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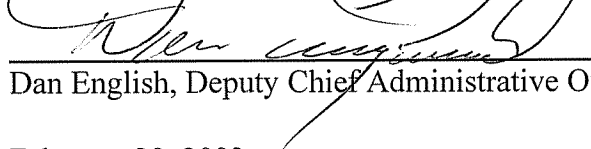
HALIFAX PO Box 1749
Halifax, Nova Scotia
REGIONAL MUNICIPALITY B3J 3A5 Canada

Halifax Regional Council
March 18, 2003

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: February 20, 2003

SUBJECT: **Case 00451: Request for a MPS/LUB Amendment to Permit a Lounge at 5576 Fenwick Street, Halifax**

ORIGIN

Request by Dan Joseph to amend the Halifax Municipal Planning Strategy and Land Use Bylaw to permit a lounge at 5576 Fenwick Street (operating under the name "My Other Brother Darrell's").

RECOMMENDATION

It is recommended that Regional Council not initiate the process to consider amending the Halifax Municipal Planning Strategy and Land Use Bylaw to permit a lounge at 5576 Fenwick Street.

BACKGROUND

Synopsis of Proposed Development: The property is located at 5576 Fenwick Street (operating under the name “My Other Brother Darrell’s”). The applicant wishes to designate a portion (up to 600 square feet) of an existing licensed restaurant as a lounge area. This requires an amendment to the Halifax Municipal Planning Strategy and Land Use Bylaw. Under the Nova Scotia Alcohol and Gaming Authority regulations, a licenced restaurant, permitted within the present zone, is not allowed to sell alcoholic beverages except when purchased with a meal.

Location, Designation and Zoning: This site is within a Commercial Designation on the Generalized Future Land Use Map of the South End and is zoned RC-2 (Residential/Minor Commercial) Zone. The intent of the MPS policies is to limit commercial uses within the South End area to minor commercial uses. Lounges are not referenced in the policies for Minor Commercial Centres. This use is not permitted on this property as-of-right, by development agreement, or through a rezoning process. The only option for the developer is to request a plan amendment to include policies which would support this type of use in this area.

History of the Property: In August 1992 an application was received to rezone the subject property from RC-2 to C-2 (General Business) Zone in order to enable a lounge licence. Staff did not recommend the application. The application was withdrawn a day before the scheduled public hearing in December, 1992.

At present, there are only two licensed lounge establishments in the immediate vicinity - Bearley’s House of Blues and Ribs on Barrington Street, which was permitted under terms of a development agreement for a Municipal Heritage Property; and the Resolute Club, on Inglis Street, which is legally non-conforming under the present RC-2 zoning. In response to a request to permit a lounge at 5677 Brenton Street, a previous staff report of October 10, 1990 examined options to consider lounges in areas designated and zoned residential-commercial mix and minor commercial.

Staff favoured permitting lounges in all minor commercial zones throughout the city where associated with, but subordinate to a restaurant. A second option identified at that time was to permit lounges only in residential-commercial designated areas. Special controls were suggested to ensure lounges remained subordinate to the principal use in order minimize land use impacts. Either of these options would have enabled the applicant’s request to proceed. However, in 1991, Council approved plan and land use bylaw amendments to allow lounges of up to 600 square feet only within RC-2 Zoned areas along Spring Garden Road, and decided not to consider them within other minor commercial areas. Staff’s recommendation on this current application is therefore consistent with previous staff reports and with the previously established position of Council on this matter.

DISCUSSION

Site specific plan amendments and policy reviews should generally only be considered where circumstances related to policies of Council have changed significantly. If Council feels that allowing lounges in conjunction with restaurants would not alter the character of minor commercial

areas then a Halifax wide, or at least, South End wide amendment should be considered. Certainly any extension of the area where lounges are currently permitted would open the door for similar requests for “extension” elsewhere in the Halifax Plan area.

The applicant argues that attitudes have changed as area residents desire quiet drinking establishments close to home and do not wish to travel to larger establishments downtown. The applicant indicates that customers have asked over the last few years to be served beer or wine without a food purchase. Consequently, the owner wishes to be able to “designate a portion of our restaurant as lounge seating.”

Staff do not see the merit in considering a site-specific MPS and land use by-law amendment to permit a lounge at 5576 Fenwick Street. The development of lounges in minor commercial areas could lead to land use conflicts related to noise and traffic on adjacent residential areas. This was the rationale for 1991 decision by the former Halifax City Council in not adopting such an approach. Although the argument that trends and attitudes have changed may have some merit, this argument is not specific to this property. If it is considered appropriate to permit a lounge at one location, then this ability should be extended, at least, to other parts of the South End Plan area in which similar zoning exists. Staff cannot see any change in the circumstances which led to the 1991 decision not to amend MPS policy in relation to this matter. Staff cannot, therefore, recommend approval of this application.

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

1. Do not proceed with this requested amendment. This is the recommended course of action.
2. Authorize an MPS and land use by-law process to consider allowing lounges in association with restaurants in all minor commercial zones within the Halifax Plan area.
3. Authorize a plan and land use by-law process to consider a specific amendment to permit a lounge at 5576 Fenwick Street. This is not recommended for reasons outlined above.

ATTACHMENTS

Map 1: Generalized Future Land Use

Map 2: Zoning

Attachment A: Extracts from the Municipal Plan and the Peninsula Land Use Bylaw

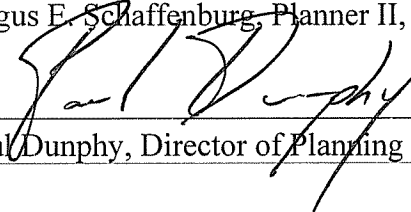
Attachment B: Minutes of City of Halifax Council of December 9, 1992

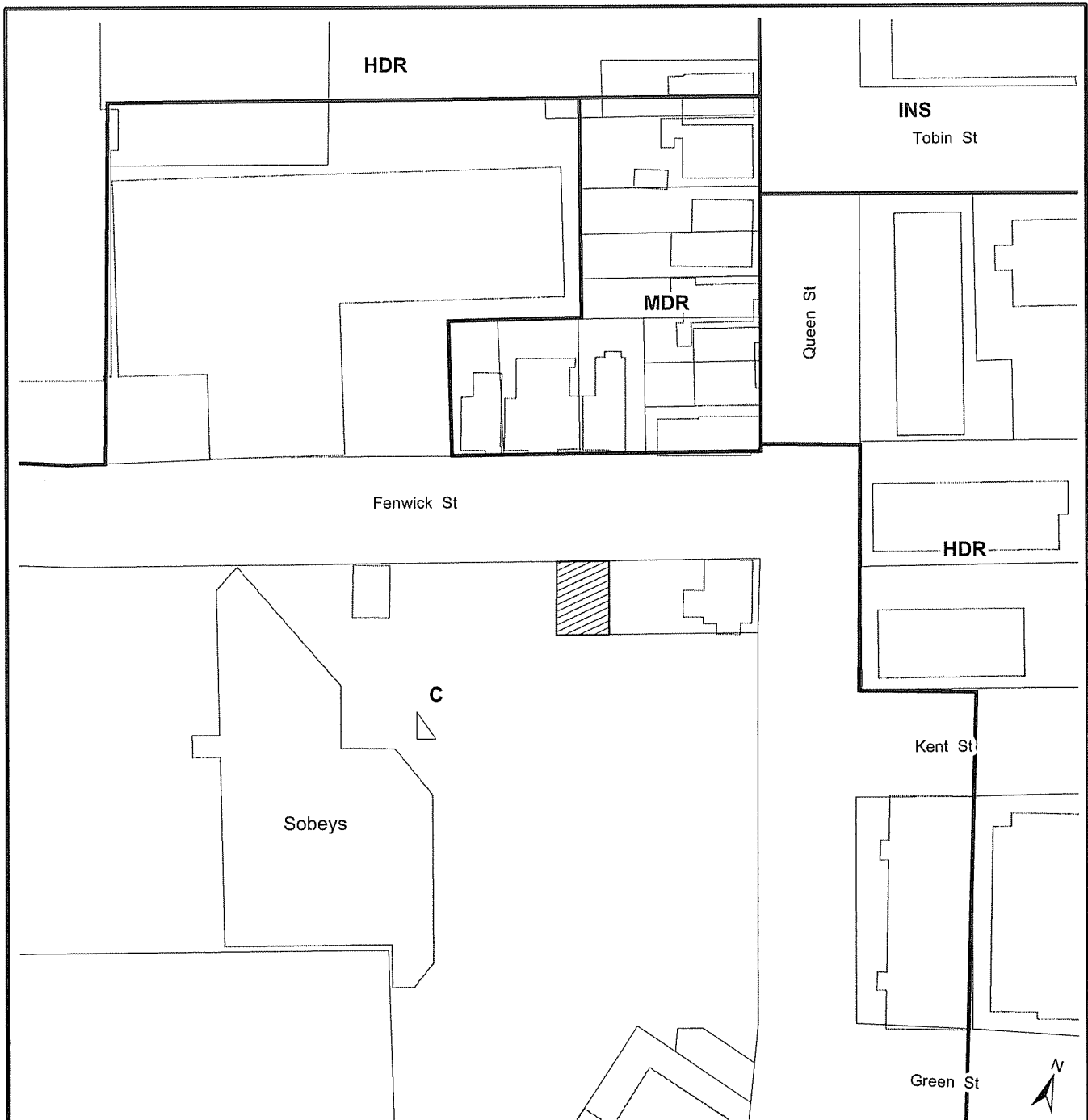
Attachment C: Letters of February 20, 2002 from Mr. Joseph

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: Angus E. Schaffenburg, Planner II, 490-4495


Report Approved by: _____


Paul Dunphy, Director of Planning and Development Services



Map 1 - Generalized Future Land Use

5576 Fenwick Street
Halifax

 Subject property

Designation

- C Commercial
- MDR Medium Density Residential
- HDR High Density Residential
- INS Institutional

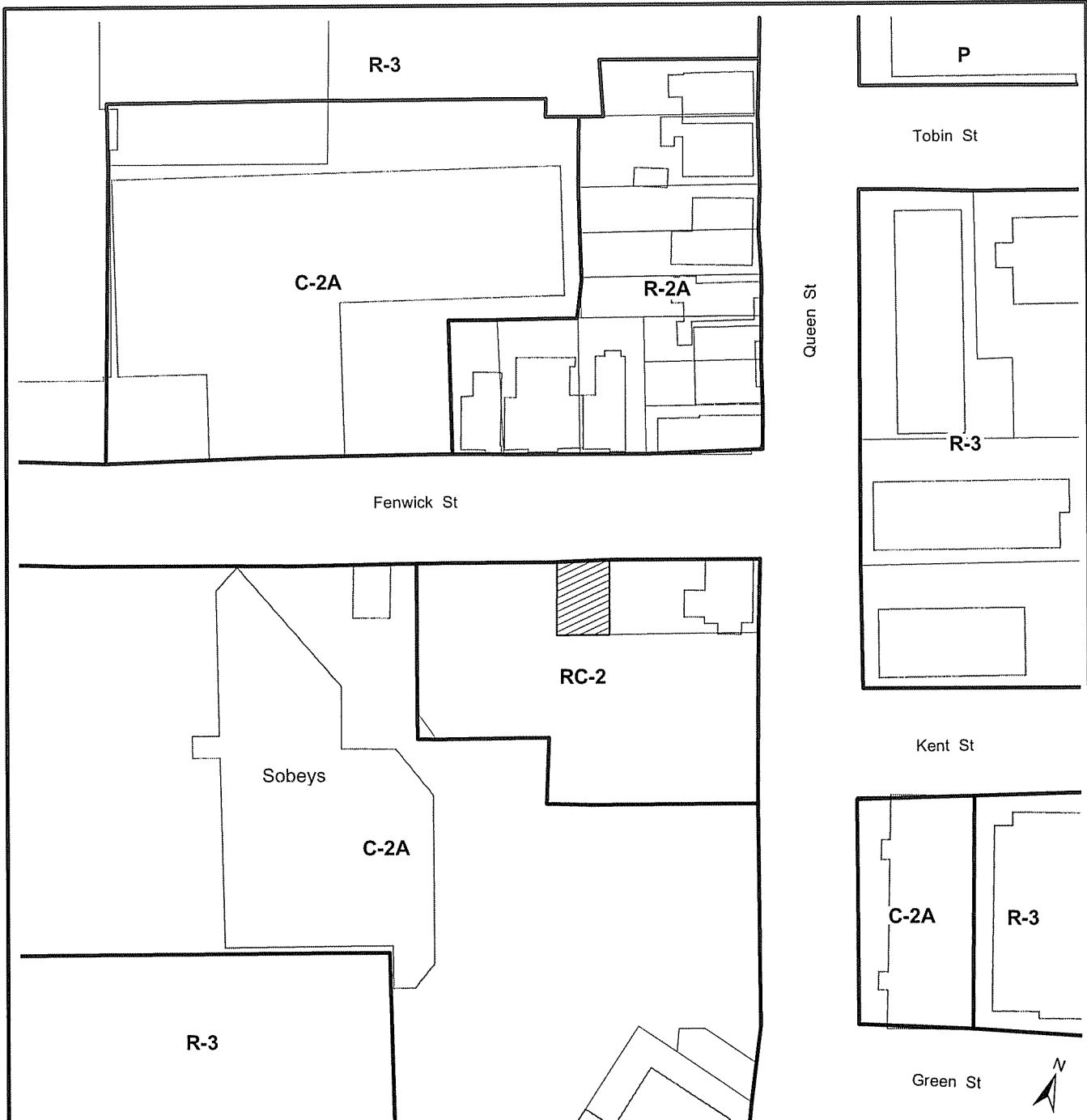
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REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Halifax Plan Area.


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

Halifax Plan Area



Map 2 - Zoning

5576 Fenwick Street
Halifax

 Subject property

Halifax Plan Area

Zone

- R-2A General Residential Conversion
- R-3 Multiple Dwelling
- C-2A Minor Commercial
- RC-2 Residential Minor Commercial
- P Park and Institutional



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.

Attachment A: Extracts from the Municipal Plan and the Peninsula Land Use Bylaw

2. COMMERCIAL FACILITIES

- Objective Provision for a variety of commercial uses in appropriate locations to serve the needs of the area and compatible with the needs of the City.
- 2.1 In the South End it is the City's intent to allow for neighbourhood shopping facilities and minor commercial facilities. Commercial uses shall not be encouraged other than in accordance with Part II, Sections II and III of the Municipal Development Plan.
- 2.2 Spot rezonings to permit neighbourhood shopping facilities pursuant to and consistent with Part II, Section II, Policy 3.1.1 of the Municipal Development Plan may be permitted.
- 2.2.1 Pursuant to Policies 2.1 and 2.2, the City shall amend its Zoning Bylaw to provide for a residential neighbourhood commercial zone which provides for a maximum of six residential units and one neighbourhood commercial use in any given development.
- 2.3 Minor-commercial uses shall be permitted in areas designated as "Commercial" or "Residential-Commercial Mix" on the Future Land Use Map (Map 2) of this Plan.
- 2.3.1 In areas designated as "Residential-Commercial Mix", the City shall permit the following uses:
- (i) residential uses;
 - (ii) in new buildings, residential uses with minor commercial uses occupying the ground floor, provided that the commercial uses have independent and direct access to the street; and
 - (iii) in existing buildings, minor commercial uses and a mix of minor commercial and residential uses.
- 2.3.2 In areas designated as "Residential-Commercial Mix", the City shall not require provision of family-type housing accommodation in any building.
- 2.3.3 Pursuant to Policy 2.3.1, the City shall amend its Zoning Bylaw to provide for two residential commercial zones which would permit residential uses consistent with medium-density and high-density residential areas respectively, and each of which would permit minor commercial uses.

- 2.4 Minor commercial uses shall be permitted only in the areas so designated in the Plan and expansion of those areas may be permitted only through amendment to this Plan.

SECTION IX

SPRING GARDEN ROAD COMMERCIAL AREA PLAN

OBJECTIVES AND POLICIES

1. COMMERCIAL FACILITIES

Objective The maintenance and promotion of the Spring Garden Road Area as a major commercial centre, accommodating a mixture of commercial activity, particularly high-quality retail uses, but also including offices, hotels, and other uses that enhance its vitality, including residential as a secondary use.

1.1 The City shall encourage the development of the area as a major commercial centre pursuant to Section II, Policy 3.1.3.

1.2 In areas designated "Residential-Commercial Mix", the City shall permit the following uses:

- (i) residential uses;
- (ii) minor commercial uses, provided that in new buildings they are limited to the ground floor and basement levels, while in existing buildings they are permitted throughout the building;
- (iii) commercial and residential uses in mixed use buildings shall have independent and direct access to the street;
- (iv) lounges in association with restaurants, provided that the intensity of use and impact on the residential character of the area shall be controlled through the Land Use Bylaw by limiting the size of lounges and ensuring that they are subordinate to the associated restaurant; and
- (v) public parking on the city owned Clyde Street parking lot bounded by Dresden Row, Clyde Street and Queen Street.

- 1.4 The City shall permit only retail and personal service uses, banks, restaurants, beverage rooms, lounges and similar uses, to locate at grade, adjacent to the sidewalks on Spring Garden Road as shown on Map 1.
- 1.5 Residential uses should be encouraged in commercial buildings in the Spring Garden Road area in order to preserve a lively and varied street environment and to enhance street safety after business hours. In particular, such uses should be encouraged on the second and third floors on the street front.

Peninsula North

- 2.13 Properties in Area 8 fronting on the west side of Gottingen Street but which are outside of the existing commercial core area as denoted by the Major Commercial Designation, shall be designated as "Residential-Commercial Mix" on the Generalized Future Land Use Map (Map 9Gh) of this Plan.
- 2.14 In areas designated as "Residential-Commercial Mix", the following uses shall be permitted:
1. residential uses;
 2. in new buildings, residential uses with minor commercial uses occupying the ground floor or below grade, or minor commercial uses on the ground floor or below grade;
 3. in existing buildings, minor commercial uses and a mix of minor commercial and residential uses, including existing minor commercial uses located above the ground floor;
 4. existing parking lots and parking structures;
 5. lounges in association with restaurants for properties fronting on Gottingen Street, provided that the intensity of use shall be controlled through limitations on the size of such lounges and ensuring that they are subordinate to the restaurant use.

RC-2 ZONE

RESIDENTIAL/MINOR COMMERCIAL ZONE

48BA(1) The following uses shall be permitted in any RC-2 Zone:

- (a) R-1, R-2 and R-2T uses;
- (b) R-2A uses in the "**South End Area**";
- (c) minor commercial uses as set out in the C-2A Zone, Section 59A(1)(b) to (m) inclusive, excluding (1a) (billboards), provided that such uses are located at grade or below grade;
- (d) a lounge in association with a restaurant in the "**Spring Garden Road Area**";

LOUNGES - SPRING GARDEN ROAD AREA

48BD The seating area for a lounge shall be a maximum of 600 square feet or, less than the seating of the restaurant, whichever is less.

Attachment B: Minutes of City of Halifax Council of December 9, 1992

Public Hearing: Case No. 6602: Rezoning - RC-2 to C-2, 5576 Fenwick Street

A staff report dated 6 November 1992 was submitted.

This item was deleted during the setting of the agenda by the City Clerk. A letter dated 8 December 1992 from Mr. Glenn A. MacArthur, President, Lint Trap Properties Ltd., applicant, withdrawing his application was submitted.

Alderman Holland, who asked that he be permitted to speak on this item when it was proposed for deletion, addressed Council and noted that he had received many phone calls and correspondence stating that what was proposed was not in the best interests of the character of the neighbourhood. Alderman Holland filed these letters of correspondence with the City Clerk at this time.

The following petitions were received in opposition to the proposed rezoning:

- a petition in opposition to the proposed rezoning containing approximately 16 signatures of residents of 1186 Queen Street;
- a petition containing 14 signatures of residents of 1135 Queen Street in objection to the proposed rezoning;
- a petition containing 38 signatures of residents of 5576 Queen Street in objection to the proposed rezoning;
- a petition containing approximately 99 signatures.

The following additional correspondence we received in opposition to the proposed rezoning:

- a letter dated 8 December 1992 from Carol Ann Silverman, 1143 Queen Street;
- a letter dated 7 December 1992 from Andrew S. Wolfson, Wolfson, Schelew, Green & Zatzman, representing the owner of the property at 5320 Tobin Street;
- a letter dated 8 December 1993 from Colin V. Audain;
- a letter dated 3 December 1992 from Douglas Bundy, Development Manager, Sobeys Leased Properties Limited;

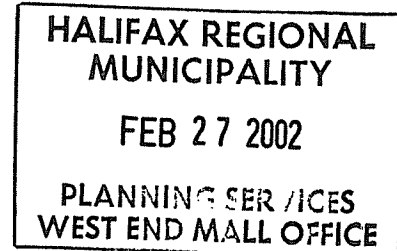
Attachment C: Letters of February 20, 2002 from Mr. Joseph

MCJ Restaurant Ltd. – My Other Brother Darrell's Restaurant & The Missing Sock Laundromat
5576 Fenwick Street, Halifax, Nova Scotia, B3H 1P8
Tel: 902.492.2344
www.myotherbrotherdarrells.com



February 20th, 2002

Gary Porter
HRM Planning Division
PO Box 1749
Halifax, Nova Scotia
B3J 3A5



Per: Request for an amendment to the
Municipal Planning Strategy:
My Other Brother Darrell's Restaurant
5576 Fenwick Street
Halifax, Nova Scotia
B3H 1P8

Dear Mr. Porter:

My Other Brother Darrell's Restaurant, located at 5576 Fenwick Street, Halifax, Nova Scotia, B3H 1P8, continues to enjoy loyal patronage from customers year round. We have listened to our customers' requests over the years and continue to refine our business and improve the service and products we offer. We have made significant capital investments in our business to speed up food service by increasing our kitchen output, creating more seating year round with booth-style seating, and adding a seasonal outdoor deck area for our customers to enjoy the sun and quiet of our South End neighborhood.

Our facility now boasts a history of over a decade of service to the community. Under the current ownership and management team, Darrell's, as it is commonly known, is fast becoming recognized as a South End neighbourhood "institution", a long-standing business known for consistency of service, food and beverage products.

Our customers have been very vocal in the past few years about their desire to come and enjoy a cold beer or a glass of wine with lunch or dinner at Darrell’s. At times our customers would prefer to enjoy an alcoholic beverage without being required to order food from our menu, while they relax and enjoy the casual atmosphere that we have fostered with our staff and location.

To service this growing demand from our patrons and capture the potential of this business opportunity, we are requesting from your office an amendment to the Municipal Planning Strategy for a *lounge in association with a restaurant* for the building located at 5576 Fenwick Street. This amendment will allow us to make the required application to the Nova Scotia Alcohol & Gaming Commission to have a seating area for a lounge that shall be a maximum of 600 square feet or, less than the seating of the restaurant, whichever is less.

This area of the South End of Halifax has enjoyed growth that both residential and commercial occupants alike enjoy. Darrell’s has become tradition in this neighbourhood within the context of that growth. Many things have changed, including the desire for neighbouring and loyal customers to enjoy a quiet outing of food and beverage, as well as a wide range of other services closer to home. We regularly hear from our patrons that they do not wish to participate in the hustle and bustle of larger establishments that can be noisy and crowded. Our patrons enjoy the fact that we are just around the corner, eliminating the need to drive and pay parking or the hassle and expense of taxi service, when they want to enjoy a good dining experience.

Growth and development of other businesses in areas such as ours has been very successful without creating nuisance impact on adjacent residential areas. Rather, businesses like Darrell’s add character and convenience to a way of life in keeping with our times.

Please find attached the following supporting documents to accompany this amendment request:

- A letter signed by all residents of neighbouring properties in support of this amendment and the proposed licensee amendment to provide lounge seating.
- A letter from the building owner, Atef (Charlie) Khoury of 5568, Fenwick Street, Halifax NS, B3H 1P8, to confirm that he supports the amendment application.
- A copy of the building location and property description as filed with the City of Halifax.

If approved, this amendment will allow us to meet the demands of our loyal customers and local residents.

We respectfully request the support of the City of Halifax in our efforts to improve the services and products offered in our neighbourhood and appreciate your consideration of this amendment. The result of this amendment for a *lounge in association with a restaurant* being approved by the City of Halifax will be an improved level of service at the request of our customers that will encourage the residents of our community to come out and enjoy our facility and our neighbourhood more often.

We look forward to continued growth and prosperity as business residents of our South End community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Joseph', with a stylized flourish at the end.

Dan Joseph
Owner and General Manager
My Other Brother Darrell’s Restaurant

MCJ Restaurant Ltd. – My Other Brother Darrell's Restaurant & The Missing Sock Laundromat
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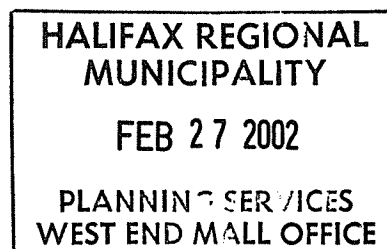


February 20th, 2002

To: Residential neighbours of *My Other Brother Darrell's Restaurant*

Per: Request to the City of Halifax for an amendment to the
Municipal Planning Strategy for the purpose of obtaining authorization
From The Nova Scotia Alcohol & Gaming Commission to designate a portion
of our restaurant as lounge seating

Business &
Location: My Other Brother Darrell's Restaurant
5576 Fenwick Street
Halifax, Nova Scotia
B3H 1P8



Dear Darrell's Neighbour:

My Other Brother Darrell's restaurant continues to enjoy loyal patronage from customers year round. We have listened to our customers' requests over the years and continue to refine our business and improve the service and products we offer. We have made significant capital investments in our business to speed up food service by increasing our kitchen output, create more seating year round with booth-style seating, and we now offer a seasonal outdoor deck area for our customers to enjoy the sun and quiet of our South End neighbourhood.

Our facility now boasts a history of over a decade of service to the community, and under the current ownership and management team, Darrell's is fast becoming recognized as a South End neighborhood 'institution' – a long-standing business known for consistency of service, food and beverage products.

Our customers have been very vocal in the past few years about their desire to come and enjoy a cold beer or a glass of wine at Darrell's, while enjoying the relaxed and casual atmosphere that we have fostered with our staff and location. To service this growing demand from our customers we must acquire an amendment to the Municipal Planning Strategy for our building and an amendment to our liquor license that would allow us to designate a portion of our restaurant as lounge seating.

Please find attached a copy of the letter and supporting documents that we will be submitting to the City of Halifax to request the necessary amendment. To complete this amendment request for the city, we require signatures from all of our immediate neighbors that clearly indicates they are aware of our request for a planning amendment, which if approved will be followed by a liquor license amendment request to acquire a lounge license for Darrell's.

These two amendments will allow us to meet the demands of our loyal customers, which include our neighbors, and continue to grow our business. These amendments will allow us to designate a portion of our seating, to service customers who wish to enjoy an alcoholic beverage without being required to order food from our menu. These amendments will not result in operating hours later than 12 midnight, as we wish to maintain the relaxed and enjoyable atmosphere with the consistent quality of our food, beverages and service that we have become known for.

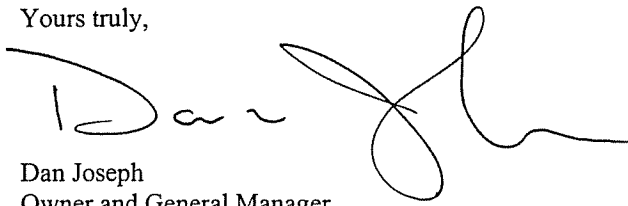
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A copy of this letter signed by all of our neighbors will be submitted with our application to the City of Halifax for this Municipal Planning Amendment. If the amendment is approved, a copy of this letter will then accompany our application to the Nova Scotia Alcohol & Gaming Commission for the license amendment request for Darrell’s to receive lounge seating.

Your support of these amendments is appreciated and the resulting new services that we can offer our customers. The result will be an improved level of service that will enhance our customers’ ability to come out and enjoy our facility more often.

We look forward to continued growth and prosperity as business residents of this South End community. Thank you for your continued support.

Yours truly,

A handwritten signature in black ink, appearing to read "Dan Joseph". The signature is fluid and cursive, with a large loop at the end.

Dan Joseph
Owner and General Manager
My Other Brother Darrell’s Restaurant

MCJ Restaurant Ltd. – My Other Brother Darrell’s Restaurant & The Missing Sock Laundromat
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Tel: 902.492.2344
www.myotherbrotherdarrells.com

I, the undersigned, have read the documents herein contained, and support the request for amending of the Municipal Planning Strategy for a lounge in association with a restaurant for the building located at 5576 Fenwick Street.

Atef K Houry
Resident Signature

Atef Khoury (Landlord and Building Owner)
5568 Fenwick Street
Halifax, NS
B3H 1P8

Atef K Houry
Print Name

Feb - 20 - 2002
Date

Sherman MacRae
Resident Signature

Sherman MacRae
1152 Queen St., #1
Halifax, NS
B3H 2S8

SHERMAN MAC RAE
Print Name

Feb. 22 - 2002
Date

Darlene MacRae
Resident Signature

Darlene MacRae
1152 Queen St., #1
Halifax, NS
B3H 2S8

Darlene MacRae
Print Name

Feb. 22. 2002.
Date

J.H. Browker
Resident Signature
JACKIE BROWKER
Print Name
Feb 20/02.
Date

Jackie Browker
1152 Queen St., #4
Halifax, NS
B3H 2S3

W. Biggs
Resident Signature
Wilfred Biggs
Print Name
20 Feb, 2002.
Date

Wilfred Biggs
1152 Queen St., #2
Halifax, NS
B3H 2S3

M. Spearman
Resident Signature
M. SPEARMAN
Print Name
02-02-20
Date

Mike Spearman
5571 Fenwick St., #1
Halifax, NS
B3H 1R1

Allan Sweet
Resident Signature
Alan Sweet
Print Name
Feb 21, 2002
Date

Allan Sweet
5571 Fenwick St., #2
Halifax, NS
B3H 1R1

M. Robichaud
Resident Signature
Marc Robichaud
Print Name
Feb 20, 2002
Date

Marc Robichaud
5571 Fenwick St., #3
Halifax, NS
B3H 1R1