

Item No. 8.1
Halifax Regional Council
December 13, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 
Richard Butts, Chief Administrative Officer

Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: November 15, 2011

SUBJECT: **Case 16466 First Annual Review – Amendments to the Downtown
Halifax Secondary Municipal Planning Strategy and Land Use By-
Law**

SUPPLEMENTARY REPORT

ORIGIN

October 18, 2011, public hearing and Council's direction to provide a staff report on the additional amendments proposed at the meeting.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A-2 and B-2 of this report.

BACKGROUND / DISCUSSION

In the staff reports dated July 21, 2011, and September 12, 2011, staff provided an overview of the proposed amendments to the Downtown Halifax Municipal Planning Strategy (MPS) and Land Use By-Law (LUB). Regional Council held a public hearing on October 18, 2011, and a motion was put on the floor to consider additional amendments. This supplementary report provides staff's response to those proposed amendments in the order in which they were presented.

Amendment 1 - Removal of additional flexibility relative to replacement of existing parking spaces on the Clyde Street parking lots by deleting proposed amendment 25 of Attachment B-1.

Due to the completion of the RFP process for the redevelopment of the Clyde Street lots, the need for this amendment no longer exists, therefore, staff recommend in favour of deleting the proposed amendments relative to this item. The revised amendments are included in Attachments A-2 and B-2.

Amendment 2 - Inserting the words "or in Precinct 3 on a lot not abutting Spring Garden Road" together with an amendment to Item 21 by inserting at the beginning of Section 11 D the words "except for lots in Precinct 3 on a lot not abutting Spring Garden Road".

Amendment 3 - Allowance of green space on the side streets in the Spring Garden Road area.

These amendments are one and the same and propose to retain the requirement for the provision of ground level landscaped open space for residential buildings within the Spring Garden Road Precinct, except for lots which front on Spring Garden Road itself. The other areas that would be affected by this would be all or portions of: South Park Street, Brenton Street, Dresden Row, Birmingham Street, Queen Street, Brunswick Street, Grafton Street, Sackville Street, Annandale Street, Artillery Place, Doyle Street, and Brenton Place (see Map 1).

The amendments recommended by staff are to remove the requirement for ground level landscaped open space from the entire Spring Garden Road Precinct to create a consistent and strong built form environment with buildings located at the sidewalk. Should the requirement not be removed, over time, a built form would result that is inconsistent with that which is already established and which is proposed to continue. For these reasons, staff does not recommend amendments 2 and 3.

Amendment 4 - Replacing Amendment 15 (Attachment B-1) with the following:

"Where an existing building is deemed to be non-conforming under this By-Law, it shall be allowed to be extended, enlarged, or altered as long as the extension, enlargement or alteration complies with the By-Law, or a variance that does not result in an increased floor area is granted by the Design Review Committee and as long as the following provisions are met:

1. **Development which proposes the complete or partial demolition of a Registered Heritage Building is not eligible;**
2. **The gross floor area of the development does not exceed the gross floor area of a building that could be constructed on the same site in complete compliance with this By-Law.”**

These amendments are beyond the scope of that which was described in the advertisement for the public hearing and, as such, could only be considered by Council after their advertisement and following another public hearing. Nonetheless, and for the benefit of Council, staff provides the following comments on the proposed amendments for consideration.

These amendments propose to restrict the alteration of non-conforming structures such that (i) any expansion would be limited to the gross floor area of a new building that could be constructed on the same site if the site were undeveloped; and (ii) any proposal that includes the complete or partial demolition of a registered heritage building would be prohibited.

Staff would not recommend in favour of the restriction relative to placing a limit on the gross floor area. Non-conforming structures were designed and constructed to meet the requirements in effect at the time of their development and therefore, were fully authorized developments. With the adoption of the Downtown Halifax MPS and LUB, finite building envelopes and other requirements have been established which many existing structures may not meet. There is no intention that non-conforming structures should be altered to conform to the new requirements. They should be accepted for what they are and only additions to them should have to meet the new requirements. In some cases, additions to these buildings may even serve to improve their relationship to the street or mitigate against an undesired massing and scale.

Relative to the amendment associated with the complete or partial demolition of a registered heritage building, staff would recommend in favour, provided the restriction is limited to complete demolition. The concept of partial demolition is unclear and would be difficult to define or very likely be in conflict with the general intent of demolition under the *Heritage Property Act*. For example, the removal of an interior demising wall between heritage buildings could be considered a partial demolition and be prohibited. Complete demolition is much more straightforward and consistent with the *Act* and the existing provisions of the Downtown Halifax LUB, relative to the applicability of the Post-Bonus Height in heritage contexts. For these reasons, staff would only recommend this aspect of the amendment provided it pertains only to complete demolition and another public hearing is advertised and held.

Further, Council is reminded that this series of amendments constitutes phase 1 of 2 and that a second round of housekeeping amendments will make its way to Council next year. The amendments concerning restrictions to expansion of non-conforming structures and demolition of heritage structure, as well as others relative to additional heritage property protection, will be considered through that process.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the operating budget for C310 Planning & Applications.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

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

ALTERNATIVES

1. Regional Council may choose to approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A-2 and B-2. This is the recommended course of action.
2. Regional Council may choose to either adopt certain amendments but not others outlined in this report, or alternatively request that additional amendments not identified in this report be made, in which case an additional staff report and public hearing may be required.
3. Regional Council may choose to refuse the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A-2 and B-2. Regional Council is under no obligation to amend its MPS and a decision not to amend the MPS cannot be appealed.

ATTACHMENTS

Map 1	Lots on Side Streets in Precinct 3, Spring Garden Road
Attachment A-2	Proposed Amendments to the Downtown Halifax SMPS
Attachment B-2	Proposed Amendments to the Downtown Halifax LUB (including Appendix B)

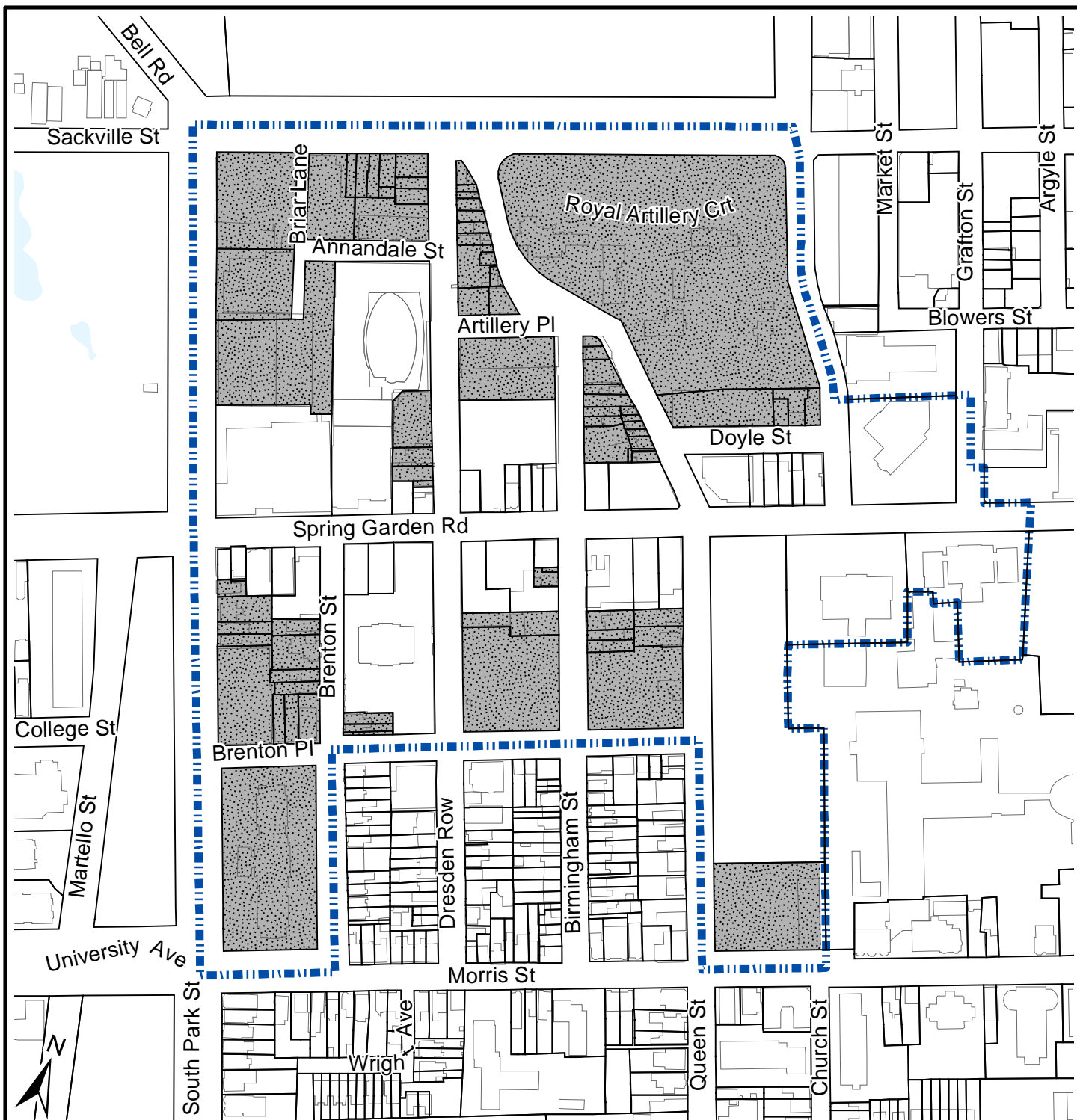
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Kelly Denty, Supervisor, Planning Applications, 490-6011

Report Approved by: _____
Austin French, Manager, Planning Services


Financial Approval by: _____
James Cooke, CGA, Director of Finance/CFO, 490-6308


Report Approved by: _____
Philip Townsend, Director, Planning and Infrastructure, 490-7166



Map 1 - Lots on Side Streets in Precinct 3, Spring Garden Road

Downtown Halifax Secondary Plan Area

 Property within the precinct with no street frontage on Spring Garden Road

 Boundary of Precinct 3 - Spring Garden Road

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 50 100 m


Downtown Halifax Secondary Plan Area

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

ATTACHMENT A-2
PROPOSED AMENDMENTS TO THE DOWNTOWN
HALIFAX MUNICIPAL PLANNING STRATEGY

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Downtown Halifax Secondary Municipal Planning Strategy is hereby amended as follows:

1. Amend the “TABLE OF CONTENTS” by adding “**3.2.4 Drive-Thrus**” after “3.2.3 Provision of a Mix of Housing Types”.
2. Amend the “TABLE OF CONTENTS” by adding “**8.8 Non-Conforming Buildings**” after “8.7 Functional Plans”.
3. Amend Chapter 3 by adding the following subsection and policy after Policy 8:

3.2.4 Drive-Thrus

Drive-thrus are often seen as a convenient service delivery model within primarily automobile-oriented environments. However, they are not appropriate in a denser and more compact urban context. In order to (1) reduce potential conflicts between pedestrians and automobiles, (2) maintain the built form character of urban neighbourhoods, and (3) protect the aesthetic quality of urban streetscapes, drive-thrus will be prohibited in downtown Halifax.

Policy 8A HRM shall establish provisions within the Land Use By-law to prohibit drive-thrus within downtown Halifax.

4. Amend Policy 18 of Chapter 3 by adding the following clause after clause (i):
 - (j) **the undergrounding of overhead electrical and communication distribution systems.**
5. Amend Chapter 8 by adding the following section and policy after Policy 91:

8.8 NON-CONFORMING BUILDINGS

The DHSMPS and the DHLUB diverge from previous MPS policies and land use by-law regulations in both approach and intended outcome. It is therefore expected that many existing buildings in downtown Halifax will not conform to the new land use by-law provisions. In order to support the growth aspirations for downtown Halifax, this Plan will allow for the extension, enlargement, and alteration of non-conforming buildings.

Policy 92

It shall be the intention of HRM to allow for the extension, enlargement, and alteration of non-conforming buildings in downtown Halifax.

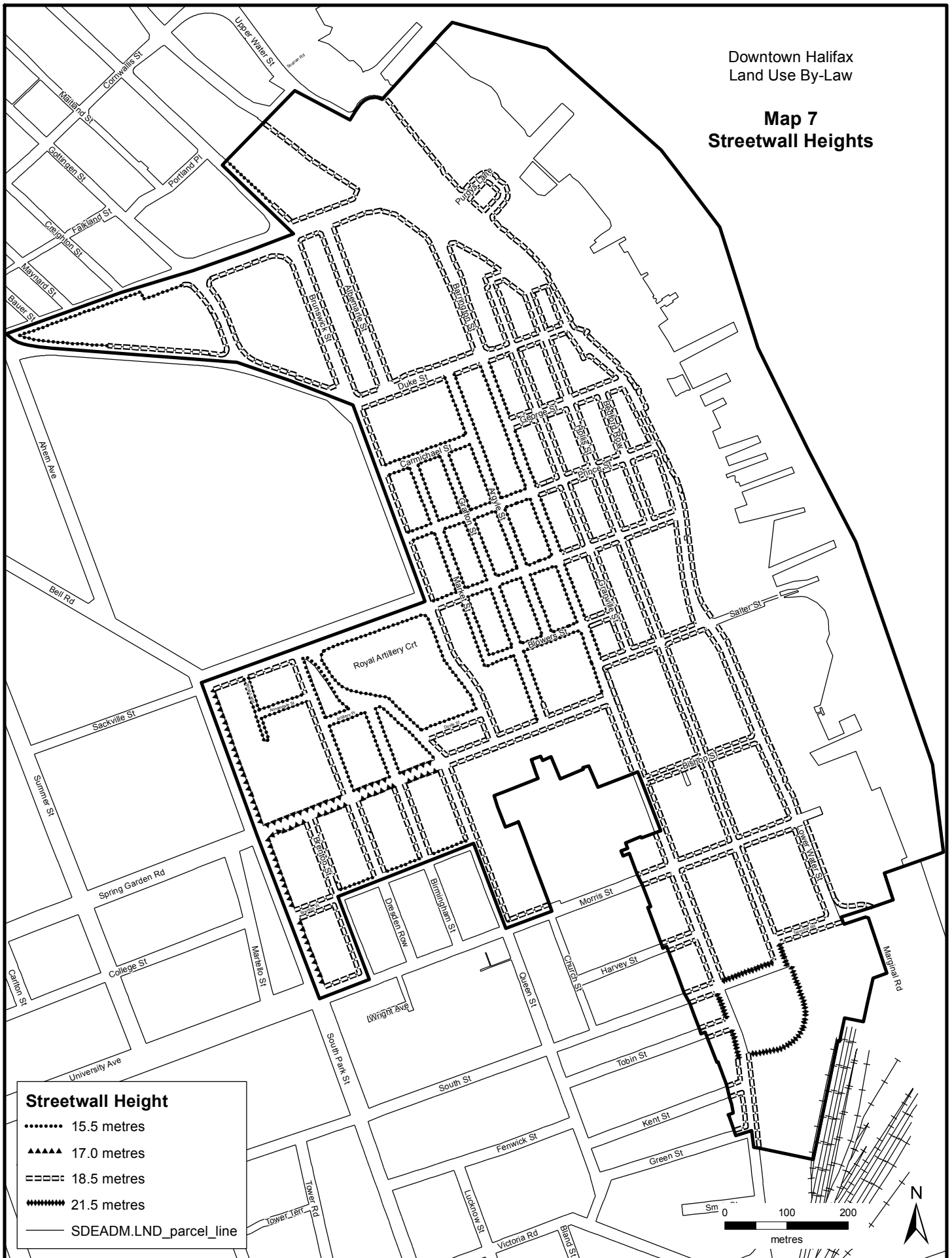
THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the ____ day of _____, A.D., 20____.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this ____ day of _____, A.D., 20____.

Municipal Clerk

Downtown Halifax
Land Use By-Law

Map 7 Streetwall Heights



Effective:

Note: Effective date does not indicate date of data creation.

ATTACHMENT B-2
PROPOSED AMENDMENTS TO THE DOWNTOWN
HALIFAX LAND USE BY-LAW

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Downtown Halifax Land Use By-law is hereby amended as follows:

1. Amend the “TABLE OF CONTENTS” to add “**Non-Conforming Buildings**” following “Interpretation of Zoning Boundaries”.
2. Amend the “TABLE OF CONTENTS” to replace “Residential Uses: Precincts 2, 3 and 9 – Landscaped Open Space Requirements” with “**Residential Uses: Precinct 2 – Landscaped Open Space Requirements**”.
3. Amend the “TABLE OF CONTENTS” to add “**Residential Uses: Precincts 3 and 9 – Landscaped Open Space Requirements**” following “**Residential Uses: Precinct 2 – Landscaped Open Space Requirements**”.
4. Amend the “TABLE OF CONTENTS” to add “**Temporary Construction Uses Permitted**” following “Waterfront View Corridors: Abutting Uses”.
5. Amend the “TABLE OF CONTENTS” to add “**Drive-Thrus**” following “Prohibited External Cladding Materials”.
6. Amend section 2 by substituting subsection (k) with the following:

(k) *Average grade* means the average finished elevation around the perimeter of the ~~lot~~ **building**.
7. Amend section 2 by substituting subsection (af) with the following:

(af) *Flat roof* means a roof that is sloping no greater than ~~1:12~~ **1:10**.
8. Amend section 2 by adding the following subsection following subsection (ab):

(aba) *Drive-thru* means a built form established to provide or dispense products or services, through an attendant or a window or an automated machine, to persons remaining in vehicles that are in a designated stacking aisle.
9. Amend section 2 by substituting subsection (bb) with the following:

(bb) *Multiple Unit Dwelling* means a building containing ~~four~~ **three** or more dwelling units.
10. Amend section 2 by substituting subsection (bh) with the following:

- (bh) *Projecting sign* means a sign which projects from and is supported by or which extends beyond a wall of a building **or is attached to the underside of the building or canopy.**
11. Amend subsection (2) of section 4 by substituting clause (b) with the following:
- (b) with the exception noted in clause ~~(d)~~**(c)**, only those applicants with professional expertise in the fields of architecture, landscape architecture, urban design, city planning, structural engineering or a similar field shall be eligible as members of the Committee;
12. Amend subsection (2) of section 4 by substituting clause (e) with the following:
- (e) with the exception of the resident at large ~~member~~ **members**, members of the Committee must hold a professional degree in their respective fields;
13. Amend section 5 by substituting subsection (6) with the following:
- (6) ~~In addition to the requirements of sub-section (1), unless~~ **Unless** otherwise specified, all development within the Downtown Halifax Secondary Municipal Planning Strategy plan area boundary, as shown on Map 1, shall be subject to site plan approval ~~by the Development Officer.~~
14. Amend section 5 by substituting subsection (7A) with the following:
- (7A) Prior to ~~an application for site plan approval being submitted~~ **submitting a substantive application for site plan approval**, the applicant shall undertake public consultation concerning the project ~~in a format acceptable to the Development Officer and using a combination of the following three methods~~ **using the following three methods, in a format acceptable to the Development Officer:**
- (a) open house;
- (b) public kiosk; and
- (c) website/online forum.
15. Amend section 6 by adding the following subsection after subsection (4):

Non-Conforming Buildings

- (5) **Where an existing building is deemed to be non-conforming under this By-law, it shall be allowed to be extended, enlarged, or altered as long as the extension, enlargement or alteration complies with this By-law, or a variance is granted by the Design Review Committee.**

16. Amend section 7 by substituting the title before subsection (6) with the following:
Residential Uses: Precincts 2, ~~3 and 9~~ – Landscaped Open Space Requirements
17. Amend section 7 by substituting subsection (6) with the following:
- (6) Where any ~~residential~~ building is erected, altered, or used primarily for residential purposes in Precinct 2: Barrington Street South; ~~Precinct 3: Spring Garden Road Area; or Precinct 9: North End Gateway~~, the lot on which such building is located shall contain landscaped open space.
18. Amend section 7 by substituting subsection (8) with the following:
- (8) A minimum of ~~5~~ **11.25** square metres of landscaped open space shall be provided for each ~~person residing in the building~~ **dwelling unit in a building**.
19. Amend section 7 by deleting subsection (9):
- ~~(9) For the purposes of calculating the number of persons residing in a building, the population of each dwelling unit shall equal 2.25 persons.~~
20. Amend section 7 by substituting subsection (10) with the following:
- (10) A maximum of 60% of the landscaped open space requirement may be transferred to the building rooftop, provided that:
- (a) ~~the any~~ rooftop landscaped open space is ~~contiguous and not less than a~~ **minimum of** 56 square metres in area; ~~and,~~
- (b) the rooftop landscaped open space is fully accessible for the common use of the occupants of the building; **and,**
- (c) **the rooftop landscaped open space is located on a portion of the roof that is not sloping.**
21. Amend section 7 by adding the following subsections after subsection (11):
- Residential Uses: Precincts 3 and 9 – Landscaped Open Space Requirements**
- (11A) Where any building is erected, altered, or used primarily for residential purposes in Precinct 3: Spring Garden Road Area or Precinct 9: North End Gateway, the lot on which such building is located shall contain landscaped open space.
- (11B) For the purpose of subsection (11A), *primarily* means more than 50% of the gross floor area is devoted to residential uses, including enclosed space

serving residents of the building and areas devoted to personal services, such as laundry and waste disposal and common area.

(11C) A minimum of 5 square metres of landscaped open space shall be provided for each dwelling unit in a building.

(11D) The full amount of the landscaped open space requirement may be transferred to the building rooftop, provided that:

(a) any rooftop landscaped open space is a minimum of 56 square metres in area;

(b) the rooftop landscaped open space is fully accessible for the common use of the occupants of the building; and

(c) the rooftop landscaped open space is located on a portion of the roof that is not sloping.

(11E) The requirements of subsection (11B) may be varied by site plan approval where the relaxation of the requirement is consistent with the Design Manual.

22. Amend section 7 by adding the following subsections after subsection (23):

Temporary Construction Uses Permitted

(24) Nothing in this By-law shall prevent the use of the land or the use or erection of a temporary building or structure which is necessary and accessory to construction in progress, such as a work camp or construction camp, mobile home, sales or rental office, tool or maintenance shed or scaffold, including a shipping container which serves as one of the foregoing, except as a mobile home, sales or rental offices, provided that a development permit has been issued.

(25) A rock crusher may be used at the site of a demolition of a structure or building, or at the site of development permitted pursuant to this By-law, provided a development permit has been issued for such use.

(26) Incidental to a development, a temporary rock crusher may be permitted.

(27) A development permit issued for the use of a temporary rock crusher accessory to demolition of a structure or building pursuant to this By-law or a development pursuant to this By-law shall be valid for any period specified not exceeding sixty (60) days. A development permit issued under this subsection may be renewed for a period not to exceed thirty (30) days at a

time, if a Development Officer determines that an extension of the period is necessary. No rock crusher shall be located or used within three (3) metres of any property boundary.

- (28) A development permit issued for the use of a temporary rock crusher accessory to the construction of primary or secondary services pursuant to the Regional Subdivision By-law shall be valid for any period which does not exceed the construction time schedule specified in the subdivision agreement. No rock crusher for which a permit has been issued under this subsection shall be located or used within sixty (60) metres of any building used for residential or institutional purposes; with the exception of fire stations, police stations, public works facilities, cemeteries, historic sites and monuments, and recreational trails where no rock crusher shall be located or used within three (3) metres of any property boundary.
- (29) Notwithstanding any other provision of this By-law, a temporary rock crusher accessory to construction in progress shall not be used to process material for export to another site nor to process material imported to the site.
- (30) A temporary rock crusher may be used as accessory to demolition in progress to process demolished material for export to another site subject to disposal in accordance with the requirements of this By-law and the C&D Materials Recycling and Disposal License By-law.
23. Amend section 8 by adding the following subsection after subsection (21):
- Drive-Thrus**
- (22) **Drive-thrus shall be prohibited.**
24. Amend subsection (7) of section 12 by adding the following clause after clause (i):
- (j) **the undergrounding of overhead electrical and communication distribution systems.**
25. Amend subsection (8) of section 13 by substituting clause (a) with the following:
- (a) internally-illuminated fascia signs or **internally-illuminated** awning signs;
26. Amend subsection 4.6.3 of Schedule S-1 (Design Manual) of the Downtown Halifax Land Use By-law by substituting clause (a) with the following:
- (a) ~~internally-lit box signs~~ **internally-illuminated fascia signs** or ~~internally-lit~~ **internally-illuminated** awning signs;

27. Amend subsection 4.6.4 of Schedule S-1 (Design Manual) of the Downtown Halifax Land Use By-law by changing the labeling of subsection 4.5.4.6 (Number of signs) found on page 56 to **4.6.4.6**.
28. Amend Map 7 Streetwall Heights, as illustrated in Appendix “B-1”, by adding maximum streetwall heights where they are missing.

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the _____ day of _____, A.D., 20__.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this _____ day of _____, A.D., 20__.

Municipal Clerk