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Harbour East Community Council
March 1, 2007

TO: Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: February 15, 2007

SUBJECT: Case # 00993: Amending Development Agreement - Beazley Lanes

ORIGIN

Application by Beazley Bowling Lanes Ltd for a non-substantive amendment to a development agreement to permit a lounge at 613 Highway #7 (Main St), Westphal.

RECOMMENDATIONS

It is recommended that Harbour East Community Council:

1. Approve, by resolution, the non-substantive amendment to a development agreement, as shown in Attachment A (the second amending development agreement), to allow for a lounge on the premises.
2. Require the amending 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 approval is later, including applicable appeal periods, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Beazley's Bowling Lanes is located in a multi-tenant commercial building owned by Madison Realty Ltd. at 613 Highway #7 in Westphal (Map 1). The property is located at the busy intersection of Highway #7 with the Forest Hills Connector in the C-4 (Highway Commercial) Zone of the Cole Harbour/Westphal Land Use By-law. The C-4 zone permits a broad range of commercial uses, community uses and existing residential uses. Other businesses in the premises include The Sandtrap (a golf facility/ lounge), car stereo sales, a used clothing retailer, Tai Kwon Do, used furniture sales, and a hair salon, to name a few. The property is surrounded by other C-4 zoned lots, similarly occupied.

Policies of the Community Planning Strategy (Attachment B) require a development agreement for the establishment of a beverage room in this plan area. There is an existing development agreement for a 70 seat beverage room in association with Beazley Bowling Lanes registered on May 9, 1994 and amended later that year to change signage provisions for the business.

At the time of Beazley's original application for a development agreement to permit a beverage room, the proposal included a food counter and eating area in the bowling facility, *outside* of the area designated under the agreement for a beverage room. The text of the development agreement also excludes 'the ordering of food' from the definition of 'Beverage Room'. The original staff report does not indicate why food ordering was excluded from the licenced area, and it is currently the business owner's intent to relocate the food counter to the licenced area in order to meet the Nova Scotia Alcohol and Gaming Control Commission requirements for a 'Lounge' licence. While a liquor licence for the sale of beer and wine (a 'Beverage Room' licence), only requires a food preparation area on site, a 'Lounge' can only operate in association with a licensed eating establishment. Underage access to a 'Lounge' is generally prohibited, and the lounge licence permits the sale of spirits in addition to beer and wine. The province just amended the hours of operation restrictions allowing beverage rooms to remain open as late as lounges (2:00 a.m.).

Beazley's proposes to locate their existing food counter inside the area under the development agreement designated for a beverage room. Before doing this, the development agreement must be amended to change the definition of Beverage Room, so that it no longer excludes the ordering of food, as shown in Attachment A.

DISCUSSION

Staff have reviewed the proposal under the relevant planning strategy policy (Attachment B) and have identified no concerns with the proposal. The intent of the policy was to require development agreements for beverage rooms in order to specifically control the potential effects of these types of uses. Restaurants or dining rooms are permitted as of right in the C-4 (Highway Commercial) zone, where the facility is located (Map 1).

Council may approve these changes pursuant to the Non-Substantive Amendment clause in the existing agreement. Section 7.2(d) lists the 'establishment of kitchen facilities and/ or dining room' as a being amendments that may be deemed non substantive.

Approval of this non-substantive amendment will not result in any changes to the hours of operation which are already controlled under clause 4.4 of the existing development agreement¹. The applicant does not intend to change the business's hours of operation, nor could they make application to do so as a non-substantive amendment. A public hearing would be required to change the hours of operation.

Public Participation

While a public hearing is not required to consider a non-substantive amendment, clause 7.3 of the development agreement requires notice in writing of the amendment be sent to owners within five hundred feet of the subject property. This notice is to advise them that they may present written or oral submissions prior to Council's consideration of the proposal. Notice will be sent 10 days prior to the March 1st Council meeting to owners identified on Map 1.

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 approve the non-substantive amendment to the existing development agreement. This is the recommended course of action.
2. Council may refuse the non-substantive amendment to the existing development agreement. This alternative is not recommended as staff are satisfied that the proposal is consistent with the policies and intent of the MPS.
3. Council may propose modifications to the non-substantive amendment to the existing development agreement. Such modifications may require further negotiations with the developer, and may be outside the scope of a non-substantive amendment.

ATTACHMENTS

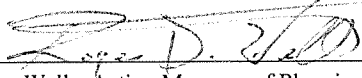
Map 1:	Zoning and Location
Attachment A	Draft Amending Agreement
Attachment B	Relevant Policies of the Cole Harbour Westphal MPS

¹ 10:00a.m. to 1:00a.m. Monday -Saturday; Noon - 1:00a.m. Sunday

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then 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 Koblents, Planner 490-4181

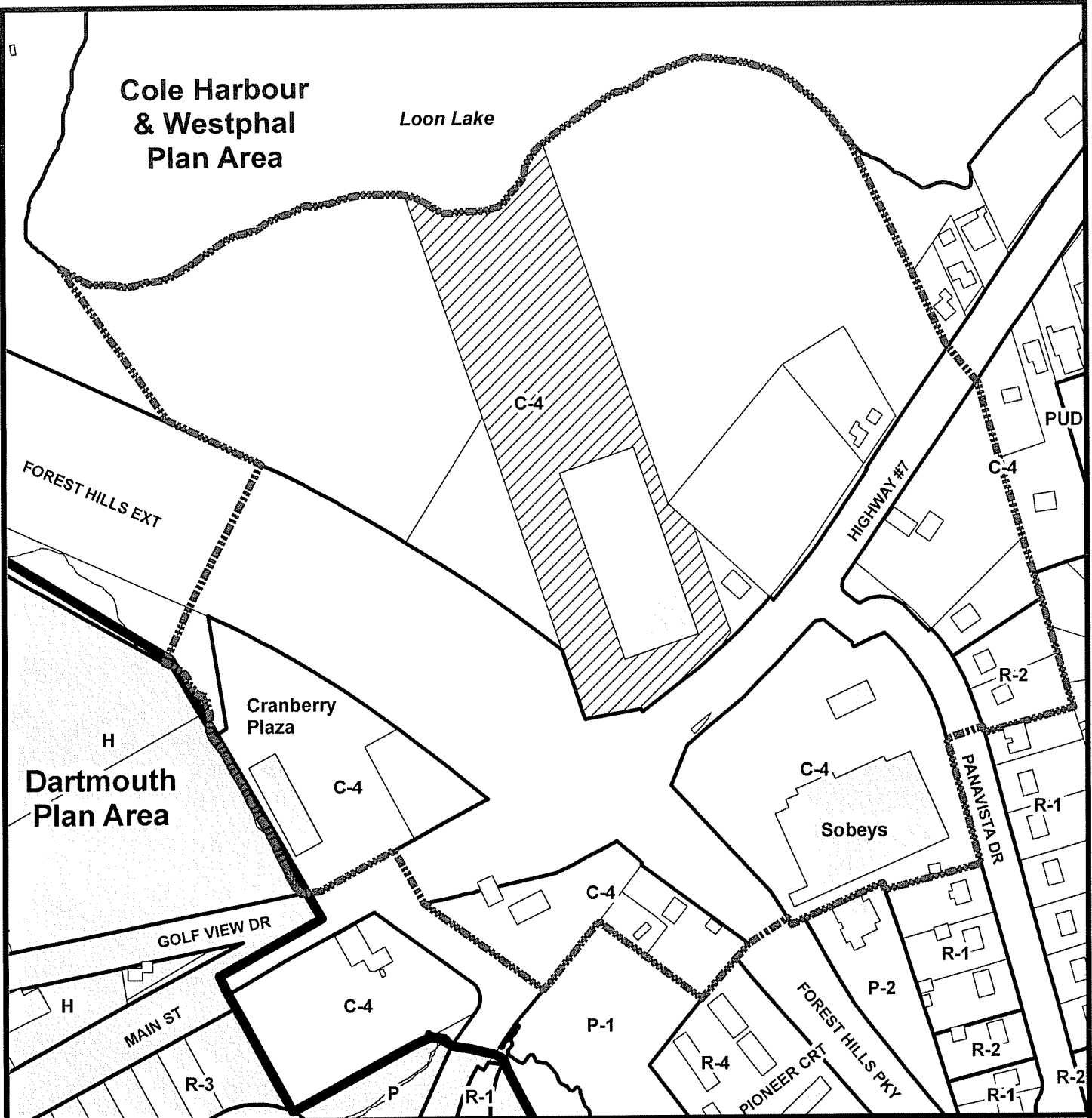
Report Approved by:



Roger Wells, Acting Manager of Planning Services, 490-4373

Cole Harbour & Westphal Plan Area

Loon Lake



Map 1 Zoning & Location

Legend

Dartmouth Zones

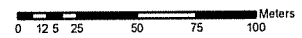
- R-1 Single Family Residential
- R-3 Multiple Family Residential
- H Holding
- P Park

Cole Harbour/Westphal Zones

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-4 Multiple Unit Dwelling
- C-4 Highway Commercial
- P-1 Open Space
- P-2 Community Facility
- PUD Planned Unit Development
- / / / / Subject Property
613 Highway #7
- 500' Notification Area



HALIFAX
REGIONAL MUNICIPALITY
Community Development



This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour/Westphal Land Use By-law area

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

**Attachment A
Draft Amending Agreement**

THIS SECOND AMENDING AGREEMENT made this _____ day of _____, 2007,

BETWEEN: **MADISON REALTY LIMITED**
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of lands situated to the northwest of the intersection of Highway No 7 and the Forest Hills Collector in Westphal (613 Highway #7) and which said lands are more particularly described in Schedule 'A' to this agreement (hereinafter called the "Lands");

AND WHEREAS the Cole Harbour/ Westphal Community Council of the Halifax County Municipality approved an application by the Developer to enter into a development agreement to allow for a beverage room within the existing building (Municipal Case #90297), which said development agreement was registered at the Registry of Deeds at Halifax in Book No. 5561 at Pages 422 to 431 as Document Number 17586 (hereinafter called the "Agreement");

AND WHEREAS the Cole Harbour/ Westphal Community Council of the Halifax County Municipality approved an application by the Developer to amend the Agreement to change signage provisions made under Part 6 of the Agreement (Municipal Case #90295), which said development agreement was registered at the Registry of Deeds at Halifax in Book No. 5640 at Pages 980 to 981 as Document Number 43985 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Developer has requested further amendment to the Agreement to allow for a dining room within the licenced part of the establishment;

AND WHEREAS the Harbour East Community Council of the Municipality approved this request at a meeting on the _____ day of _____, 2007, referenced as Municipal Case #00993 (hereinafter called the "Second Amending Agreement");

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

1. To amend Section 1.1 of the Agreement by deleting text as follows:

1.1 BEVERAGE ROOM shall mean that portion of the Building which is open to the public for the sale of alcoholic beverages, excluding the ordering of food:

2. To amend Section 7.2 by deleting clause (d) as follows:

(d) establishment of kitchen facilities and/or dining room

3. All other terms of the Agreement shall remain in full force and effect.

4. This Second Amending Agreement and everything contained herein shall be binding upon the Parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set hands and seals to this Second Amending Agreement on the day and year first above written.

SIGNED, SEALED AND DELIVERED) MADISON REALTY LIMITED

in the presence of)

Per _____)

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SEALED, DELIVERED and ATTESTED) HALIFAX REGIONAL MUNICIPALITY

to by the proper signing officers of Halifax)

Regional Municipality duly authorized)

in that behalf in the presence of)

Per _____)

) Per _____

) Mayor

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Municipal Clerk

Attachment B

Relevant Policies of the Cole Harbour/Westphal MPS

HC-5 Notwithstanding Policies CC-2 and HC-2, within the Community Commercial and Highway Designations, it shall be the intention of Council to permit beverage room and other entertainment uses only in commercial structures having greater than ten thousand (10,000) square feet, according to the development agreement provisions of the Planning Act. In considering such developments, Council shall have regard to the following:

- (a) separations from residential uses;
- (b) vehicular access and egress;
- (c) the location and extent of open storage and/or display;
- (d) the location of parking and loading areas;
- (e) drainage both on and off the site;
- (f) any landscaping of such uses; and
- (g) the provisions of Policy IM-11.

IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of sewer and water services;
 - (iii) the adequacy or proximity of school, recreation and other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) the potential for damage to or destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and
- (e) any other relevant matter of planning concern.
- (f) 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.

(Regional Council - July 2, 2002, Effective - August 17, 2002)