area is otherwise zoned for low and medium density residential uses, as illustrated on Map 1. While the only business uses permitted on the subject property are variety stores and food stores such as convenience stores, the applicant is requesting that additional business uses be permitted on the property.

### **Proposal**

The applicant has indicated that it is no longer feasible to operate a small scale locally owned neighbourhood convenience store and has applied to allow several additional local commercial and office uses on the property. This request requires an amendment to the Land Use By-law and must be considered by Harbour East Community Council.

The additional uses proposed for the subject property are listed below. All of the proposed uses are permitted on certain C-1 Zoned properties located within the plan area:

- professional / business offices (e.g. legal, insurance, real estate)
- personal service shops (e.g. tailor, hair salon)
- specialty retail (e.g. bakery, deli, gifts)
- medical offices and veterinary offices

In addition to those uses proposed by the applicant for the subject property, several other car oriented uses such as coffee shops and cafes with drive thru windows are permitted on other C-1 properties that front on collector roads. The applicant's proposal does not seek to permit cafes or coffee shops, with or without drive-thrus, on the subject property. The applicant has indicated that the residential dwelling on the second floor would be maintained and that some upgrades or renovations to the exterior of the building would likely be required in order to attract and retain new tenants for one of the proposed uses.

### **MPS Policy**

The Urban Residential (UR) designation is intended to provide a priority area for residential uses and for other uses supportive of residential neighbourhoods. While larger community and general commercial uses are not permitted within the UR Designation, the MPS recognizes that smaller

commercial uses which are more likely to serve a local area and pose minimal land use impacts on the surrounding area may be appropriate within otherwise residential neighbourhoods (Attachment B).

The MPS does not permit new applications to rezone properties to the C-1 Zone. New neighbourhood business uses are usually permitted by development agreement. However, in this case the property is already zoned C-1. The building has been in place since the MPS was adopted and the zone provisions already establish requirements for parking, signage, screening, outdoor storage and maximum commercial floor area. As a result, the applicant has applied to permit several additional C-1 Zone uses on the subject property through an amendment to the LUB.

#### **Neighbourhood Business Uses /C-1 Zone**

When the MPS and LUB were adopted existing neighbourhood business uses were placed in the C-1 Zone. Policy UR-17 recognizes that certain neighbourhood business uses such as cafes and coffee shops, which are likely to generate additional traffic or land use impacts may not be appropriate within all areas of the UR designation. As a result, the LUB identifies that the only uses permitted on all C-1 zone properties are food and variety uses such as conveniences stores. Additional uses, including those proposed by the applicant as well as cafes and coffees shop with drive-thru windows are permitted on selective C-1 zone properties that are listed in the LUB because they front on collector roads (Attachment C).

#### **DISCUSSION**

Staff have considered the proposal relative to the intent of the MPS for the UR designation. The MPS expresses the intent to recognize and support the benefits that neighbourhood business uses may provide to surrounding neighbourhoods. However, the MPS also recognizes that not all of the existing C-1 Zone properties are ideal sites for all types of neighbourhood business uses, and specifically identifies traffic and land use impacts on the surrounding area as concerns. Therefore, an important consideration in this planning exercise is the degree to which the proposed uses would increase traffic and impose other potential impacts on the surrounding area.

The applicant submitted a Traffic Impact Statement, prepared by a qualified Professional Engineer, which concludes that all of the additional uses proposed for the property would generate significantly less traffic than a convenience store. By their nature, convenience store type uses typically operate beyond the 8-10 hour work day utilized by many other commercial uses. Frequent and brief customer trips are also inherent characteristics of convenience stores due to their general objective to offer a limited variety of products in a quick and convenient manner.

By comparison, the additional uses proposed by the applicant generate less traffic and typically cater to a more limited clientele due to their focus on a more specific and targeted or specialized array of products or services. As a result, the proposed uses, such as business/office, medical office, personal service shops and specialty retail, would result in less traffic and possibly more limited hours of

operation and lower chance of past concerns such as loitering, that are likely to occur in conjunction with a convenience store.

### Summary of Survey Results

Staff mailed a survey to 113 nearby property owners in order to advise the neighbours of the application and seek their feedback on the proposal. The survey allowed residents to identify whether or not each of the land uses proposed by the applicant would be an appropriate alternative to the commercial uses currently permitted on the property. Of the 113 surveys sent out, 31 responses were received, an overview of which is provided in the table below.

Category of Proposed Uses	Responses	
	Yes	No
1) Professional and business offices (e.g. legal, insurance, real estate, accounting)	21	9
2) Personal service shops (e.g. tailor, hair salon)	19	11
3) Specialty retail (e.g. bakery, deli, gifts)	16	14
4) Medical/veterinary offices	17	13

\*\*\*Although 31 surveys were returned, 1 respondent only provided comments and did not select yes/no for any of the proposed uses.

The majority of survey respondents indicated that each of the land uses proposed by the applicant would be an appropriate alternative to a convenience store use. The most preferred land use was professional and business offices while the least preferred was specialty retail uses. Some respondents identified concerns such as increased traffic/parking on a residential street with a school, issues such as robberies and loitering that have been experienced on the property in the past, and that many of the proposed uses may be found or located in adjacent commercial areas. Some of those that responded positively to the survey questions identified that the proposed uses were more appropriate for the area than a convenience store and that some of the uses could be of benefit to the neighbourhood.

### Conclusion

The MPS intends to allow for neighbourhood scale commercial uses on properties located in residential areas that contained minor commercial uses at the time that the MPS and LUB were adopted. The MPS also intends to ensure that properties in the C-1 zone don't generate excessive traffic or impact neighbourhood character. Staff are of the opinion that it is appropriate to permit

the uses proposed by the applicant as an alternative to food and variety stores for the following reasons:

- All of the uses proposed by the applicant are expected to generate less vehicular traffic than the uses currently permitted on the property;
- The proposed uses typically result in shorter hours of operation than the convenience store type uses currently permitted on the property and operated in the past;
- The proposed uses are less likely to impose some of the unwanted impacts, such as robberies and loitering, that have been associated with the convenience uses on the property;
- Any commercial use on the property would have to comply with the applicable C-1 Zone requirements for parking, screening, fencing and the size of the building and commercial area cannot be increased; and
- Staff have proposed additional restrictions for the subject property which specifically restrict the operation of a pawn shop, tattoo parlour, or massage parlour on the property. Furthermore, veterinary uses could not include a dog day care facility.

Staff are of the opinion that the proposed amendments are consistent with the intent of the MPS for neighbourhood business uses within the Urban Residential designation and recommend that Council approve the proposed amendments as set out in Attachment A.

### **BUDGET IMPLICATIONS**

The HRM costs associated with process this planning application can be accommodated within the approved budget for C310 Planning & Applications.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through the HRM Website, responses to inquiries, as well as a survey that was sent to residents of the affected neighbourhood. Given the fairly narrowly defined scope of the applicant's proposal the local councillor for the area waived the public information meeting in favour of a survey that could be sent directly to area residents.

Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 1.

The proposed land use by-law amendment will potentially impact local residents and property owners.

### ALTERNATIVES

1. Council may choose to approve the proposed amendment to the LUB. This is the recommendation of staff for reasons set out in this report.
2. Council may choose to approve the proposed amendments to the LUB subject to modifications to the types of uses permitted. This may require further discussion with the applicant and necessitate a second Public Hearing.
3. Council may choose to refuse the proposed amendments to the LUB, and in doing so, must base this decision on a conflict with MPS policy.

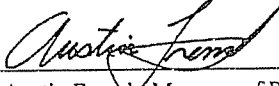
### ATTACHMENTS

Map 1: Zoning and Location  
Map 2: Generalized Future Land Use  
Map 3: Area of Notification and Survey Distribution

Attachment A: Proposed Amendments to the Cole Harbour/Westphal LUB  
Attachment B: Excerpts from the Cole Harbour/Westphal MPS  
Attachment C: Excerpts from the Cole Harbour/Westphal LUB  
Attachment D: Written Submission

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, Senior Planner, 490-3991

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



## Map 1 - Zoning and location

95 Circassion

 Subject Property

Cole Harbour/ Westphal

### Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-5 Rowhouse Dwelling
- C-1 Neighbourhood Business
- P-1 Open Space
- P-2 Community Facility

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES

0 25 50 100 150 Feet


This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour/ Westphal Plan Area

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



## Map 2 - Generalized Future Land Use

95 Circassion

 Subject Property

### Designation

UR Urban Residential

Cole Harbour/ Westphal

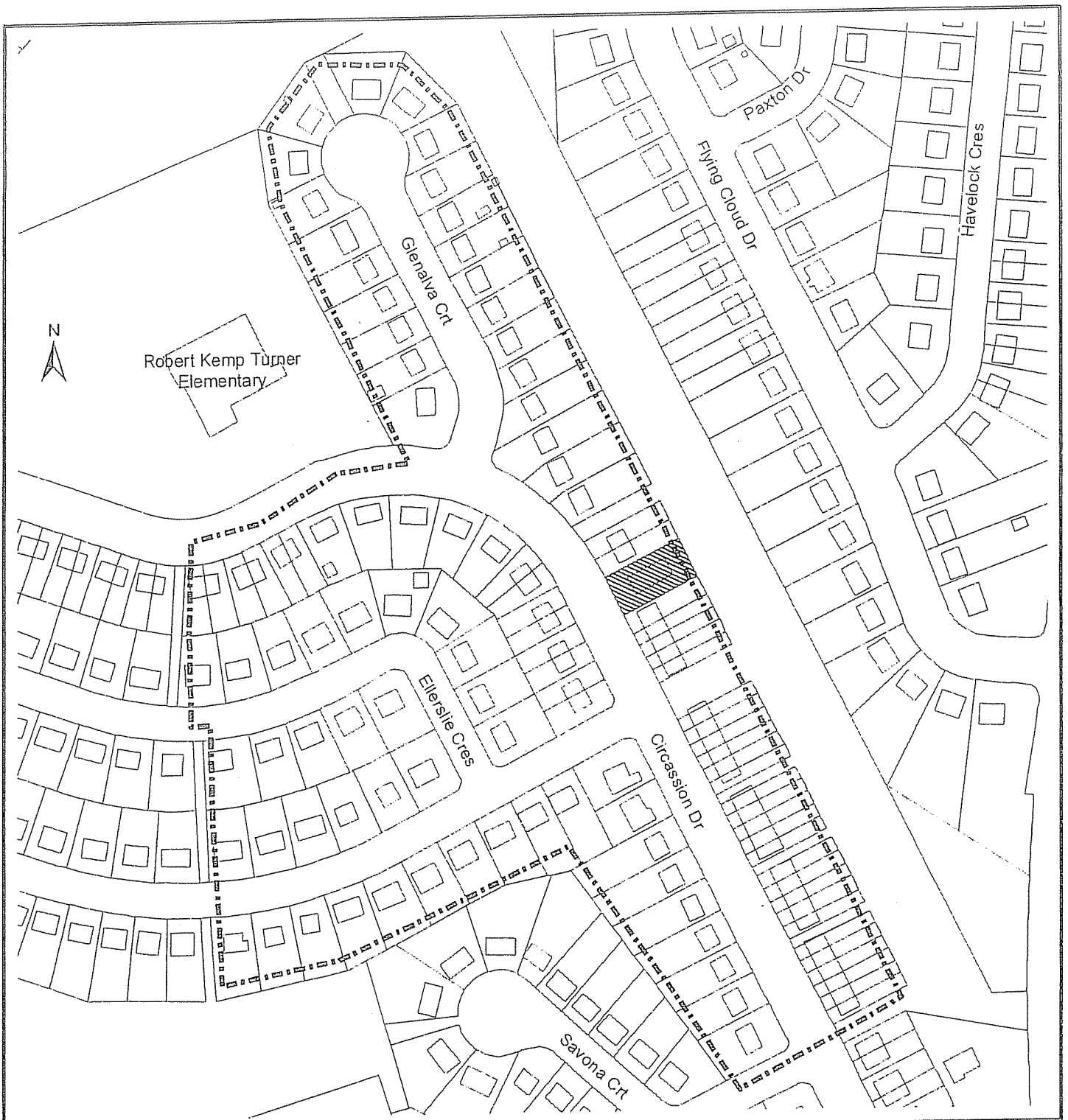
**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES

0 25 50 100 150  
Feet

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Cole Harbour/ Westphal Plan Area


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





### Map 3 - Notification and Survey Area

95 Circassion

 Subject Property

Cole Harbour/ Westphal

**HALIFAX**  
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COMMUNITY DEVELOPMENT  
PLANNING SERVICES

0 50 100 200 300  
Feet

This map is an unofficial reproduction  
of a portion of the Cole Harbour/  
Westphal Plan Area

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Attachment A: Proposed Amendments to the Cole Harbour /Westphal LUB

BE IT ENACTED by the Harbour East Community Council that the Cole Harbour/Westphal Land Use By-law as enacted by the former Halifax County Municipal Council on the 30<sup>th</sup> day of November, 1992 and approved by the Minister of Municipal Affairs on the 3<sup>rd</sup> day of March, 1993, as amended, is hereby further amended as follows:

1. The following text shall be added to the end of Section 16.1:

Additional Neighbourhood Business Uses permitted on PID 40143646:

- professional / business offices (e.g. legal, insurance, real estate);
- personal service shops (e.g. tailor, hair salon), which shall not include tattoo parlours or massage parlours;
- specialty retail (e.g. bakery, deli, gifts), which shall not include pawn shops;
- medical offices; and
- veterinary offices, which shall not include the boarding of any animal, whether daily or overnight, except for animals that require boarding for medical purposes.

I HEREBY CERTIFY that the amendments to the Cole Harbour/Westphal Land Use By-law as set out above, were passed by a majority vote of the Harbour East Community Council at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2010.

GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Cathy Mellett, Municipal Clerk

Attachment B: Excerpts from the Cole Harbour/Westphal MPS

UR-1 In recognition of the established residential community and the need to provide for a variety of residential opportunities as the community continues to grow and evolve, it shall be the intention of Council to establish the Urban Residential Designation as shown on Map 1 - Generalized Future Land Use Map. This designation shall constitute the priority area for continuing residential development and for those uses which are supportive of residential environments.

Neighbourhood Business Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood business uses such as corner stores, personal service shops, professional offices, specialty retail and cafes/coffee shops can conveniently serve local residents from locations within their own neighbourhoods. However, such uses can create compatibility concerns with adjacent residential development relative to traffic generation on local streets, access controls, hours of operation, and visual effects related to site and building design. In light of these concerns, new neighbourhood business uses will only be considered by development agreement. Existing neighbourhood business zoning will be maintained. Where deemed appropriate, limitations may be placed on the range of uses permitted where there is expressed concern relative to increased traffic and impact on adjacent residential uses.

UR-17 Notwithstanding Policy UR-2, in recognition and support of existing neighbourhood business uses, within the Urban Residential Designation, it shall be the intention of Council to establish a neighbourhood business zone which permits neighbourhood businesses along with single detached dwellings. It is the intention of Council that this zone shall be applied only to properties having a neighbourhood business zone on the effective date of the planning strategy. The range of uses permitted in a neighbourhood business zone may be limited on those properties where there is expressed concern over increased traffic and impact on adjacent residential uses.

UR-18 Notwithstanding Policies UR-2 and UR-17, within the Urban Residential Designation, it shall be the intention of Council to consider new neighbourhood business uses according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:

- (a) neighbourhood business uses shall be limited to uses that are primarily intended to serve the local neighbourhood;
- (b) the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet, exclusive of any area devoted to an accessory dwelling unit;
- (c) the architectural design is compatible with the predominant roof styles, window styles and exterior materials used in the surrounding residential neighbourhood;

- (d) the height, bulk and lot coverage of any building is compatible with adjacent land uses and with the character of the surrounding residential neighbourhood;
- (e) open storage or outdoor display shall not be permitted;
- (f) site design features, including signage, landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent developments;
- (g) there is direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- (h) the impact on traffic circulation and, in particular, the suitability of access to and from the site;
- (i) maintenance of the development;
- (j) hours of operation; and
- (k) the provisions of Policy IM-11.

(Reg. Council-May 11/99, Effective-June 26/99)

Attachment C: Excerpts from the Cole Harbour/Westphal LUB

**PART 16: C-1 (NEIGHBOURHOOD BUSINESS) ZONE**  
**(RC-May 11/99;E-Jun 26/99)**

**16.1 C-1 USES PERMITTED**

No development permit shall be issued in any C-1 (Neighbourhood Business) (RC-May 11/99;E-Jun 26/99) Zone except for the following:

Commercial Uses

Existing variety stores;  
Existing food stores;  
Single unit dwellings

**Additional Neighbourhood Business Uses Permitted on Properties Described as 363 Caldwell Road (PID# 403311), 369 Caldwell Road (PID#40714818), and 404 Caldwell Road (PID#40124745)**

- professional / business offices (e.g. legal, insurance, real estate)
- personal service shops (e.g. tailor, hair salon)
- specialty retail (e.g. bakery, deli, gifts)
- cafe / coffee shops (may include drive-thru window)
- medical / veterinary offices (RC-May 11/99;E-Jun 26/99)

**16.2 C-1 ZONE REQUIREMENTS**

In any C-1 Zone, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services	6,000 square feet (557.4 m <sup>2</sup> )
	on-site services	20,000 square feet (1858.1 m <sup>2</sup> )
Minimum Frontage:	central services	60 feet (18.3 m)
	on-site services	100 feet (30.5 m)
Minimum Front or Flankage Yard		25 feet (7.6 m)
Minimum Rear or Side Yard	15 feet (4.6 m)	
Maximum Lot Coverage		35 percent
Maximum Height of Main Building		35 feet (10.7 m)
Minimum Width of Main Building		20 feet (6.1 m)

**16.3 OTHER REQUIREMENTS: NEIGHBOURHOOD BUSINESS USES (RC-May 11/99;E-Jun 26/99)**

Where uses are permitted as Neighbourhood Business Uses (RC-May 11/99;Jun 26/99) in any C-1 Zone, the following shall apply:

- (a) The gross floor area of any permitted commercial building in any C-1 Zone, including any floor area devoted to a permitted dwelling unit, shall not exceed three thousand (3,000) square feet (278.7 m<sup>2</sup>).

- (b) The maximum gross floor area of any permitted commercial use in any C-1 Zone shall not exceed fifteen hundred (1,500) square feet (139.4 m<sup>2</sup>).
- (c) No portion of any lot shall be used for the collection and storage of refuse unless the refuse containers are screened.
- (d) Except where any lot in any C-1 Zone abuts another lot in a C-1 Zone, no portion of any parking space within the C-1 Zone shall be permitted within any required side or rear yard, except where a fence or other visual and physical barrier is erected in which case there shall be no parking within five (5) feet (1.5 m) of the side or rear lot line.
- (e) No open storage or outdoor display shall be permitted.

**16.3A SIGNAGE REQUIREMENTS: NEIGHBOURHOOD BUSINESS USES**

Where uses are permitted as Neighbourhood Business Uses in any C-1 Zone, the following shall apply:

- (a) one ground sign shall be permitted on a lot containing a maximum of two (2) sign faces, a maximum sign face area of 25 square feet per sign face, and with a maximum overall sign height of 15 feet;
- (b) fascia and/or awning signage shall be permitted;
- (c) no roof signs shall be permitted;
- (d) moveable letter signage shall be permitted within the ground sign provided the overall sign area is not exceeded; and
- (e) no portable or moveable signs shall be permitted.

**16.3B PARKING REQUIREMENTS: NEIGHBOURHOOD BUSINESS USES**

Notwithstanding Section 4.25, where uses are permitted as Neighbourhood Business Uses in any C-1 Zone, the minimum number of off-street parking spaces required for a neighbourhood business use shall be the sum-total number determined by application of the following standards:

- (a) two spaces / dwelling unit;
- (b) two spaces / person performing a personal service;
- (c) five spaces / patient oriented professional service;
- (d) one space / two employees not including persons covered by (b) and (c);
- (e) one space / two hundred square feet of floor space devoted to a non-residential uses not included in (b), or (c) excluding areas used for such things as storage or bathrooms; and
- (f) in no case shall less than three off-street spaces be provided for each non-residential use. (RC-May 11/99;E-Jun 26/99)

**16.4 OTHER REQUIREMENTS: HOME BUSINESS USES**

Where home business uses are permitted in any C-1 Zone, the following shall apply:

- (a) Any business shall be wholly contained within the dwelling which is the principal residence of the operator of the business.

- (b) No accessory building shall be used for the storage or display of materials, goods, supplies or equipment related to the operation of the business.
- (c) No more than twenty-five (25) per cent of the gross floor area shall be devoted to any business use, and in no case shall any business use occupy more than three hundred (300) square feet (27.9 m<sup>2</sup>) gross floor area.
- (d) No mechanical equipment shall be used except that which is reasonably consistent with the use of a dwelling and which does not create a nuisance by virtue of noise, vibration, glare, odour or dust or which is obnoxious.
- (e) No outdoor storage or display of materials, goods, supplies, or equipment related to the operation of the business use shall be permitted.
- (f) No more than one (1) sign, which shall be affixed to the main dwelling, shall be permitted for any business and no such sign shall exceed two (2) square feet (0.2 m<sup>2</sup>) in area.
- (g) One (1) off-street parking space, other than that required for the dwelling shall be provided for every one hundred and fifty (150) square feet (13.9 m<sup>2</sup>) of floor area devoted to any business.
- (h) No exterior alterations to the dwelling related to the business use shall be permitted except to meet fire safety, structural safety, or health regulations.
- (i) No retail operation shall be permitted except where retail is accessory to a business use which involves the production of goods or crafts or the provision of a service.

Attachment D: Written Submission

Hello Mr. Driscoll, I am writing as a resident of . I live very close to the property trying to get a C-1 permit. I have lived on this street for 22 years. I was never so glad as to see the previous store close. My children were not allowed to even enter that building. I personally saw, with many different people running it, that store be used as a venue for drugs, and a hang out for less desirable individuals.

The previous store closed after many robberies. I do not feel this is an appropriate clinetelle for my neighborhood. I am of the opinion that the same person or people have owned this property and had family members running the business. Why should I be sure that this owner will bring a reputable business to my neighbourhood?

There is an elementary school in very close proximity, there are many children having to walk by the building as there is only a sidewalk on one side of the road. This is, right now, a very quiet area. When there is a business on a residential, subdivision street it increases the traffic flow. There is enough legitimate traffic on our street as it is. I do not want to go back to the days of constant traffic in and out of that parking lot for any reason. If you need any further information please feel free to contact me.

Tracey Sullivan