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P.O. Box 1749  
Halifax, Nova Scotia  
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Halifax Regional Council  
February 22, 2005

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:** *Julia Hearncastle*  
*JH* Councillor Harry McInroy, Chair, Harbour East Community Council

**DATE:** February 7, 2005

**SUBJECT:** **Case 00635 - Amendments to Development Agreement - 3 Bruce Street,  
Dartmouth**

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**ORIGIN**

Harbour East Community Council - February 3, 2005

**RECOMMENDATION**

**It is recommended that:**

- 1. Regional Council initiate the process for a site specific amendment to allow the current operations of 3Bruce Street, Dartmouth with strict conditions on the distribution and warehousing as well as lot maintenance and improvements.**
- 2. A full consultation process be included as part of this procedure.**

### **BUDGET IMPLICATIONS**

There are no budget implications.

### **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**

None suggested at this time.

### **ATTACHMENTS**

Staff report dated January 27, 2005

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

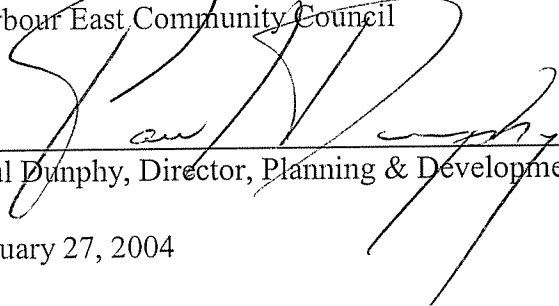
Report Prepared by: Julia Horncastle, Legislative Assistant, Governance and Strategic Initiatives Telephone: 490-4211



PO Box 1749  
Halifax, Nova Scotia  
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Harbour East Community Council  
February 03, 2005

TO: Harbour East Community Council

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

DATE: January 27, 2004

SUBJECT: Case 00635 - Amendments to a Development Agreement - 3 Bruce Street,  
Dartmouth

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#### **ORIGIN**

An application by Michel Klayme to amend an existing development agreement in order to permit an addition to a neighbourhood convenience store at 3 Bruce Street, Dartmouth.

#### **RECOMMENDATION**

It is recommended that Harbour East Community Council:

- ***Refuse*** the proposed amendments to the existing agreement to permit an addition to an existing neighbourhood convenience store and authorize the warehouse and distribution use at 3 Bruce Street for reasons stated in this report.

## **BACKGROUND**

In 1987, the City of Dartmouth and Michel Klayme entered into a development agreement to permit a neighbourhood convenience grocery store and one residential dwelling unit at 3 Bruce Street in accordance with Policy C-2 of the Dartmouth Municipal Planning Strategy (MPS).

The property presently contains a neighbourhood convenience store, Bailey Meat Market. A trailer and a cube van are also located on the property which the owner is using for storage of pizza boxes and other supplies that are distributed to other outlets in Metro. This activity is considered a warehouse and distribution use which is not permitted in accordance with the Dartmouth Land Use Bylaw nor by the existing agreement. Therefore, this activity (warehousing and distribution) is an unauthorized land use and subject to legal actions by the Municipality.

Furthermore, a minor addition (171 square feet) has been made to the building without a permit and does not meet the requirements of the existing agreement. Additionally, it was noted during the various site visits that the property was unsightly. In recent months, the applicant has cleaned up the property as directed by municipal staff.

### **Land Use Zoning, Designation and Surrounding Area**

The subject property is zoned R-1 (Single Family Residential Zone) and designated Residential according to the Municipal Planning Strategy (MPS) for Dartmouth (*refer to Maps 1 and 2*). The existing development agreement which applies to the property was approved in 1987 under policy C-2 of the Dartmouth MPS.

The lands located immediately to the south of the site is an apartment building which is zoned R-3 - Multiple Family Residential Zone (Medium Density). The property to the east is a two-unit dwelling and zoned R-1 (Single Family Residential Zone). The properties to the north are commercial uses which are zoned C-3 (General Commercial) Zone.

### **Proposal**

Michel Klayme has made an application to amend the existing agreement to permit an addition to the existing structure for the purpose of storing goods. However, in applying for the addition, the applicant is in essence, applying to authorize the warehousing and distribution use.

### **Public Information Meeting**

A Public Information Meeting was held May 26, 2004 to hear public comments on this proposal. The minutes from this meeting are included as Attachment A. A mail-out to individual property owners situated in proximity to the proposed development was undertaken. The notification area is shown on Map 1.

## DISCUSSION

In reviewing this application, staff have determined that the applicant delivers meats and pizza supplies throughout the entire region for other pizza outlets. This type of use and activity is deemed to be a warehousing and distribution use as discussed previously. The existing agreement permits a neighbourhood grocery convenience store, but does not permit the distribution of goods. The current storage and distribution contravenes the existing development agreement and is not consistent with MPS policy objectives respecting neighbourhood convenience uses.<sup>1</sup> There is no policy to enable Council to consider or permit a warehouse and distribution use by way of development agreement or rezoning within the Residential designation.

Specifically, the overall intent of the Dartmouth MPS is to protect and revitalize existing neighbourhoods. The MPS contains a matrix table (Attachment B) which provides a list of land uses that may be considered under each designation. As this property is designated Residential and warehousing and distribution may not be considered through a development agreement or rezoning under the existing MPS policies. The required zoning for warehousing and distribution uses is a C-3 (General Business Zone) which may not be considered within the Residential designation.

The MPS supports neighbourhood commercial establishments as a significant part of any neighbourhood. However, the intent of the MPS is that these uses should serve the immediate neighbourhood rather than the region as a whole. The preamble to the commercial policies of the MPS contains the following statement in respect to neighbourhood convenience uses:

*There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. (Dartmouth MPS, Pg 54)*

It is the opinion of staff, the use of the trailer and cube van or even an expansion to the existing building for the warehousing of pizza boxes and other supplies that are distributed to other outlets in Metro is not a neighbourhood commercial establishment and therefore is clearly not consistent with the intent of the Residential Designation. Staff does not support the proposed amendment to the development agreement given there is no enabling policy and is contrary to the intent of the Dartmouth MPS.

Should Community Council decide to not approve this application as per the staff recommendation, legal action will be initiated against the property owner. This action will be based on unauthorized land use, construction without a valid permit, and the placement of the trailers. The case file has been forwarded to Legal Services and further action is pending the decision of Council.

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<sup>1</sup> Neighbourhood convenience uses include, but are not necessarily limited to grocery stores, drug stores, barber shops, TV repair shops, etc.

**Summary**

It is staff's opinion that the proposed amendment to the existing development agreement does not carry out the intent of the Municipal Planning Strategy for Dartmouth.

On the basis of the above analysis, staff recommends that Council *refuse* this application to amend the existing agreement to permit an addition to the existing neighbourhood convenience grocery store and to legalize the warehousing and distribution use. As previously stated, should Council refuse this application, staff will proceed with legal action to obtain compliance with the Dartmouth Land Use by-law and existing development agreement for this property.

**BUDGET IMPLICATIONS**

There are no known HRM budget implications.

**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**

The following alternatives may be considered by Harbour East Community Council:

1. Reject the application to amend the existing agreement based on reasons cited above. This is the recommended alternative.
2. Subject to an application from Mr. Klayme, Council may choose to recommend to Regional Council that a site specific amendment be considered to permit a warehousing and distribution use through an Initiation Report from Planning Staff. Staff wishes to advise Community Council that this is not a viable option given that a warehousing and distribution use is clearly not a reasonable neighbourhood commercial establishment and staff will not support nor recommend this alternative.

**ATTACHMENTS**

Map 1:	Location, Zoning and Notification
Map 2:	Generalized Future Land Use
Attachment A:	Minutes of Public Information Meeting
Attachment B:	Table 4 - Matrix Table
Attachment C:	Dartmouth MPS Policies

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Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jill Justason, Planner I, 869-4747

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Map 1  
Zoning & Location  
3 Bruce Street

\* Area of Proposed Amendment  
to Existing Contract



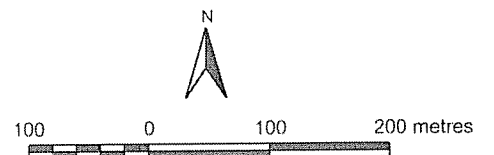
--- Notification Area

- R-1 Single Family Residential Zone
- R-2 Two Family Residential Zone
- R-3 Multiple Family Residential Zone
- CDD Comprehensive Development District
- C-1 Local Business Zone
- C-3 General Business Zone
- P Park Zone
- H Holding Zone

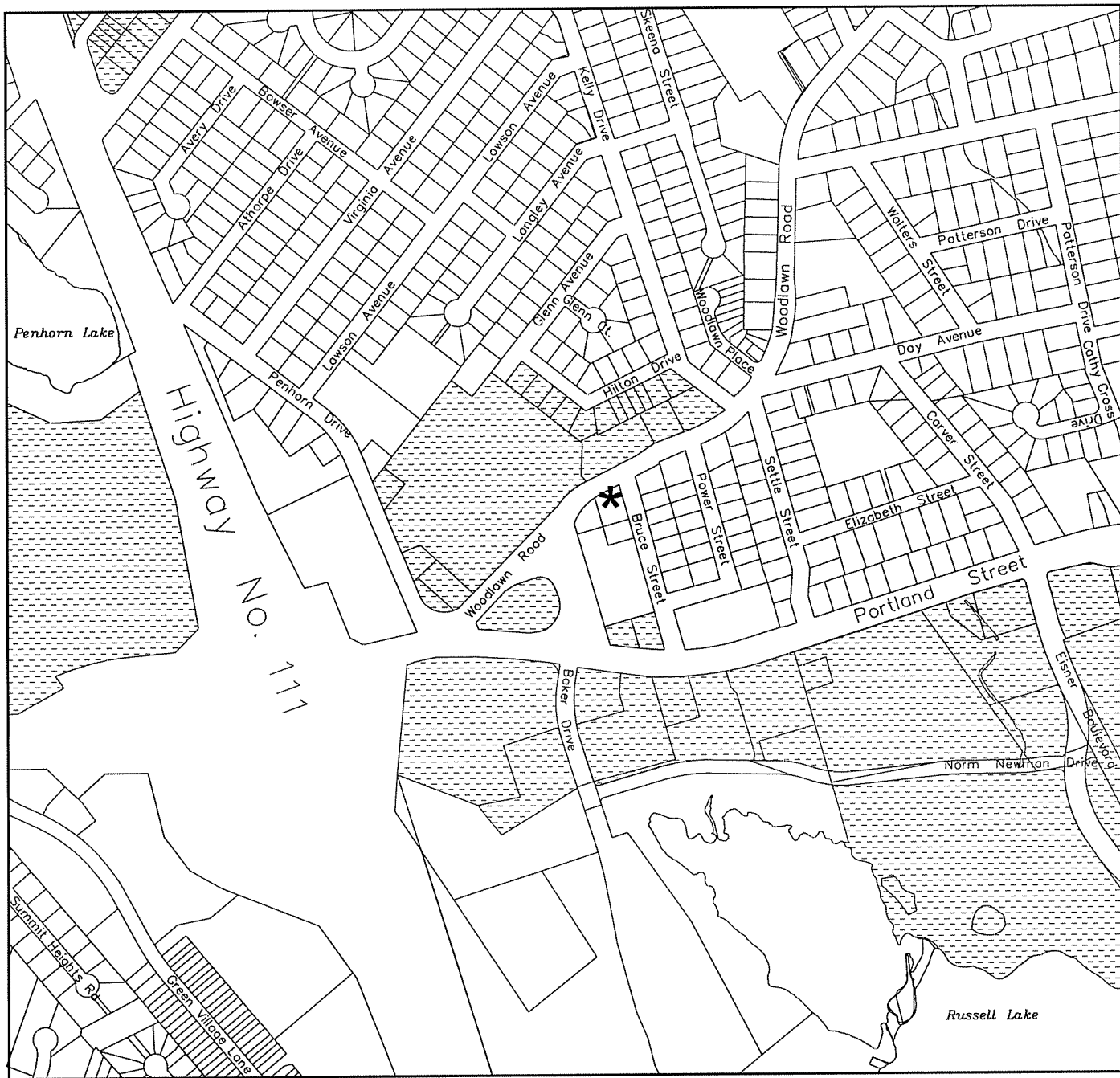
Note: HRM does not guarantee the accuracy of any representation on this plan

■ Contract

▨ Development Agreement





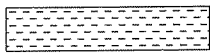



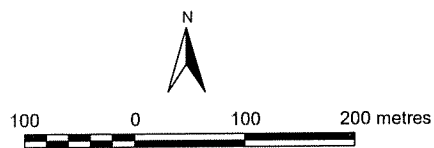
Map 2  
 Generalized Future Land Use  
 3 Bruce Street

\* Area of Proposed Amendment  
 to Existing Contract



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

-  Commercial Designation
-  Residential Designation



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**Attachment A****HALIFAX REGIONAL MUNICIPALITY  
PLANNING SERVICES - SACKVILLE OFFICE  
PUBLIC INFORMATION MEETING  
CASE NO. 00635 - 3 BRUCE STREET, DARTMOUTH****Attachment A****7:00 p.m.****Wednesday, May 26, 2004****Program Room, Woodlawn Library**

**STAFF:** Jill Justason, Planner  
Kurt Pyle, Planner  
Cara McFarlane, Administrative Support

**APPLICANT:** Michael Klayme, Property Owner, Bailey's Meat Market

**OTHER:** Councillor Condo Sarto, District 7  
Councillor Brian Warshick, District 6

**MEMBERS OF  
THE PUBLIC:** 5

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The meeting commenced at approximately 7:13 p.m.

**COUNCILLOR CONDO SARTO, DISTRICT 7**

Councillor Sarto welcomed everyone to the public information meeting. He introduced Jill Justason as the Planner assigned to this application; Kurt Pyle, Planner, HRM Planning & Development Services; Brian Warshick, Councillor for District 6; and Cara McFarlane who will record the minutes. He explained the purpose of the meeting is to gather comments and concerns on an application by Michael Klayme to extend his business at 3 Bruce Street, Dartmouth. The comments from this meeting will be recorded and reviewed by staff and put into a formal report which will go to Harbour East Community Council. The process was explained to the residents.

**JILL JUSTASON, PLANNING SERVICES**

Ms. Justason showed the residents, on overhead, where the subject property is located. The property is currently zoned R-1; however, there is an existing development agreement which is overlying the R-1 Zone. The development agreement allows for either the neighbourhood convenience store by itself or for a neighbourhood convenience store with the one unit apartment. The proposal is to do an addition to the existing convenience store. She went over the R-1 Zone permitted uses and the

reason for the development agreement. She explained the policy (Policy IP-1C) that is relevant to the proposal. The development agreement process was also explained.

### **MICHAEL KLAYME, BAILEY'S MEAT MARKET**

Mr. Klayme showed a plan of the existing building and then what is being proposed. The proposed storage space is 34' x 25'. There will be some fencing along either side of the property. This will allow for some seclusion to the adjacent properties. He showed the existing parking area with some planters added to the front and side of the store. There will be a green area along Bruce Street. Some fruit trees already exist on the property. The addition would be made more appealing to the neighbourhood. It will be used for storage space for excess items. He showed elevations of the building. The addition will be attached and as high as the existing building. There will be a loading and exit door on the side. He assured all the residents that the addition will be up to HRM standards. The addition itself will not have added water or sewer. The trailer that sits on the property now will be taken away.

### **QUESTIONS AND COMMENTS**

Councillor Sarto asked how big the extension is going to be. Mr. Klayme said they applied for 36' x 25', but in keeping with regulations (floor and height restrictions) they had to go with 34' x 25'. Councillor Sarto asked about the upgrades of landscaping to the sides of the building. Mr. Klayme explained they live in the downstairs of this building; therefore, the green area is and will be a play area for the children.

One resident asked if the addition will be similar to a garage. Mr. Klayme said that it is, but we have to comply with the city standards and regulations. Ms. Justason said a buffer of some sort (fence) is requested to block some of the potential impacts on the adjacent neighbours. There is some possibility of some enhancements along Woodlawn Road. Mr. Klayme intends to put a planter, or possibly a tree, near the parking lot. The fencing will be behind the proposed addition and there will be a planter where the existing sign is located. Ms. Justason said there will have to be a certified survey done for the fencing. It will be in close proximity to the property line. One resident said there is some fencing there now and would the new fence interfere with snow removal on his property. Is it a requirement to put a fence there or is it up for discussion? Ms. Justason said it is subject to discussion although some type of buffer to adjacent neighbours would be preferred. Mr. Klayme said the most important thing is having the addition and he will do whatever is required of him.

Ken Smith, Bruce Street, asked if the meeting is being held to consider input for the addition or a revision to the existing development agreement. Ms. Justason explained the development agreement has to be revised to allow for any addition. Mr. Smith asked what the existing development agreement says in regards to the area for commercial use. Ms. Justason said within the existing agreement there was a plan that was registered along with it which took in the convenience store as well as the one unit apartment. Mr. Smith asked if the existing development agreement is being amended to include the proposed addition. Ms. Justason explained that it is being considered to be

amended for the proposed addition as well as the small 200 square foot addition. Mr. Smith asked if the development agreement was amended when the 200 square foot addition was constructed. Ms. Justason said it was not. Mr. Smith asked why they are having a meeting for this addition when it was not done for the previous addition. Ms. Justason explained that it was done without a permit. It was just recently picked up by the Municipality. Mr. Klayme explained further on that issue. Mr. Smith asked what specific use will be stated in the development agreement for the addition. Ms. Justason said the existing use would remain. The addition is to accommodate storage of existing goods that are on the premises now. There will not be any additional retail space.

One resident asked what year the original development agreement was approved. Ms. Justason said it came into effect in 1987 and it was amended in 1990. The original development agreement required fencing and an access way to be closed off. When the fencing began there was a petition sent into the former City of Dartmouth requesting that the fencing not be a requirement as it was thought to be a negative impact on the neighbourhood.

Mr. Smith asked how city staff views the square footage of the building within reasonable limits of other businesses for the total square footage of the commercial space as apposed to green space around the building. Ms. Justason explained the development agreement gives the ability to take requirements from the land use by-law which sets the maximum (eg: 35% lot coverage in an R-1 Zone). In this situation, it is actually below 35%. Kurt Pyle, HRM Planner, said in this case the development agreement the zoning would be overridden underneath it. In most commercial zones, full commercial uses are permitted. This case is consistent with low scale commercial. Mr. Smith would like to see this property classified differently than a commercially zoned property. He was looking for a comparison to development agreement properties as apposed to commercial. Mr. Pyle explained there are different levels of commercially zoned properties, this is why it is used only as a guide in terms of compatibility with the community. If the property was to be changed to a commercial zone there are many other permitted uses allowed that the residents probably wouldn't want. Ms. Justason explained that the zoning is used as a general guideline, but the development agreement is used to control the land use compatibility, landscaping, etc., and to provide some flexibility. The development agreement allows development to happen on a site by site basis.

There was some discussion on lot coverages for C-1 and C-2 Zones.

Mr. Smith asked why Mr. Klayme was asked to reduce the size of the addition. Ms. Justason said it was not felt at the time to be compatible with adjacent land uses as well there were concerns about what the land use would be.

Councillor Warshick asked for an approximate percentage of lots currently in Dartmouth that have lot coverage by commercial zone. Mr. Pyle believed it would not exceed 50%. Mr. Smith thought they would have known as the reduction in the addition had to be based on something. Ms. Justason explained it would have looked very dense and overcrowded with the original addition. Also, the height of the addition was a problem. It should be aesthetically pleasing to a residential neighbourhood. The building envelope was very large. Staff looked at the neighbourhood as a

whole. The criteria set out at the beginning of this meeting (height, bulk, use, etc.) are types of things planning staff looked at when considering compatibility. Councillor Warshick asked that staff bring examples of other properties in the area that would compare to this property to the public hearing.

Mr. Smith asked if development agreements can be amended on regular intervals. Ms. Justason explained that there is always the ability for an applicant to come in and apply for an amendment. There is a mechanism set out which would require a major amendment to the existing development agreement to go through a public process. A minor amendment could be approved by Council by resolution. A detailed review by the appropriate departments and agencies must take place first before going to Council.

Councillor Sarto and Ms. Justason thanked everyone for coming and sharing their concerns and comments.

### **ADJOURNMENT**

The meeting adjourned at approximately 8:04 p.m.

Attachment B

Table 4								
Reserve	Urban Core	Institutional	Park & Open Space	Industrial	Commercial	Residential	← General Land Use Classification  Land Use  ↓	
●	<i>Deleted-Reg.Council-July1/2000, Effective-Sept2/2000</i>				●	●	Single	
●					●	●	Duplex	
						●	●	Low Density Multiple
						●	●	Medium Density Multiple
						●	●	High Density Multiple
						●	●	Mobile Homes
					●	●	●	Neighbourhood Con. Stores
					●	●	●	Home Occupations
					●	●	●	Retail Trade
					●	●	●	Service Commercial
					●	●	●	Regional Commercial
				●	●	●	●	Local Office
				●	●	●	●	General Office
				●	●	●	●	Tourist Commercial
				●	●	●	●	Warehousing/Distribution
				●	●	●	●	Light Industrial
				●	●	●	●	Harbour Oriented Industrial
			●	●	●	●	●	General Industrial
●			●	●	●	●	●	Local Parks/Rec. Facilities
●			●	●	●	●	●	District Parks/Rec. Facilities
●		●	●	●	●	●	City Parks/Rec. Facilities	
●		●	●	●	●	●	Regional Parks & Facilities	
●		●	●	●	●	●	Watershed	
●		●	●	●	●	●	Environmental Protection Area	
●		●	●	●	●	●	Local Institutional	
●		●	●	●	●	●	City/Regional Institutional	
●		●	●	●	●	●	Utilities	

**Attachment C - Dartmouth MPS Policies**

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