

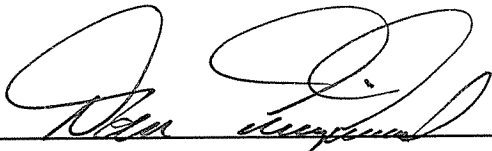


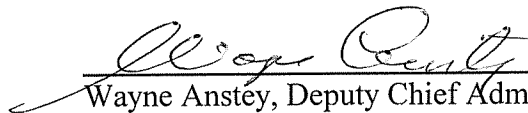
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

11.1.11

Halifax Regional Council
June 12, 2007

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Dan English, Chief Administrative Officer


Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: June 1, 2007

SUBJECT: Encroachment License Agreement, 2594 Agricola St., Halifax

ORIGIN

Application for an Encroachment License Agreement by BMP Project Developments Limited on behalf of 3083833 Nova Scotia Limited, at 2594 Agricola Street, Halifax.

RECOMMENDATION

It is recommended that Regional Council approve the Encroachment License Agreement at 2594 Agricola Street, Halifax, presented as Attachment C, subject to the approval of the development agreement by Peninsula Community Council.

BACKGROUND

On June 12, 2007, Regional Council will consider approving amendments to the Halifax Municipal Planning Strategy (Case 00895) that will enable Peninsula Community Council to consider permitting, by development agreement, a multiple unit residential building with ground floor commercial space at 2594 Agricola Street, Halifax.

The Agricola Street and the North Street elevations of the proposed building are presented as Schedules A of the attached Encroachment License Agreement (Attachment 1). The design proposes aerial encroachments along both of the Agricola Street and the North Street facades. These aerial encroachments protrude into the public right-of-way by a maximum of 0.76 metres (2.5 feet).

The Encroachment By-law (By-law E-200) requires that any proposed encroachments outside of those listed in the by-law be approved by Regional Council. The permanent encroachment of a building into the HRM street right of way is one type of encroachment which requires an encroachment agreement and Regional Council approval.

DISCUSSION

As discussed in the staff report to Council, the aerial encroachments will add depth to the residential units and contribute to the urban-oriented design of the building.

Generally, staff do not support encroachments into the street right of way. The right of way is for municipal purposes and is a corridor for vehicles, pedestrians and utilities. Encroachments can limit any future use of the right of way for intersection upgrades. Encroachments can also create safety concerns associated with condensation and associated ice build-up on the sidewalk. In addition, staff feel that the right of way should not be used to resolve private building issues which can be addressed in a manner which does not impact the right of way. Staff are also concerned about setting precedents regarding the use of the right of way.

However, this case does possess unique features which staff feel merits consideration by Regional Council and should not set a precedent for future applications as staff would not recommend similar type of encroachments in future applications.

- The removal of the encroachment would impact the design of the building in a way which could jeopardize the project's funding from the province. The required size of the units are specified in the funding criteria. Reducing the number or size of units would result in a design which does not meet the criteria and therefore may result in a loss of funding for much needed affordable housing.
- There is an overall public benefit to this development. Both the affordable housing units and the artist studios which are proposed for the development are consistent with both the Regional Plan and the Cultural Plan and are enhancements to the local neighborhood.

- The property lines are not square which results in portions of the building encroaching into the right of way.

The building is proposed to encroach into the Agricola Street and North Street rights of way to a maximum depth of 0.76 metres (2.5 feet) as shown on Schedules A and B of the attached Encroachment License Agreement (Attachment 1). The proposed encroachment encompasses a total of 12.68 sq metres. In accordance with By-law E-200, the building encroachment will therefore be subject to an annual encroachment fee of \$126.80 (\$10. per square metre).

The attached draft encroachment license agreement also includes the following:

1. Construction and maintenance of the building must comply with Streets By-law S-300.
2. At the time of building permit application, the encroachment will be reviewed for compliance with the Building Code and no permit issued until compliance is achieved.
3. 3083833 Nova Scotia Limited will be responsible for any maintenance on or removal of the building encroachment at their expense.
4. 3083833 Nova Scotia Limited agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the building however caused, except to the extent that the loss arises out of the gross negligence of HRM.
5. Record information will be provided in paper and electronic format.

Due to the unique nature of this application and the overall public benefit, staff recommend that the encroachment be approved. The specific conditions included in the proposed agreement address safety and liability concerns associated with the encroachment.

BUDGET IMPLICATIONS

The annual fee of \$126.80 will be a new revenue source for HRM.

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

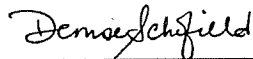
1. Regional Council could approve the encroachment license. This is the recommended alternative for the reasons outlined in this report.
2. Regional Council could refuse the encroachment license. The removal of the encroachment would impact the size of the units and may jeopardise the affordable housing funding. It would also impact the urban-oriented design of the building.

ATTACHMENTS

Attachment 1: Encroachment License Agreement

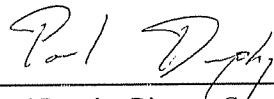
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared and
Approved by:



Denise Schofield, P.Eng, A/Manager-Development Engineering

Report Approved by:



Paul Dunphy, Director, Community Development

Report Approved by:



For Catherine Sanderson, Sr. Manager, Financial Services, 490-1562

Attachment 1

This **Encroachment License Agreement** made this day of , 2007

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

3083833 NOVA SCOTIA LIMITED

Of the Other Part

Recitals

1. (1) Whereas 3083833 Nova Scotia Limited wishes to construct and maintain a portion of their building at 2594 Agricola Street in the public right of way of North Street and Agricola Street;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2007, the Halifax Regional Municipality agreed to give 3083833 Nova Scotia Limited an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

Definitions

2. In this agreement, unless the context otherwise requires:

(a) "HRM" means the Halifax Regional Municipality

(b) "Engineer" means the Engineer as defined by the Halifax Regional Municipality Act.

License

3 Subject to the terms of this encroachment license agreement, HRM hereby grants to 3083833 Nova Scotia Limited the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of North Street and Agricola Street, Halifax identified on Schedule "A" to maintain the building at 2594 Agricola Street.

Removal

4 The encroachment must be removed from the street right of way if requested by HRM. Such a removal will be at the expense of 3083833 Nova Scotia Limited. Should 3083833 Nova Scotia Limited wish to remove the building encroachment, it shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the

expense of 3083833 Nova Scotia Limited.

Permits

- 5 (1) 3083833 Nova Scotia Limited agrees to comply with all municipal by-laws including the Streets By-law, S-300 for the all maintenance work which involves the construction of the building or excavation of the street.
- (2) At the time of building permit application, the encroachment will be reviewed for compliance with the Building Code and no permit issued until compliance is achieved.

Record Drawings

6. 3083833 Nova Scotia Limited shall provide a copy of the record drawings of the completed work and immediately upon completion of any removal, both in hard copy and electronic format.

Indemnity

7. 3083833 Nova Scotia Limited agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the building however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

8. 3083833 Nova Scotia Limited, agrees to pay the fees set out in Encroachment By-law E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the building is 12.68 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$126.80 to be paid by March 1st annually.

Occupational Health & Safety Act

9. 3083833 Nova Scotia Limited agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically 3083833 Nova Scotia Limited agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

10. (1) Either party may terminate this license agreement at any time.
- (2) Upon termination of the license agreement, 3083833 Nova Scotia Limited shall remove the building encroachment and restore the surface of North and Agricola Streets

Notices

11. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Public Works and Transportation
PO Box 1749
Halifax, N.S. B3J 3A5

and

3083833 Nova Scotia Limited.

Legal notices in respect of HRM must given in compliance with the Municipal Government Act

12. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Municipal Clerk, Jan Gibson

3083833 Nova Scotia Limited

BMP Architecture
Planning
Development

1800 P. Projects Development Ltd.
1800 P. Projects Development Ltd., 1800 P. Projects Development Ltd.
1800 P. Projects Development Ltd., 1800 P. Projects Development Ltd.

LOCATION	AREA OF ENCROACHMENT
AGRICOLA STREET	18.07 SQ. FT. (0.41 SQA.)
NORTH STREET	83.50 SQ. FT. (1.88 SQA.)
TOTAL AERIAL ENCROACHMENT	101.57 SQ. FT. (2.29 SQA.)

BRIDGEVIEW PLACE
COMMERCIAL & RESIDENTIAL BUILDING
MONTREAL, QUEBEC

AERIAL ENCROACHMENT PLAN SECTION AND DETAILS

DATE: 08/05/08

SCALE: 3/16" = 1'-0"

A10.1

