8.1.1

HALIFAX
REGIONAL MUNICIPALITY

PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
April 2, 2007

TO: Peninsula Community Council

SUBMITTED BY: Paul Dunphy, Director of Community Development

DATE: March 16, 2007

SUBJECT: **Case 00809: Development Agreement, 1521 LeMarchant Street, Halifax**

ORIGIN

Application by Halifax Condominium Corporation No. 33 to permit commercial uses on the ground floor of an existing apartment building at 1521 LeMarchant Street, Halifax, including a restaurant, print shop and hair salon and to discharge a development agreement for a dental lab at the same location.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Give Notice of Motion to consider an application by Halifax County Condominium Corporation No. 33 to enter into a development agreement for property at 1521 LeMarchant Street, Halifax, and schedule a public hearing;

2. Approve the development agreement, as contained in Attachment A, to permit commercial uses on the ground floor of an existing apartment building at 1521 LeMarchant Street, including a restaurant, print shop and hair salon;

3. Require that the development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community 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, and

4. Subject to signing of the new agreement, discharge the existing development agreement for a dental office, to take effect upon the registration of the new agreement.

BACKGROUND

The property at 1521 LeMarchant Street is occupied by a 63 unit apartment building with ground floor commercial spaces (refer to Map 1 and Schedule "C" of Attachment A). The surrounding area includes a mix of residential uses, university uses and "neighbourhood" commercial uses.

The existing ground floor commercial spaces are occupied by a print shop ("Julia's Photocopy Service") and a hair and tanning salon ("Snip-It-First"), both of which are unauthorized uses. The remaining space, facing Coburg Road and proposed as restaurant space, has been temporarily occupied by the owner's business, Point East Investments Limited. Point East has applied for municipal permits to occupy a portion of this space and plan to vacate the space immediately, if Council grants approval of the proposal, to make way for the restaurant.

Description of Proposal:

The proposal consists of the following (refer to Schedules "B", "C" and "D" of Attachment A):

- A deli-style, eat-in / take-out restaurant in the southern space, facing Coburg Road;
- Authorization of the existing print shop and hair / tanning salon;
- Discharge of existing development agreement for a dental lab/office;
- Requirement that other commercial uses only be permitted through a substantive amendment to the development agreement.

The proposal does not involve an increase in the size or floor area of the building or an increase in the residential population density of the building.

History of Building and Commercial Uses:

The existing building was constructed in 1962 and is non-conforming to the existing zoning / Land Use By-law, as it contains a greater residential population density than currently permitted and does not fully comply with other by-law requirements such as angle controls and open space.

There have been a number of commercial uses occupying the ground floor over the years, some of which have been authorized and others which have not. Former authorized uses include a bank, doctors offices / medical clinic, dental offices, grocery / convenience store, carpet cleaning business, hair salon, professional offices and air cleaning equipment rentals. Unauthorized uses have included a bookstore, vet clinic and the current hair salon and print shop.

There have been two previous applications, in the mid to late '90s, which proposed the legalization of commercial uses in conjunction with proposed penthouse and carport additions to the building. Both of these applications were unsuccessful. There have also been various attempts since then to occupy the vacant space and a "Store For Rent" sign has been advertising the space during much of this time prior to the recent occupancy by Point East.

The permitted ground floor uses under the current zoning/LUB are an office for professional or personal services of up to 700 square feet, a child care centre or a special care home. In addition, a development agreement was entered into in 1980 which allows for a dental lab. Although the dental lab closed many years ago, the agreement is still in effect and has not been discharged.

Zoning and Enabling Policy:

The property lies within the Peninsula Centre Area Plan of the Halifax MPS. The subject property is split by two land use and zoning designations. A large portion of the property which contains the existing building is designated High Density Residential (HDR) and zoned R-3 (Multiple Dwelling) while a smaller portion to the east is designated Medium Density Residential (MDR) and zoned R-2 (General Residential).

Implementation Policy 3.14 and Section 99(4) of the Land Use By-law allow Council to be able to consider the proposal through the development agreement process.

DISCUSSION

The Peninsula Centre Area Plan, and Halifax MPS in general, call for a balance between the maintenance of low-rise residential areas, the continued development of university areas, allowances for limited neighbourhood and minor commercial uses as well as the suitable re-use of existing non-conforming uses and structures. As the subject property and structure is non-conforming, the existing ground floor space cannot be used for either residential or most commercial uses through the as-of-right development process.

Implementation Policy 3.14 provides Council with the ability to approve suitable alternate uses of the ground floor space, provided that they are "less intensive" than the existing or previous non-conforming uses that occupied the space. Since there have been continuous attempts to occupy or rent the space, the non-conformity applies to the last uses which legally occupied the space, which, in this case, are a convenience store and medical clinic. Both of these uses could have expanded within the building to occupy the entire ground floor. Therefore, Council has some discretion in determining whether the proposed and unauthorized uses (restaurant, print shop, hair/tanning salon) are less intensive than a convenience store and medical clinic.

In considering the level of intensity of a particular land use, Council may wish to consider factors such as the size or floor area, pedestrian and vehicular traffic, hours of operation, noise levels, lighting and emissions.

It is staff's view that the proposed / unauthorized uses may be considered marginally less intensive than a convenience store and medical clinic, although no studies have been conducted to compare specific person/vehicle counts or noise or emission levels. In terms of the proposed restaurant use versus a convenience store, the number of restaurant customers is likely to be slightly smaller, but these customers will stay for longer periods of time. With regard to the print shop and hair salon, it

is staff's understanding that many of the customers would be students walking to these locations as opposed to customers arriving by vehicle. In terms of hours of operation, the print shop currently is open on weekdays only and the hair/tanning salon, in addition to weekday hours, is open only two nights until 7pm and on Saturday mornings. Staff have not received any complaints with regard to these two businesses.

The following provisions have been placed in the draft development agreement (Attachment A) in order to address neighbourhood compatibility issues:

- permitted land uses are restricted to the restaurant, print shop and hair/tanning salon as well as those uses permitted as-of-right;
- signs on the building are limited in size and are not permitted to be illuminated, except from the front;
- the existing pylon sign abutting Coburg Road is permitted to remain in place and can be replaced in its current form and location;
- hours of operation for the restaurant are limited so that it remains open no later than 9pm;
- deliveries to the building will occur only between the hours of 9am-5pm and delivery vehicles will park on the eastern side of the building as opposed to on the abutting streets;
- there will be no outdoor storage/display and the garbage container will be screened with an opaque fence or walls/landscaping;
- the current level of landscaping and open space on the site will be maintained.

Public Information Meeting/Notification Area

A public information meeting was held on December 8, 2005. Minutes of the meeting are attached as Attachment C. The notification area is indicated on Map 1. If Community Council decides to hold a public hearing regarding this application, property owners within the notification area identified on Map 1 will be notified.

Conclusion:

The proposal provides a reasonable re-use of the ground floor commercial space which is consistent with the intent of the MPS. The draft development agreement (Attachment A) places reasonable controls on such matters as permitted uses, signs, hours of operation and deliveries.

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 development agreement. This is the recommended course of action.

2. Council may refuse to enter into the 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 choose to propose modifications to the agreement. Such modifications may require further negotiations with the Developer.

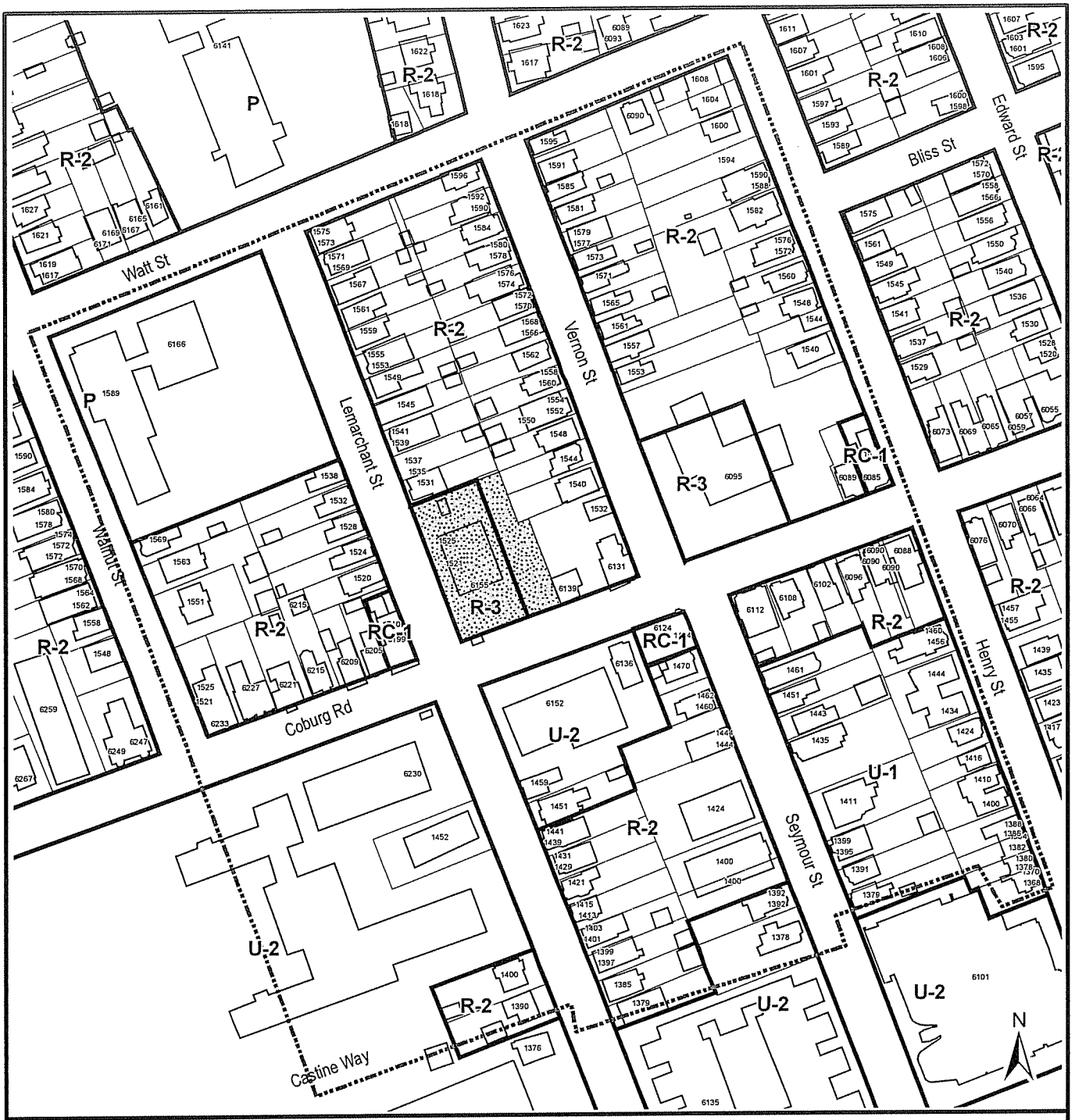
ATTACHMENTS

Map 1	Location and Zoning
Attachment A	Draft Development Agreement containing the following Schedules:
Schedule "B"	Site Plan (Plan # 00809-001)
Schedule "C"	Ground Floor Plan (Plan # 00809-002)
Schedule "D"	Restaurant Floor Plan (Plan # 00809-003)
Attachment B	Relevant Excerpts from MPS and LUB
Attachment C	Minutes of Public Information Meeting
Attachment D	Written Submission from Public

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: Paul Sampson, Planner, 490-6259

Report Approved by: Roger Wells, Acting Manager of Planning Services, 490-4373



Map 1 - Location and Zoning

1521 Lemarchant Street
Halifax

Subject property

Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

R-2	General Residential
R-3	Multiple Dwelling
RC-1	Neighbourhood Commercial
P	Park and Institutional
U-2	High-Density University

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

0 10 20 30 40
m

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

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

23 January 2007 | Case 00809 | file: T:/work/planning/hilary/casemaps/00809.pdf (HEC)

Attachment A

THIS AGREEMENT made this day of , 2007,
BETWEEN:

HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 33,
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 1521 LeMarchant Street, Halifax (PID# 00049684) and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for ground floor commercial uses within the existing apartment building on the Lands pursuant to the provisions of the *Municipal Government Act*, Implementation Policy 3.14 of the Halifax Municipal Planning Strategy and Section 99(4) of the Halifax (Peninsula) Land Use By-law;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the Halifax Regional Municipality;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting on the day of , 2007 (referenced as Municipal Case Number 00809) and at the same meeting, approved the discharge of the existing development agreement for a dental lab on the subject property, said agreement being filed in the Registry of Deeds on April 22, 1980 in Book 3397, at Pages 430-436, said discharge to take effect upon the registration of this agreement;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

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

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

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

1.3 Applicability of Other By-laws, Statutes and Regulations

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

The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of HRM and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer.

1.4 Conflict

Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

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

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all federal, provincial and municipal regulations, by-laws or codes applicable to any lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 SCHEDULES

The Developer shall develop and use 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 filed in the Halifax Regional Municipality as Case Number 00809:

Schedule "A"	Legal Description of the Lands
Schedule "B"	Site Plan (Plan # 00809-001)
Schedule "C"	Ground Floor Plan (Plan # 00809-002)
Schedule "D"	Restaurant Floor Plan (Plan # 00809-003)

2.2 Permitted Uses

2.2.1 The permitted uses on the ground floor of the existing apartment building shall include, in addition to those permitted by the Land Use By-law, a print shop, hair / tanning salon and restaurant (eat-in / take-out) as generally illustrated in Schedules "C" and "D".

2.2.2 Other uses proposed for the ground floor of the building which are not indicated in Section 2.2.1 shall only be considered through a substantive amendment to the development agreement.

2.3 Signs

2.3.1 Signs shall be permitted provided that:

(a) each of the ground floor commercial uses shall be permitted up to three fascia signs, the total combined sign area of which shall not exceed 20 square feet;

(b) signs indicated in clause (a) above shall not be neon or back lit, but shall be either non-illuminated or lit from the front;

(c) no more than one pylon sign not exceeding 20 feet in height nor 80 square feet in area per side shall be permitted on the site which may advertise each of the ground floor businesses

2.4 Hours of Operation and Deliveries

2.4.1 The restaurant shall be permitted to operate between the hours of 7:00 a.m. and 9:00 p.m., seven days per week.

2.4.2 The restaurant, hair salon and print shop hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

2.4.3 Deliveries to the building shall occur only between the hours of 9:00am and 5:00pm. Delivery vehicle drop-offs shall take place on the Lands on the eastern side of the building.

2.5 Landscaping and Open Space

2.5.1 The Developer shall maintain the current level and quality of landscaping on the property in the areas as shown on Schedule "B".

2.5.2 Every effort is to be made to ensure the preservation of the existing trees and vegetation on site. Any trees that are damaged shall be replaced, two new trees for each damaged tree, with trees of the same type and with minimum sizes of 60 mm caliper (2.4 inch diameter) for deciduous trees and coniferous trees a minimum of 1.5 m (5 ft.) high.

2.5.3 No outdoor storage/display shall be permitted on the Lands. Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping prior to the issuance of an occupancy permit for any commercial use.

2.6 Maintenance

2.6.1 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 buildings, 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.

2.7 Non-Substantive Amendments

2.7.1 The following items are considered by both parties to be not substantive and may be amended by resolution of the Council:

a) the provision of outdoor patio / seating area for the restaurant;

b) changes to the sign requirements of Section 2.3;

c) hours of operation.

2.8 Substantive Amendments

2.8.1 Amendments to any matters not identified under Section 2.7.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

3.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

3.1 Enforcement

The Developer agree 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.

3.2 Failure to Comply

If the Developer fail to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer 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:

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

(2) the Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the development agreement, whereupon all reasonable expenses

whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on Lands and be shown on any tax certificate issued under the *Assessment Act*.

(3) 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

(4) 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.

4.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 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.

4.2 Subsequent Owners

4.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the lands which is the subject of this Agreement until this Agreement is discharged by the Council.

4.2.2 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.

4.3 Commencement of Development

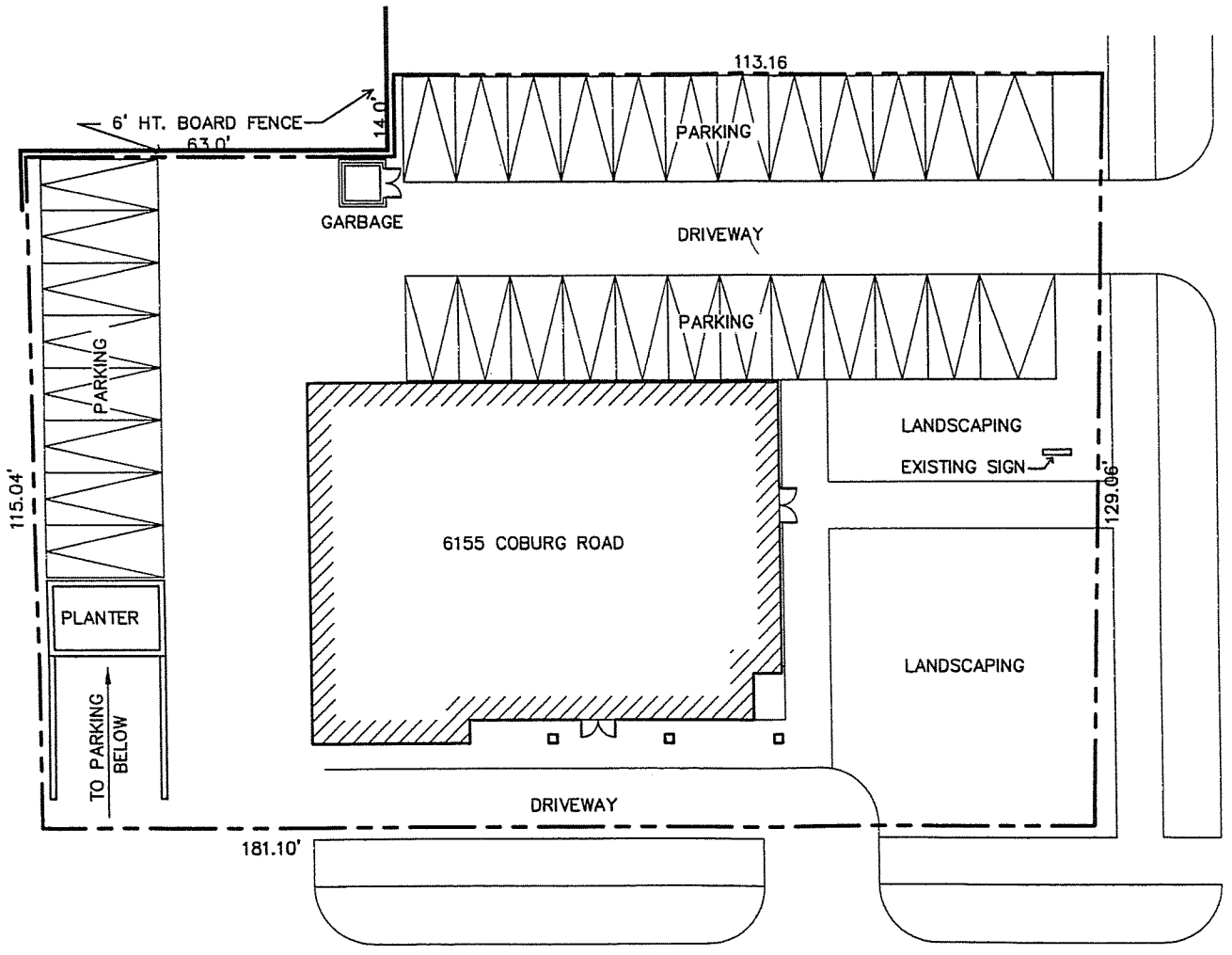
4.3.1 In the event that the proposed development has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

4.3.2 For the purposes of this section, commencement shall mean the issuance by the Municipality of an Occupancy Permit for the proposed restaurant use.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED) **HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 33**
in the presence of:)
)
per: _____) per: _____
)
)
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

Schedule "B"



SITE PLAN
1" = 20'-0"

Schedule "B" - Plan # 00809-001

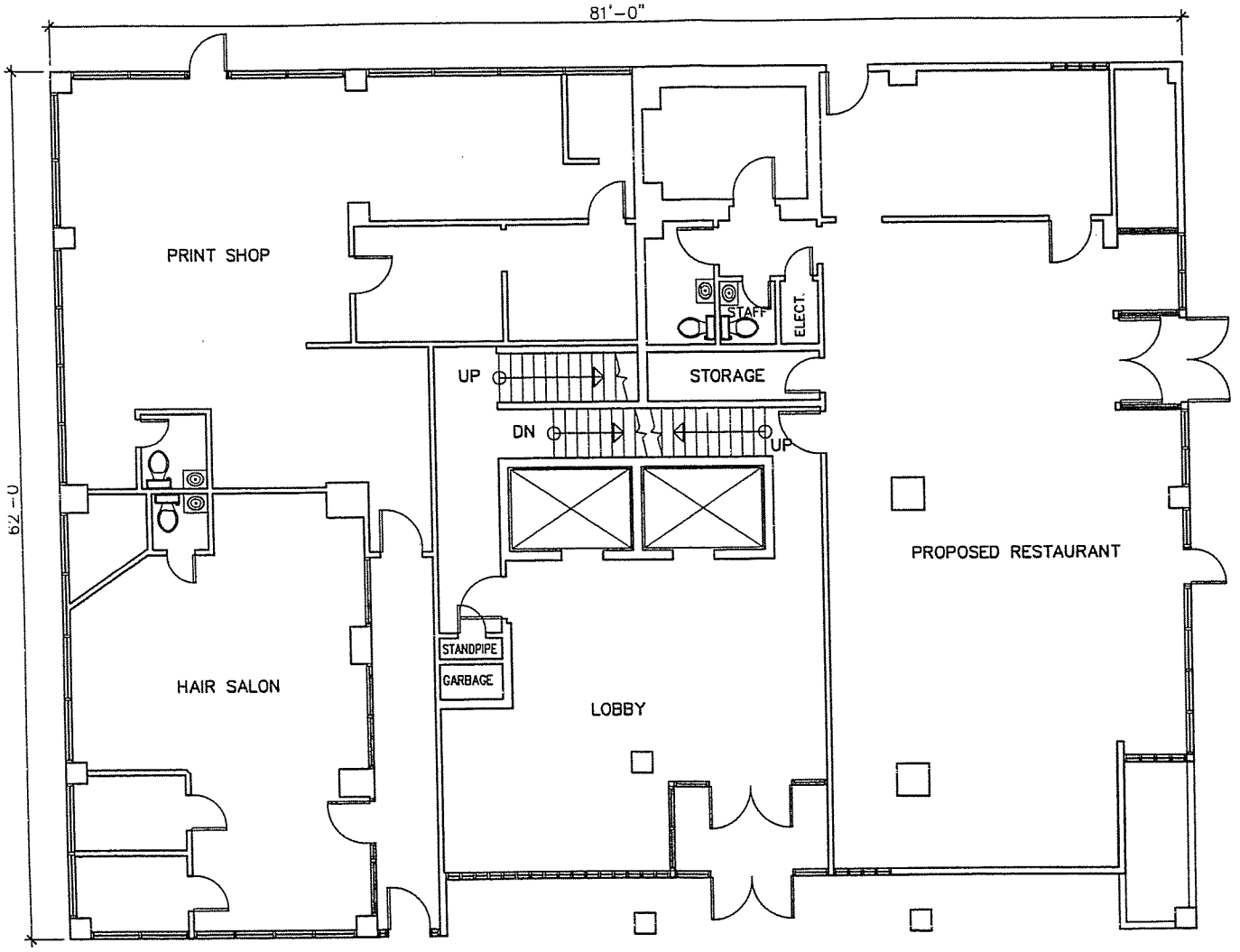
GEOFF KEDDY
& ASSOCIATES
ARCHITECTURE
INTERIOR DESIGN
5357 INGLIS STREET
HALIFAX, N.S. B3H 1J4
PH: 420-9400 FAX: 420-9400

Project
LeMARCHANT TOWERS
6155 COBURG RD.
1521 LeMarchant
HALIFAX, N.S.

Drawing
SITE PLAN

Date	JUNE 2005
Scale	AS NOTED
Designed	G. KEDDY
Drawn By	J. HUSKINS
Dwg. No.	A2

Schedule "C"



MAIN LEVEL FLOOR PLAN

1/8" = 1'-0"

Schedule "C" - Plan # 00809-002

GEOFF KEDDY
& ASSOCIATES
ARCHITECTURE
INTERIOR DESIGN
5357 INGLIS STREET
HALIFAX, N.S. B3H1J4
PH: 420-9400 FAX: 420-9400

Project

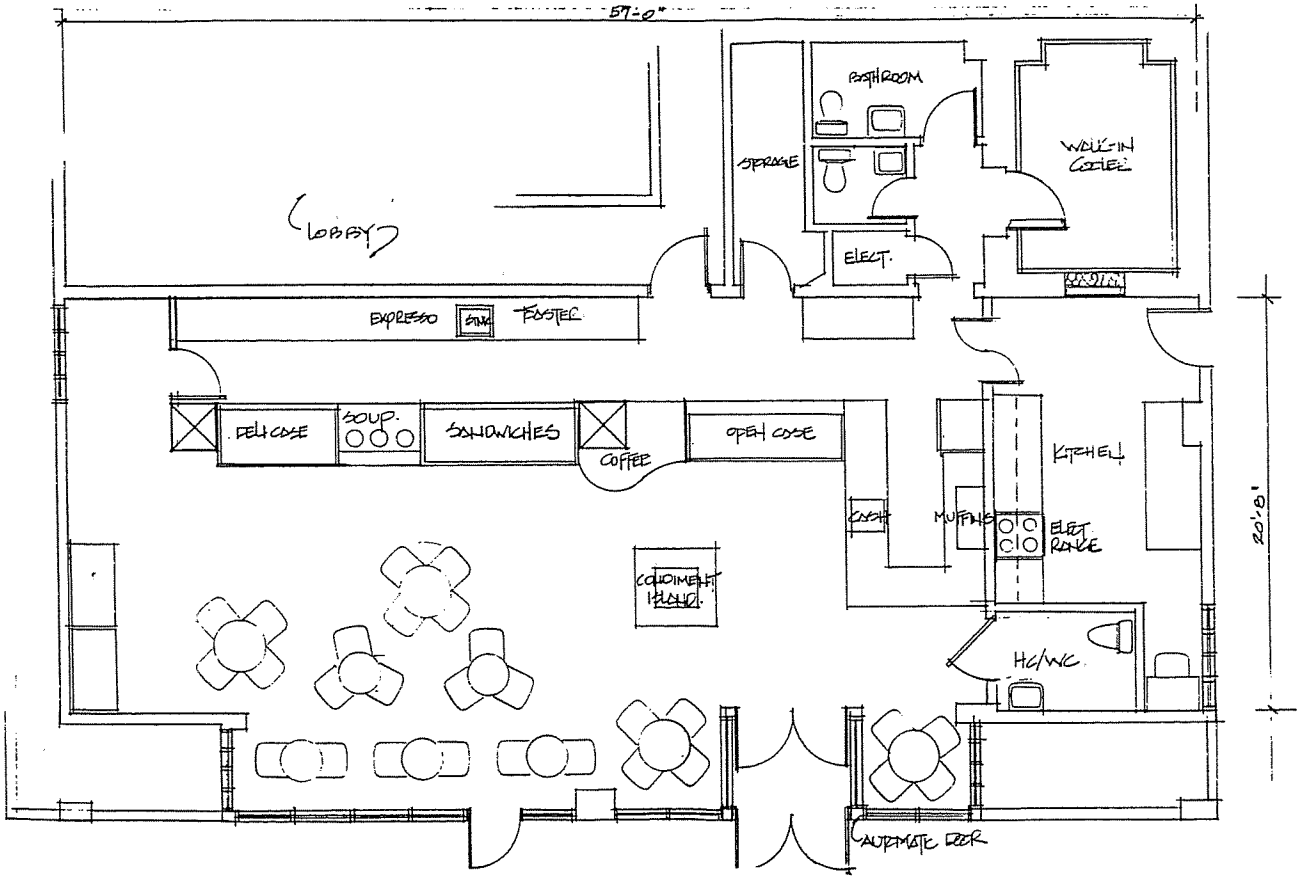
LeMARCHANT TOWERS
6155 COBURG RD.
1521 LeMarchant
HALIFAX, N.S.

Drawing

MAIN LEVEL
FLOOR PLAN

Date	JUNE 2005
Scale	AS NOTED
Designed	G. KEDDY
Drawn By	J. HUSKINS
Dwg. No.	A1

Schedule "D"



PROPOSED RESTAURANT

1/8"=1'-0"

Schedule "D" - Plan # 00809-003

GEOFF KEDDY
&ASSOCIATES
ARCHITECTURE
INTERIOR DESIGN
5357 INGLIS STREET
HALIFAX N.S. B3H1J4
PH: 420-9400 FAX: 420-9400

Project

LeMARCHANT TOWERS
6155 COBURG RD.
1521 LeMarchant
HALIFAX, N.S.

Drawing

PROPOSED RESTAURANT

Date	JUNE 2005
Scale	AS NOTED
Designed	G. KEDDY
Drawn By	J. HUSKINS
Dwg. No.	A3

Attachment B

Relevant Sections of Municipal Planning Strategy and Land Use By-law:

HALIFAX MPS - IMPLEMENTATION POLICIES

3.14 Council may, by development agreement, permit a non-conforming use to be changed to another less intensive non-conforming use, or permit the structure in which such a use is located to be altered or expanded, provided that:

a) the layout and design of the property shall be complementary to the fabric of the neighbourhood, and this shall be achieved through attention to a variety of factors including, but not limited to, the following, on which Council shall specify conditions to be met in the development agreement:

i) architectural design;
ii) the size, location, and landscaping of courts, open spaces, and yards;
iii) location of primary and secondary entrances to the building; and
iv) size, location, and design of fences.

b) vehicular activity, particularly parking and loading, shall be controlled so as not adversely to affect the neighbourhood in terms of traffic flow and nuisance;

c) facilities for parking, loading, vehicular access, outdoor display, and outdoor storage shall be designed to avoid any adverse effects on adjacent properties and to ameliorate existing problems, through attention to factors including but not limited to:

i) location;
ii) surface treatment;
iii) storm drainage;
iv) access from the street; and
v) screening, buffering, and landscaping.

d) except where specific benefits to the neighbourhood can be demonstrated, all additions to a building, all off-street parking and loading areas, and all outdoor display and storage areas shall be set back from the street line by the more restrictive of:

i) the minimum setback of the existing building; or
ii) the mean setback of the buildings on the adjacent properties on either side; or
iii) the minimum setback specified for the zone in which the use is located.

e) except where specific benefits to the neighbourhood can be demonstrated, additions to the structures on the property shall not:

   i) further encroach upon the minimum side and rear yards stipulated for the zone in which the property is located; or

   ii) result in the total lot coverage or building height exceeding the maximum stipulated for the zone in which the property is located;

f) any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties;

g) no bulk refuse containers shall be visible from the street or from the immediate neighbourhood;

h) no additional lot area shall be used for outdoor storage, and measures shall be taken to screen any outdoor storage areas from the street and immediate neighbourhood;

I) with regard to on-site advertising for commercial or industrial uses:

   i) where the property is located in a residential zone, no additional advertising surface area or illuminated signage shall be added; and
   ii) in all other cases, such advertising shall not exceed the limits prescribed for the zone in which the property is located.

j) in the case of commercial and industrial operations in residential zones, the following additional considerations shall also apply:

   i) there shall be a demonstrable improvement to the neighbourhood;
   ii) existing conditions resulting in noise, dust, vibration, odour, and emissions shall be required to be ameliorated where these cause a nuisance or hazard; and
   iii) operating hours shall be restricted to prevent nuisance.

k) No subdivision of the lot shall have occurred subsequent to the time of the adoption of this section.

HALIFAX MPS, SECTION VI - PENINSULA CENTRE AREA PLAN
2. COMMERCIAL FACILITIES

Objective The provision for a variety of neighbourhood convenience stores and minor commercial uses in convenient and accessible locations which do not adversely affect adjacent residential uses.

2.1 Neighbourhood convenience stores shall require that a limited distance be travelled and should be located within a residential neighbourhood so as to minimize the use of private automobiles to reach them. They should be located at the intersection of local streets, and should occupy only the ground floor of a building. The floor area of grocery stores shall not exceed 1,000 square feet, and the floor area of drug stores shall not exceed 1,400 square feet.

2.2 Minor commercial centres should service several neighbourhoods and may include a variety of retail, professional and local office uses in accordance with Part II, Section II, Policy 3.1.2 of the Municipal Development Plan. Minor commercial uses shall be permitted in areas designated as commercial on the Future Land Use Map of this Plan.

2.2.2 The City shall deny rezonings to permit a minor commercial use in areas not designated as commercial on the Future Land Use Map of this Plan.

2.3 Commercial uses of a City-wide or regional nature shall not be permitted in Peninsula Centre in accordance with Part II, Section II, Policies 3.2 and 3.2.1 of the Municipal Development Plan.

LAND USE BY-LAW - HALIFAX PENINSULA

99(4) **Non-conforming Use**

Council may, by development agreement, pursuant to Implementation Policies of the Municipal Planning Strategy, permit a non-conforming use to be changed to another non-conforming use, or permit the structure in which such a use is located to be altered or expanded in accordance with Policy 3.14

Attachment C

Public Information Meeting Minutes
Case 00809
December 8, 2005

In attendance: Paul Sampson, Planner
Jaime Smith, Planner
Gail Harnish, Planning Services
Councillor Uteck
Mark David
Leo Bitar

Ms. Jaime Smith called the public information meeting (PIM) to order at approximately 7:05 p.m. at the Queen Elizabeth High School. We are here this evening to talk about an application by Halifax Condominium Corporation No. 33 to enter into a development agreement to permit commercial uses on the ground floor of LeMarchant Tower. The application was brought forward on behalf of Mark David and Leo Bitar to open a deli-style restaurant on the first floor of the building.

Ms. Smith reviewed the planning process:

- tonight is the PIM. We will continue receiving input from the public over the next month or so in the form of phone, letter, or email.
- we will negotiate a development agreement with the applicants
- a report, with a recommendation, and a draft development agreement, is tabled with Peninsula Community Council
- Community Council would decide whether or not to schedule a public hearing. If a public hearing is held, notification would be sent to abutting property owners and those who sign the attendance sheet.
- there is an appeal process

Mr. Paul Sampson provided some background. The existing building and use of the property is a non-conforming use. The current zoning on the property is R-3 and R-2. The building has 63 residential units which exceeds today's standards for the R-3 zoning in terms of the population density in a building of that nature. The non-conforming use on the site means the building cannot expand and the use cannot expand in terms of the size of the residential building.

Mr. Sampson noted we do have the development agreement process which we are going through today. There were a number of applications which included a rooftop building use and a ground level carport which were applied for in the 1980's and 90's and were not successful.

Mr. Sampson indicated there has been a number of commercial uses on the ground floor over the years, many of which had permits issued by the Municipality. We have a list of uses which range from a convenience and grocery store and bank offices. Currently there are two uses: a hair and

tanning salon and a print shop. The application being discussed tonight is for the possibility of a deli-style restaurant use on the ground floor and to legalize or authorize the two businesses in the building right now. Also, there is currently a development agreement which applies to the property for a dental lab so part of the application would be to withdraw that development agreement for the dental lab.

Mr. Sampson advised the development agreement would outline conditions for development and land use. A development agreement is a legal agreement between the Municipality and the property owner, so that agreement could stipulate certain conditions whereby the owner has to comply with the development agreement.

Mr. Sampson outlined the main information we are trying to get from the public tonight:

- Is the proposal for a deli-style restaurant a desirable use for the neighbourhood?
- What other type of uses besides the restaurant and the two existing businesses would be desirable for the site? We could allow for future businesses that would fit in with the community if, for example, the print shop or the hair salon leave the premises.
- Are there any conditions that could be covered in a development agreement so that the owner has to comply with the stipulations? If there is non-compliance through the development agreement, then HRM can seek a legal remedy to ensure compliance.

Mr. Mark David advised he was a representative for the Condominium Corporation that made the application. There have been a number of different uses on that main floor. Right now, a significant amount of the ground floor is unoccupied and the landlord has been seeking to find an appropriate use for that area.

Mr. David indicated his client was quite pleased to enter into arrangements with Mama Gratti's Restaurant who has over thirty years of experience. The kind of restaurant would be similar to what presently exists at Scotia Square. It is very good food and well run and it serves good value meals, specialty coffees, etc., and it is primarily take-out rather than eat in. You will see that the proposed plan for the premises has a very limited amount of seating for eating in. It is primarily intended for people coming by, whether from university or from the neighbourhood, to take something with them. The emphasis is on take-out.

Mr. David advised Mr. Bitar and Mr. Kochhar will be making a significant investment and improvements and will be employing between eight to thirteen full time employees. The purpose primarily is to serve the building and the surrounding neighbourhood. It is expected that most of the customers accessing the premises will do so by foot.

Mr. David indicated that in making the application, the owner has presented the following arguments:

- this area of Coburg Road and LeMarchant Street is an area with a variety of uses such as universities and residences. There are a number of commercial uses close by and the Spring Garden Road commercial area is just a few blocks away.

- the owner believes the proposed business operation is in character with the surrounding area and will enhance the neighbourhood
- it will increase the jobs available to the neighbourhood

An individual stated every single one of those businesses are non-conforming uses. Mr. David responded he did not believe so.

The same individual said it was suggested it is a commercial area but it is a residential area.

Mr. David responded it is not just a residential area and referenced Lawtons and a commercial use down the street. He continued with arguments in favour of the proposal:

- it was suggested the proposed business operation would increase the density or occupation of the premises. It will not increase demands on roadways and it will not change the appearance of the area except the building.
- it would be positive to have the store occupied as opposed to vacant
- arrangement have been made to place strict conditions on hours of operation, noise level, and odours

It was questioned what these arrangements were.

Mr. David responded the lease has strict conditions about not letting noise emanate from the premises, and addresses motors related to the preparation of food, cleanliness, and to maintain a first class commercial operation.

It was questioned what the hours of operation would be.

Mr. Bitar responded he could be flexible. Eight or nine o'clock, even 7:30 p.m. would be fine.

Mr. David advised the lease also indicates this location will not have a liquor license.

Mr. David indicated the premises were constructed in 1962 before the existing plan came into effect and if there are deficiencies it is because it predated the current regime. The owner suggested it is unfair that reasonable commercial operations not be permitted and the space remain empty. It is not of benefit to the landlord or to the residents of the area to leave an open vacant space in a building and it does not enhance the neighbourhood.

Mr. Doug Clapp said he was loosely representing the neighbourhood watch group and wanted to say the casual conversations they have had so far are not necessarily opposed to a restaurant. There are a lot of questions. He spoke to about twenty-five people in the area. There is a concert tonight at the LeMarchant School and was wondering if there could be another opportunity to address this situation.

Mr. Sampson responded staff just found out today about the concert tonight. What we can do is discuss it amongst staff and the councillor. There may be an opportunity to either hold another meeting or have an information mailout and see if people will call in or provide written comments.

Councillor Uteck indicated that she often tries to have an informal meeting before an application comes forward. She had a couple of questions from Kathryn on behalf of the group.

Mr. David stated the owner did not set the date for the public meeting and did not deliberately try to find a night people could not show up.

Mr. Owen Carrigan, Vice-President of the Peninsula South Community Association, said he wanted to give some background and a bit of history of what happens in a neighourhood when you get non-conforming uses.

Mr. Carrigan indicated that a stone's throw away from this property is a grocery store which is a non-conforming use. When that grocery store was started by its original owners, it closed every night of the week and it closed on Sundays and all statutory holidays. When the original owner closed out the business, there was a steady progress of usage. The first round was that it opened on Sundays and holidays, including Easter. It tied in with one of the big chain stores so that every morning there are huge transfer trucks lined up on the side of Seymour Street. You can imagine the noise they make. Once or twice a week they have a private garbage pick-up. The garbage trucks come in and you can hear them backing up and the machine that compresses the garbage all over the neighbourhood. Sometimes he can look out his kitchen window and watch the rats run from the store to the house next door.

Mr. Carrigan said they started renovations in the store, which he understood they did without getting a license, and were going to put a pizza parlour in.

Mr. Carrigan indicated the idea is for the landlord to make money so the pressure and temptation is to make more money by doing something more and bigger. The history of the existing non-conforming usage should be looked at very carefully to see what damage was done to the residential neighbourhood.

Mr. Carrigan stated a restaurant is going to attract rats. It will also attract garbage. This non-conforming grocery store started as a small food service. The garbage result of that is all over the neighbourhood. Every morning he had to pick-up the coffee cups from his front lawn. You're also going to get noise because the garbage trucks have to come in and pick-up the garbage. There will be a garbage container outside the shop which is not pleasing. There is going to be traffic. It is going to be a quick food place. There is no parking available anywhere near that building. It is also a non-parking zone. The parking will be in the rest of the neighbourhood. He spoke with people who come to the grocery store and park in his driveway and in front of his driveway and they fight with him when he asked them to take their car out of his driveway. There will be a whole range of

problems. It is like "block busting". To let another commercial enterprise in the neighbourhood is block busting.

Mr. Carrigan indicated one the arguments for allowing this was because there are other commercial establishments in the neighbourhood. Every single commercial operation in a residential neighbourhood will be used as a precedent.

Mr. Carrigan referenced the Sobeys' grocery store which broke a lot of by-laws. To say these things are benign and cause no problems is not true. All of the evidence is there.

Mr. Carrigan said that if he went to the planning department and said he had a single family residence on Coburg Road in a residential area and wanted to put a restaurant in his front room, it would not get any further. The planning regulations are there and do not allow that. Instead there will be negotiations and they will make a proposal and the neighbours have to come out and fight to have the City enforce the by-law. That is ridiculous.

Ms. Smith indicated the municipal planning strategy (MPS) acknowledges there are non-conforming uses in the City. We have an existing building with sixty-three units and a commercial space that is partially occupied and unoccupied and it is a non-conforming use. The MPS sets out situations under which we can consider entering into a development agreement. This allows an applicant to make an application for a specific use to be put in place in those circumstances. It does not change the zoning but allows us to look at putting a development agreement in place to allow these uses. The benefit of a development agreement as opposed to a rezoning is we can get input from the community on things like garbage. She spoke with Kathryn from their group who spoke about litter in the neighbourhood and something we can look at is installing garbage receptacles on the site that would have to be taken in. We can send correspondence to our Waste Management group as well. We can look at noise through hours of operation. We can limit hours of operation through the development agreement which you cannot do through a rezoning. We will investigate parking and follow-up with Traffic Services. We work with other HRM departments to get their feedback.

Ms. Smith noted there was reference to a mix of uses in the neighbourhood. There are three corners. There are a few lots in the neighbourhood that recognize commercial uses on the site. There is a convenience store directly adjacent to this building that is zoned RC-1. Also, there is a little grocery shop down the street.

Ms. Smith indicated we recognize there has been some issue with commercial uses on the site in the past and that we do have an existing non-conforming use. What we are here tonight to gain information on is "Do you believe the existing circumstances to be exceptionable?" For example, "Do you think a vacant space would be acceptable?" What is the feeling about the two existing uses in the building? Are they acceptable or not? We do not have any complaints on record for these two sites. We are here to get feedback from you and not to debate it. It is important to look at the type of uses that would be appropriate. Another thing we can do is look at listing the type of uses that would be appropriate that would not necessarily interfere with the community.

Mr. Sampson said the zoning does not allow a great number of uses to go into that space as-of-right through a building permit to renovate the space. That is perhaps one of the reasons the space was vacant for a long time. The zoning also does not allow that building to be filled with residential space. What we are left with is that there is a development agreement that allows a dental lab and a few uses. One is a special care home under the provisions of the Homes for Special Care Provincial legislation, and also a day care if it met Provincial legislation. The site may not be suitable for those type of uses. For example, a day care facility needs a lot of washroom facilities. At the same time, that space has been vacant so the idea is to try and come up with ideas for commercial uses that would be acceptable instead of a vacant space. We do have a list of examples of what type of uses are permitted in apartment buildings in other parts of the City.

Mr. Stuart Grossert stated he has lived on LeMarchant Street with his wife since 1970. When they moved there, this was an apartment building with a bank branch. The space is not vacant. It may appear to be vacant but a lady behind a computer has been there for many months. What she does he had no idea. The space where the print shop and the hair salon are used to be covered parking. This was converted into a dental lab and it appears some permission was granted for that. The lab was actually a dental office. That was fine. There is some parking for the hair salon and the print shop at the moment and that is not a problem.

Mr. Grossert indicated a number of applications for this building came up at Council a few times. There is some parking. These other uses have crept in. They wanted to put a substantial addition onto the top of the building and they heard wonderful stories from the architect that it would enhance the neighbourhood. A driveway was put in. It was not a happy experience. When the banked moved out, the space was vacant for awhile.

Mr. Grossert stated the real problems came when they had another convenience store come in there. 6199 Coburg Road used to be a small drug store. Various additions were made to that and he believed one of them was made legal. The drug store burned down and it was rebuilt on a larger size than it ever was. They had considerable debate. His complaints and criticisms were founded.

Mr. Grossert said the problem with a convenience store is the delivery trucks. When they had two convenience stores on the opposite side of the road, there was a loading zone next to 6199 Coburg Road and no parking on the other side. There are snow banks in the winter. In the winter time, a fire truck could not get through. As soon as you get commercial enterprises that need deliveries, you will have problems. He phoned the Traffic Department a couple of times and the truck is gone when they come. They cannot be enforced. They put the trucks anywhere and park on the wrong side of the road and in the wrong direction.

Mr. Grossert stated it is the same with garbage. He has seen people open the window of their car and drop garbage on the sidewalk. You can put out all the bins you like but unfortunately the garbage does not get picked up. He had to contend with cigarette butts and the remains of cigarette cartons and fast food.

Mr. Grossert commented one of the biggest difficulties is the delivery companies have all gone to larger trucks running down residential streets. In Europe, deliveries are made by small pick-up trucks. He would be perfectly happy to see another restaurant on Spring Garden Road but not in a residential area.

Mr. David indicated the purpose of the meeting is to get input from the residents. Residents have a bad perspective that is not necessarily shared by everybody. That's fine. It seems that the kind of issues they have raised to a certain degree relate to another property, and while it provides some background, he was not sure it was applicable to this particular application. To get more to the point, it seemed to him that the kind of issues raised such as noise, litter and traffic are the kinds of things that a development agreement would address. For example, if the residents were concerned that the hours of operation only be between certain times, and if staff considers this to be a reasonable restriction that met with the residential requirements, then that is fine. Mr. Bitar indicated he was flexible in that regard. He does not intend to operate much in the evening.

Mr. David referenced the concern about delivery trucks. This particular premises has an area (pointed out), with existing garbage bins which have been there for some time. There is parking available here (pointed out), and it may be possible that deliveries to the restaurant could be made through this area (pointed out), which would perhaps alleviate the concerns about emergency access down where the schools are and maybe put limitations on hours of delivery.

Mr. David indicated he did not know the specifics about the grocery store across the street and if they were subject to a development agreement. Perhaps the ability of the City to do things at that location is inhibited by there not being a development agreement.

Mr. David commented they have valid concerns. It seemed to him that a good way to deal with residential concerns is to bring them to the attention of staff and they could form the basis of a proposed development agreement. There is nothing illegal about them applying for this. He thought this is a bit different than someone having a home on an adjacent street wanting to open a restaurant. There is an unusual history with this building but it was built with a commercial ground floor so he thought it was a little different than someone wanting to put a restaurant in the front of their house.

Mr. David said there is no question the Condominium Corporation would like to have the floor space occupied by the restaurant. What is there now is a business office that does not need a space. That office used to be located in the Lawtons' building. On a rent free and temporary basis, one lady sits in there and works there. There are a number of apartments in this building and the Condominium Corporation is greatly compelled that whatever goes on the ground floor does not negatively impact on the units in the building. That is why there are strict restrictions in the lease such as no food odor leaving the premises and no noise. Hopefully a development agreement would be able to address the concerns of the residents and the owner and operator and strict enforcement of the development agreement. Yes, the landlord wants to have the place occupied and receive rent but it has concerns for its residents and the neighbourhood and that space is essentially vacant. He questioned whether it is of benefit to anybody to have a vacant spot there.

Ms. Ann Noreen Norton indicated she lived next door to the convenience store. One of the difficulties she had in looking at things going on in the neighbourhood is entering into things in good faith. Two of her neighbours sold as a result of trying to deal with developments and having things told to them that indeed were not true and then, in particular to 6199, they did not appear to really be done in good faith. One of the problems she saw was validity when whomever is going to represent the development agreement for the City. It is a real flaw to her because of the repeated things done in the past.

Ms. Norton commented the parking area on LeMarchant next to 6199 Coburg Road was put there because when Lawtons went in they went through a similar situation and the neighbour wanted a parking area for the trucks. The parking has been a problem because the trucks park on Coburg Road in a no parking zone in front of the cross walk. Hundreds of people talked about that. The store owner has accepted no responsibility for the parking. It is only recently that somebody looked at the parking and contacted her and said it was dangerous and turned it over to somebody else. In the past month, it has improved. If a business owner says it's not their problem they park there and the City does not supervise, then it becomes their problem.

Ms. Norton indicated that in terms of garbage, she would be happy to see garbage bins because there are none. Since the convenience store opened, there have been no bins and the business owner says the City does not require him to have bins and was not paying for somebody to pickup the garbage from them. Nothing happens. Her family has a contest to see how many items from the store they can pick up in a week. The City and the business owner does nothing about it. She was told by the City enforcement that unless the garbage is on KwikWay store property, they cannot do anything about it. They do not have any property because the City allowed them to build over their property. She hired an architect to look at the plans for next door. She was told by the councillor they had a right to build this because somebody was living in it. They are overlapping past experiences with this one because it is a question of good faith. They have gone through this so many times.

Ms. Norton stated the noise issue is a problem. She had several people from the development come and tell her and her neighbours that they will guarantee there will be no noise from this building. She has pumps on the other side of her fence. Her driveway was next to the heat pump. She had two exhaust fences on the other side of her home office and cannot open her window. They run all day long on different cycles twelve months a year. She has had her property re-assessed as a result. They should look at each request separately but she thought about how loud the exhaust fans are and how many people will be sitting at picnic tables out front. It can be wonderful but they have no back-up from their City.

Councillor Uteck indicated they spent months on this site and got explanations from every department. She followed up again on the way. She has been through this with Kwik Way. The concern with the garbage bins has been followed up. Technically, they are here to discuss this application tonight and was concerned about penalizing a potential property owner. They had issues with 6199 Coburg Road and she would follow-up on them.

Councillor Uteck questioned whether there was a requirement for patio tables.

Ms. Smith responded they have not proposed any patio tables. They can include a provision in the development agreement restricting tables outside.

Ms. Norton indicated the print shop works well in the neighbourhood. The City tried to turn it down twice. The hair salon also works well. It used to be a vet clinic which worked well. They got together to support the print shop. If nobody takes responsibility for the garbage, the noise or the parking, then it is a problem.

Mr. Carrigan stated they are not anti-business. They do support the print shop.

Ms. Smith commented we are here to find out what works in the community. She was pleased to hear that the print shop was accepted.

Mr. Bitar stated he owned a deli restaurant in Scotia Square. He would be okay with accepting deliveries between 9 a.m. and 3 p.m. He did not accept deliveries in the busy time. He would not be running exhaust fans in the building because they would not have fried foods. The food they prepare is healthy. They have soup and pastry and deli meat and sandwiches. They do not sell cigarettes or chocolate bars.

Ms. Norton questioned whether there would be bins outside and whether he would look after them.

Mr. Bitar responded they would be inside. If the landlord made him put one on the corner, that's fine.

Ms. Norton asked for confirmation that the trucks would be on the other side where he indicated.

Mr. David responded that is something for staff to work out. If that is a compromise, they will certainly go along with that.

Ms. Norton questioned what happens with scaling up when a development agreement is in place.

Ms. Smith indicated that is part of what they want to talk about as well. In the development agreement, we can list other types of uses that would be acceptable in that building.

Councillor Uteck noted they would have to apply for an amendment to the development agreement.

Mr. Bitar stated the hours of operation are in the lease. They were told they could be open until 10 p.m. but if the neighbours complained, they could reduce them to 9 p.m. They would probably open at 7:40 or 8 a.m.

Ms. Norton indicated the problems have to do with mechanical devices that generate heat and air conditioning.

Mr. Bitar stated it is already heated. He would not be putting in exhaust fans because he would not have french fries.

Mr. David questioned whether there was a lot of noise from the existing garbage trucks.

Ms. Norton responded she personally never had trouble with the bins and garbage and collection. There is probably more noise from residents hanging out from balconies. The building has deteriorated somewhat. It used to be quite stable but it has degenerated over the years. The print shop and the hair salon are probably the most stable part of the building now.

Ms. Smith asked for confirmation that Ms. Norton felt these commercial uses would be acceptable to the community.

Ms. Norton responded she used the print shop and was very pleased it was there. The book store was there before and was okay and the hair salon is fine. Those business owners are very responsible and attended to things.

It was asked if the current zoning was R-3.

Mr. Sampson responded the lower part is R-3. Commercial uses are allowed on the ground floor of buildings in large apartment buildings in the South End area but presently not in the Coburg Road area. The upper part of the list is a commercial zone that is predominate in Halifax but is a Minor Commercial Zone. We are not talking about major uses such as lounges.

Ms. Smith displayed a list of proposed uses which was probably closest to this situation, and questioned whether they would be acceptable.

Mr. Carrigan responded no. He felt what was being asked was inappropriate and he thought they should only be discussing a specific proposal. If somebody wants to put a dry cleaning business in, then they should be asked to come to a meeting and discuss it but to give a possible list of what businesses can go in there is inappropriate.

Mr. Sampson noted his comment was appropriate but at the same time it was intended to generate discussion.

Mr. Carrigan stated he came here to discuss a restaurant.

Councillor Uteck indicated she concurred with Mr. Carrigan.

Ms. Smith noted we can easily look at these three uses; the print shop, the hair salon, and the restaurant. That was the application that was submitted. We were thinking that instead of coming back to the public every time the tenancy was to change, then we would have a list of uses that would be acceptable.

Mr. Sampson indicated we can draft a development agreement that only allows the two existing uses and a restaurant of this nature. We could stipulate conditions that restrict the restaurant to that.

Mr. Carrigan stated that perhaps staff's role is to represent them. The first concern was trash. The reason there is so much opposition is because it is a restaurant. With all the best of intentions, they cannot in any way do anything that is going to stop the litter from the street once the place is open. No development agreement can do that. They are putting up with this from a coffee shop and a grocery store. This will just add to it. The problem is so bad that the City will not pick-up the garbage dispenser on the post.

Mr. Carrigan indicated the second concern is that any food service in any building with garbage outside will attract rats. No development agreement can guarantee there is not going to be an infestation.

Mr. Carrigan said the third concern is traffic. Every single window in his house rattles because of the trucks with their air conditioners and motors going. No development agreement can stop that, regardless of the hours of operation. These three things substantially interfere with their ability to enjoy their home.

Mr. Norton asked what would happen if this goes through and the business is not profitable. Would they have to come back again if somebody wanted to turn it into a Subway or a Tim Hortons?

Ms. Smith responded they could restrict that in the development agreement.

Mr. Sampson indicated that if they are putting in place a set of rules in which the restaurant has to operate under, and then if another one can meet that same set of rules, they can legally move in.

Ms. Smith noted the floor plan would be attached to the development agreement so another commercial use would not be able to change this lay out.

Mr. Sampson indicated the likelihood of a chain following those rules is low but another similar type of restaurant could.

Mr. Carrigan stated the coffee shop down the street was a drug store.

Mr. Sampson responded the use met the zoning and was not covered by a development agreement.

Mr. Clapp asked about signage and lighting. Those are things the community would feel very strongly about. One of the things they appreciate about the print shop is that it is a small shop. They would like to see that dealt with in the development agreement.

Mr. Bitar responded it would not be a lit sign. There will be a canopy.

Mr. Clapp commented it would be wonderful to have outdoor café space but there would be a problem because of the smoking restrictions on the Dal site. Even if it was a non-smoking area there is so much traffic in between, and there is the litter which would be tough to enforce.

Councillor Uteck commented the Province is forcing everybody on the HRM sidewalks as of the first of January.

Mr. Bitar confirmed for Ms. Norton that they have a restaurant now in Scotia Square adjacent to the food court.

It was questioned what the length of time was for a development agreement.

Ms. Smith responded it would be in perpetuity. Also, it would run with the property.

Mr. David stated that with a development agreement, it becomes registered on the title. It is a restriction on the use of the land.

It was questioned whether it was in the best interests of the owner of the building to put such a restriction on the property.

Mr. David responded they were impressed with their dealings with the two people. If you are familiar with the restaurant downtown, he was very impressed with the way it's run. There is no fried foods or cigarettes. The owner of the property saw a good long-term relationship with Mama Gratti's.

It was commented they could see that the deliveries can be onto the property if this was going ahead.

It was pointed out that the Municipality now has Community Standards Officers who work on land use compliance in the Department of Planning & Development.

An individual commented they could envision it working. He could see that the hours would work. It will not be a large restaurant but it should not create a parking problem. There will still be a problem with garbage. The difficulty is that if the restaurant is sold and the new owner does not agree to the controls on parking and deliveries, then they are back to square one. He strongly urged that nothing be allowed outdoors. They never considered the wind effects. Most days you would not be able to sit out there because of the wind.

Mr. Clapp indicated he knew the community was concerned about traffic and understood there is talk of a traffic study being done.

Councillor Uteck advised they hired a consultant in September to go from Robie Street to Chebucto Road down to the Rotary and look at all these streets. You will see a lot of traffic counts out in the spring. What they are doing now is concentrating on their regional plan which will hopefully get to Council in February and then our neighbourhood plans. This particular area is the first off the block in her neighbourhood. A lot of people in this area do not realize what is permitted by the zoning. This area is pretty diverse.

Mr. David said he appreciated the views expressed and would pass them along to the owner. He read a lot of development agreements over the years. This is very much a bilateral approach. HRM staff have to ensure the public's interest is attended to. He would think given the ones he has read, there are significant areas in which staff can impose restrictions that do not exist in the neighbourhood now and they would give the Municipality considerable power to regulate the use. He thought a development agreement could address a lot of the concerns.

The meeting adjourned at approximately 8:45 p.m.

Attachment D

To: HRM Planning and Development Services
From: D. Owen Carrigan, 6112 Coburg Rd., Halifax, N.S., B3H-1Z4, Tel: 423-4119
Re: Case 00809, Application by Halifax Condominium Corporation No. 33
December 13, 2005

Further to the public meeting at Queen Elizabeth High School on Thursday, December 8, I am writing to place my remarks in the record for circulation with materials relating to public opinion on this matter. Specifically I wish to state my opposition to the granting of a development agreement proposed for the ground floor of 1521 Le Marchant Street for the following reasons:

THE APPLICANT: The owners of 1521 Le Marchant Street have a long history of requesting exemptions to the zoning regulations and of ignoring regulations and allowing illegal commercial uses on their premises. In fact part of their current petition is to approve the operation of a print shop and hair salon that have been operating without the required approvals. The owners of this building seem to have a sense of entitlement that they should be allowed to do whatever they want when they want and the city and the neighbors be damned. Given their record how can they be relied on to honor the fine print in any development agreement that they might sign. Given their record why should they be given a special exemption to the zoning regulations?

COMMERCIAL DEVELOPMENT: Growth on the peninsular has put pressure on home owners trying to maintain the residential character of their neighborhoods. Little by little commercial development is intruding. Our particular neighborhood already has a number of illegal and non conforming usages including stores, coffee shops, and rooming houses. Unfortunately this is used as an argument for permission for more development agreements. Commercial development in a residential neighborhood brings with it more traffic and parking problems, more litter, and more crime.

CRIME and SECURITY: Development agreements seldom take into consideration the potential for crime that comes with commercial development. Yet this is a real problem . Most of the nearby businesses have been robbed from time to time and the Needs store on the corner of Coburg and Seymour was again the victim of an armed robbery a short time ago. This endangers not only the businesses but also customers that may be in those places at the wrong time and pedestrians who may be walking by. We already have a problem with constant vandalism and crime. Commercial development on this site will only add to the problem.

THE APPLICANTS CASE: The lawyer representing the owners made three arguments at the meeting none of which carried any substance. One of his points was that because there already are some commercial establishments in the area his clients should be allowed to develop more. Most of these establishments have been a total nuisance. They have brought in more traffic, parking problems, noise, rats and mice, huge tractor trailer delivery trucks, and crime. It is exactly that there are too many commercial establishments now that no more should be allowed. A second point he made was that the

owners wanted to make more money by renting out vacant space. I hardly think it is incumbent on either the city or the neighbors to help these people with their business enterprises. Once again, a specious argument. His third point was that it would be better for the neighborhood if the space was rented than sitting vacant. What possible difference could this make? If they don't want vacant space turn the area into apartments like the rest of the building.

THE RESTAURANT: The worst possible business that could be forced on a residential neighborhood is any type of a food operation. They bring in traffic that otherwise would not be coming into the area, they generate litter that gets scattered allover, they attract rats or mice, and they attract criminals. An applicant for a development agreement can promise to control a variety of things but it is impossible for a food service to control the very things that are most damaging to a neighborhood. For example: Inventory is now delivered in huge tractor trailer trucks. They block the streets, driveways, park illegally, make loud noises, and their vibrations shake nearby houses. Customers with cars park illegally, block people's driveways and sometimes park in residence's yards. Another problem beyond their control are the rats and mice. No matter how often they call in the exterminators the vermin return. A third problem beyond their control is litter. If they put out garbage containers vandals destroy them. Also the litter is usually discarded beyond the business premise so it is the neighborhood that bears the bulk of the problem. A fourth problem beyond the control of the business owner is crime. Smaller businesses are prime targets for robberies. They have no in- store security and it is very easy for criminals to get in and out quickly. Vandalism is another problem that comes with this type of business. It will attract clientele that are not usually visitors to the neighborhood and potentially add to an already serious problem of vandalism.

To sum up, this is an applicant that has a poor track record. The restaurant that is being proposed is the worst type of business that could be put in a residential neighborhood. There are already too many commercial operations in the immediate area including coffee shops, grocery stores, doctor's offices, and over 25 illegal rooming houses. Surely it is time for the Planning Department and the City to say enough and allow us to try and save what is left of the residential character. Why should the economic ambitions of business people be given a higher priority than the rights of the residences in a residential neighborhood?

HALIFAX REGIONAL MUNICIPALITY
APR 18 2007
MUNICIPAL CLERK

Beverly W. Miller
South St.
Halifax, NS B3H 1T5

April 16, 2007

Ms. Jan Gibson, Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, NS
B3J 3A5

re: Case 00809
Public Hearing May 07, 2007

Dear Ms. Gibson and Members of Peninsula Community Council:

I am opposed to the approval of the Development Agreement re: Case #00809 for 1521 LeMarchant Street for the following reasons:

1. No Public Information Meeting. A Public Information meeting was held almost 18 months ago at a time (which the minutes of that meeting clearly indicate) made it impossible for many in the neighbourhood to attend. Failure to re-schedule a public information meeting violates the objective of Section II Subsection 12 of the MPS that recognizes "Citizen participation as a necessary part of all planning process within the City...". There has, in effect, been almost no citizen participation.

2. Approval of the hair salon and the print shop are contingent on the approval of the restaurant. It is clear from the minutes of the long-ago Public Information meeting that the hair salon and the print shop are welcome in the neighbourhood; the restaurant is controversial.

Staff should have split approval of the hair salon and the print shop from the approval of the restaurant. Not to have done this appears to violate the Municipal Planning Strategy Section I – Basic Approach and Overall Objective which states, "In consideration of development matters, alternative courses of action SHALL be identified and evaluated, whereupon the proper course of action can be selected". Staff had an obligation under the MPS to present additional options and should have done this, including separate approval of the hair salon and print shop.

3. Application appears to have been made by neither the developer nor the owner of the property, nor on behalf of either of these. Or on behalf of both of these?

- The Public Hearing notice states that this is an "Application by Halifax Condominium Corporation #33".
- The minutes of the December 2005 Public Information Meeting, however, state that, "This application was brought forward on behalf of Mark David and Leo Bitar....". Mr. David identifies himself as a "representative" of the

condominium corporation and appears to have been appearing on behalf of himself on behalf of the condominium corporation.

- Page 1 of the Development Agreement , states that "the developer is the registered owner of the lands at 1521 LeMarchant Street. (One owner of a condominium?)
- Since this is a rental property, it would appear that application is being made by a condominium corporation for a building they do not own. HRM staff should investigate Nova Scotia condominium law to determine if a condominium corporation is legally empowered to apply for this development agreement.

The Public Hearing on this DA must be postponed until these matters of who or what is applying on behalf of which party or parties and whether this is a legal action for this condominium association are resolved.

4. The Non-Substantive Agreements are unacceptable. Section 2.7.1 of the Development Agreement lists three items to be considered non-substantive agreements which may be changed simply by resolution of Peninsula Community Council.

- Provision of an outdoor patio/seating area for the restaurant
- Changes to the sign regulations
- Hours of operation

This is unacceptable. Making changes to the above requirements non-substantive, takes most of the future control of the restaurant operation out of the hands of the neighbourhood. On application of the developers (whoever they may be) Peninsula Community Council may make changes in any of these areas (which it must be noted are the areas which will do the most to protect the neighbourhood) without any public consultation.

5.The Municipal Planning Strategy (MPS) and the Detailed Area Plans were passed in the early 1980s. The other two commercial uses in the immediate area predate the passage of the plans (the Coburg Café because at the time Fader's Pharmacy was operating a lunch counter and the convenience store was occupied by O'Brien's Pharmacy) and cannot not, therefore, be used to justify more commercial development.

One of the reasons for the adoption of the MPS and the Peninsula Centre DAP was to control uses which might encroach on and threatened the future of neighbourhoods. The zoning of the site (R2 & R3) and the area clearly illustrates the intention of the plans was to protect a residential neighbourhood and the operation of a restaurant in this neighbourhood would be in clear contravention of this intention.

Yours sincerely,

Beverly W. Miller

From: "Melinda Davis"
To: <clerks@halifax.ca>
Date: Tue, Apr 17, 2007 6:33 pm
Subject: restaurant on Coburg and LeMarchant St.

We are writing to express our concern regarding a proposed fast food restaurant on the corner of Coburg Road and LeMarchant Street.

As I am sure that you are aware, we already have to deal with noisy drunken students coming home at all hours of the night, their vandalism and garbage. We currently pick up Subway, MacDonald's and pizza wrappers, napkins and paper plates on a regular, almost daily basis. Our cars are sprayed with condoments and drinks and our driveways are used as washrooms.

To add a restaurant to the neighborhood will increase the amount of people that will be loitering in the area. It will increase the garbage and it will also go further in destroying the fabric of our neighborhood community.

We would like to see no further consideration be given to this proposal.

Yours truly,
Mike and
Melinda Davis

Don't waste time standing in line—try shopping online. Visit Sympatico / MSN Shopping today! http://shopping.sympatico.msn.ca