



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No.
Halifax and West Community Council
February 28, 2017

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: **Original Signed**

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: January 20, 2017

SUBJECT: **Case 20489: Development Agreement, 5540 Kaye Street, Halifax**

ORIGIN

Application by Studioworks International Inc., on behalf of 3283927 Nova Scotia Ltd., to enter into a development agreement for 5540 Kaye Street, Halifax to allow a single dwelling unit within the 6th floor penthouse of a commercial building under construction.

LEGISLATIVE AUTHORITY

Refer to Attachment E.

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A of this report, to allow a single dwelling unit within the 6th floor penthouse of 5540 Kaye Street, Halifax and schedule a public hearing; and
2. Refuse to approve the proposed development agreement, as set out in Attachment A, as it does not reasonably carry out the intent of the MPS in that the requested modification of lot standards is not necessary to secure an appropriate development of the lot and the conditions necessitating the modification are not unique to the lot.

BACKGROUND

Studioworks International Inc., on behalf of 3283927 Nova Scotia Ltd., is applying to enter into a lot modification development agreement to modify the required lot area and side and rear yard setbacks to allow a single dwelling unit within the 6th floor penthouse of a commercial building under construction at 5540 Kaye St., Halifax.

Subject Site	5540 Kaye Street, Halifax
Location	North End, Halifax
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	Major Commercial under the Peninsula North Secondary Planning Strategy (PNSPS) of the Halifax Municipal Planning Strategy (MPS)
Zoning (Map 2)	C-2 General Business Zone under the Halifax Peninsula Land Use By-law (LUB)
Size of Site	195.8 square metres (2,108 square feet)
Street Frontage	9.45 meters (31 feet)
Current Land Use(s)	Six (6) storey commercial building currently under construction
Surrounding Use(s)	The surrounding area is comprised of commercial and residential uses including: <ul style="list-style-type: none">• a seven storey mixed use development with two underground parking levels the west• a three storey mixed use building to the east• Hydrostone Park and the Hydrostone Market area located across the street to the north• low rise residential uses to the south

Proposal Details

The applicant received a permit to construct an as-of-right six (6) storey commercial building at 5540 Kaye Street in November, 2015. The building is currently under construction and the applicant is seeking permission for a single dwelling unit to be located within the 6th floor penthouse of a commercial building under construction.

Enabling Policy and LUB Context

This application is made pursuant to Implementation Policy 4.6 of the MPS which allows Community Council to consider modifications yards, lot area, and lot width through the development agreement process. Staff advise that Policy 4.6 is intended to enable development on properties that cannot be otherwise developed. Specifically, this policy requires that:

- (a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;
- (b) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;
- (c) the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;
- (d) the modification is consistent with Section II of this Plan; and
- (e) the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.

This property is zoned C-2 which permits commercial buildings with no restrictions on front, side or rear yards. Height is limited to 24.4 metres (80 feet). Residential uses are permitted within the C-2 Zone subject to meeting the requirements of the zone that permits the use. In this case, a single unit dwelling

on the subject site is required to meet the provisions of the R-1 Zone which are provided in Attachment B. As per the following table, the proposed single dwelling unit does not meet a number of requirements of the R-1 Zone. The applicant is requesting a lot modification development agreement as a means of achieving permission for the desired residential dwelling unit.

	LUB Requirement	Proposed	Satisfied
Lot Frontage	30 ft.	30 ft.	Yes
Lot area	3,000 sq. ft.	2,108 sq. ft.	No – DA Required
Height Maximum	C-2 Zone max 80 ft.	< 80 ft.	Yes
Lot coverage maximum	35%	99%	No – DA Required
Side yard	4 ft.	0 ft.	No – DA Required
Rear yard	20 ft.	0 ft.	No – DA Required
Front yard	Same as majority of residential buildings (estimated 0 ft. required)	0 ft.	Yes
Parking	One (1) space	Six (6) Bike Parking Spaces	Yes

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, and postcards mailed to property owners within the notification area (Map 2). The six (6) comments received from members of the public expressed concern with the lack of parking in the area and with the building design. One resident was in support of the application and stated that it adds character to the neighborhood.

A public hearing must be held by Halifax and West Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners.

DISCUSSION

Staff have reviewed the proposal relative to all relevant policies and advise that it is not consistent with the intent of the MPS. Attachment C provides an evaluation of the proposed development agreement in relation to the relevant MPS policies. While it is noted that the proposal is inconsistent with the lot modification policies referenced earlier in this report, staff acknowledge that adding a single residential unit into a mixed use community containing hundreds of other residential units would not negatively impact the community, nor be contrary to the overall intent of the Municipal Planning Strategy. This limited impact notwithstanding, the following sections of the report outline the existing policy framework, and its application to this proposal.

Application of Lot Modification Policy 4.6

In investigating alternative planning processes that may be applicable to this application, rezoning the property to a more appropriate zone was considered. Following a comprehensive review of the existing zones in the LUB, it was determined that none match the land uses and development standards that would be needed to accommodate this request. Further, there are no other development agreement policies that may be applied to this request. As such, the only manner by which this request may be considered under the existing MPS is through lot modification Policy 4.6.

As stated previously, the lot modification policy enables development on lots that cannot be otherwise appropriately developed. Policy 4.6(c) stipulates that the requested modification must be necessary to secure an appropriate development where the area of the lot is so restricted that the lot cannot be appropriately developed without such modification. The applicant has received a building permit for a six (6) storey commercial building which is currently under construction. The property is zoned C-2, a general business zone where commercial uses are not subject to minimum lot area requirements. Residential uses, as contemplated by the LUB, require a minimum lot size of 3,000 sq. ft. Lots that do not meet that requirement are not permitted to be developed for residential uses based on the lack of adequate area. As per the land use by-law, the subject site lot is not of an adequate size for residential purposes.

Policy 4.6(b) requires that the condition necessitating the modification is unique to the lot and has not been created by the applicant. The small lot size is the primary modification being requested and it can be argued that although this situation has not been created by the applicant, it is not unique to the area nor does it restrict its development potential. There are many smaller lots throughout this area of Halifax and many of these lots have been developed consistent with the requirements of the LUB, without the need of a lot modification development agreement.

District 7 & 8 Planning Advisory Committee

On September 26, 2016, the Districts 7 & 8 Planning Advisory Committee (PAC) advised that, although that not all criteria of Policy 4.6 are being met with this proposal, the proposal itself has merit. Further, the Committee expressed that it values mixed use development and the additional residential density in the neighbourhood. They stated that the proposal will reduce concerns regarding parking and traffic and recognize that the requested changes are consistent with the surrounding mixed use neighborhood (Attachment D). A report from PAC to Community Council will be provided under separate cover.

Conclusion

Staff advise that the lack of relevant policy available to allow a single residential dwelling unit within the 6th floor penthouse of a commercial building is a function of the age of the existing Municipal Planning Strategy and Land Use By-law. Planning staff are currently undertaking the Centre Plan process so as to update these regulations. These updates will reflect modern planning and design practices, inclusive of allowing for more policy flexibility for mixed use buildings in appropriate areas of the Regional Centre. With this said, under the existing policy framework, there are no other development agreement policies or rezoning opportunities by which this application can be considered beyond the lot modification proposal contemplated within this report.

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that it does not reasonably carry out the intent of the MPS. The intent of Policy 4.6 is to allow development on lots that are otherwise undevelopable. In this case, a six (6) storey commercial building is permitted by the current C-2 zoning and is presently under construction. As such, the requested modifications to the lot standards to accommodate the residential unit are not necessary to secure an appropriate development of the lot. Given the proposal's incongruence with MPS policy, staff are obliged to recommend that the Halifax and West Community Council refuse to approve the proposed development agreement as contained in Attachment A.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2016 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report to allow a single residential dwelling unit within the 6th floor penthouse of 5540 Kaye Street, Halifax; and require the amending agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.
2. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and the preparation of a supplementary staff report. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

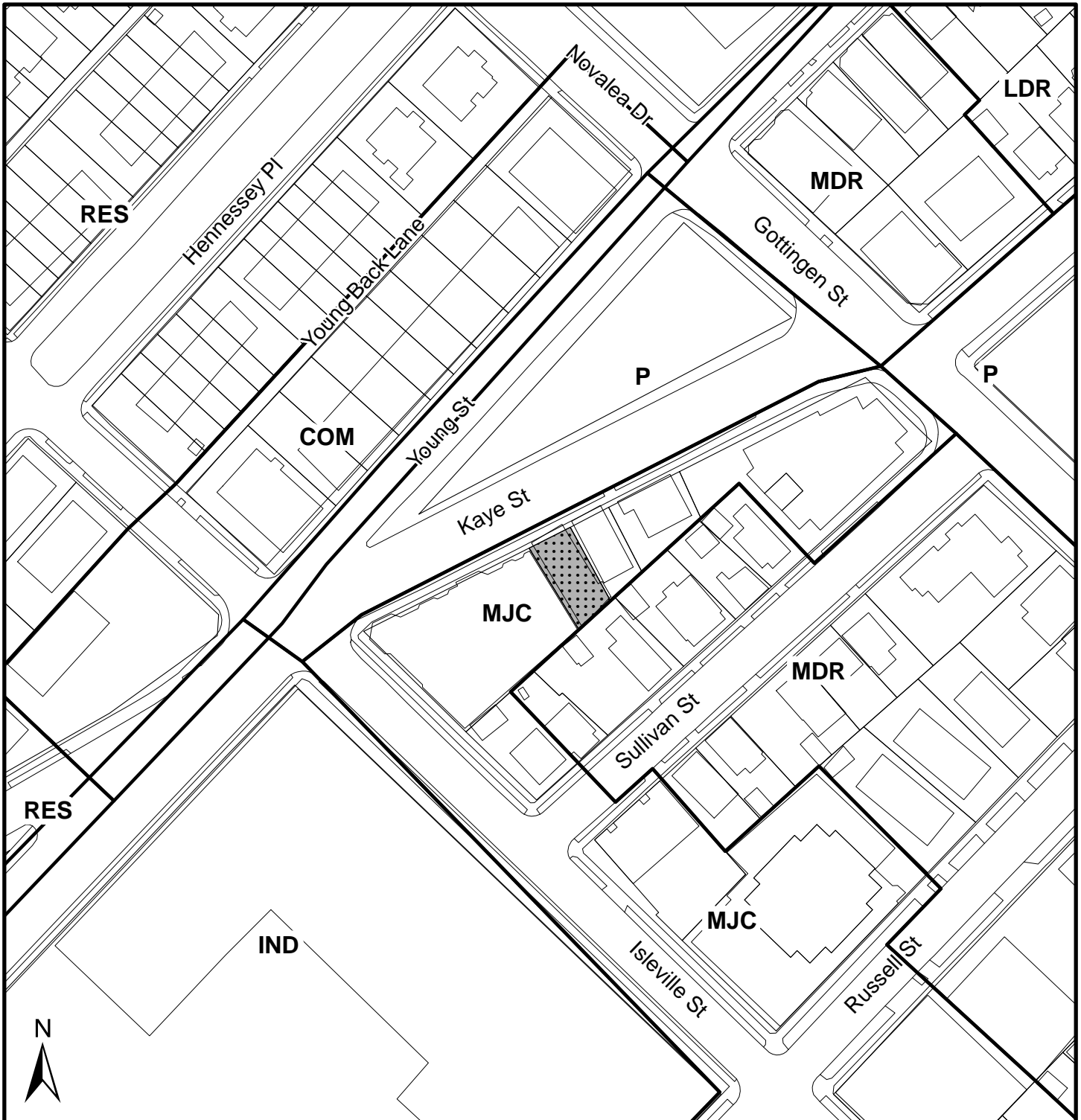
ATTACHMENTS

Map 1:	Generalized Future Land Use
Map 2:	Zoning and Notification Area
Attachment A:	Proposed Development Agreement
Attachment B:	Relevant Land Use By-law Sections
Attachment C:	Review of Relevant Policies from the Halifax MPS
Attachment D:	District 7 & 8 Planning Advisory Committee Meeting Minutes
Attachment E:	Legislative Authority

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Melissa Eavis, Planner II, 902.490.3966

Report Approved by: Original Signed
Kelly Denty, Manager, Current Planning, 902.490.4800



Map 1 - Generalized Future Land Use

5540 Kaye Street
Halifax

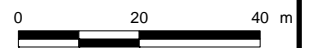
 Subject Property

Designations

- RES Residential Environments⁽¹⁾
- LDR Low Density Residential
- MDR Medium Density Residential
- MJC Major Commercial
- COM Industrial
- IND Commercial
- P Park and Institutional

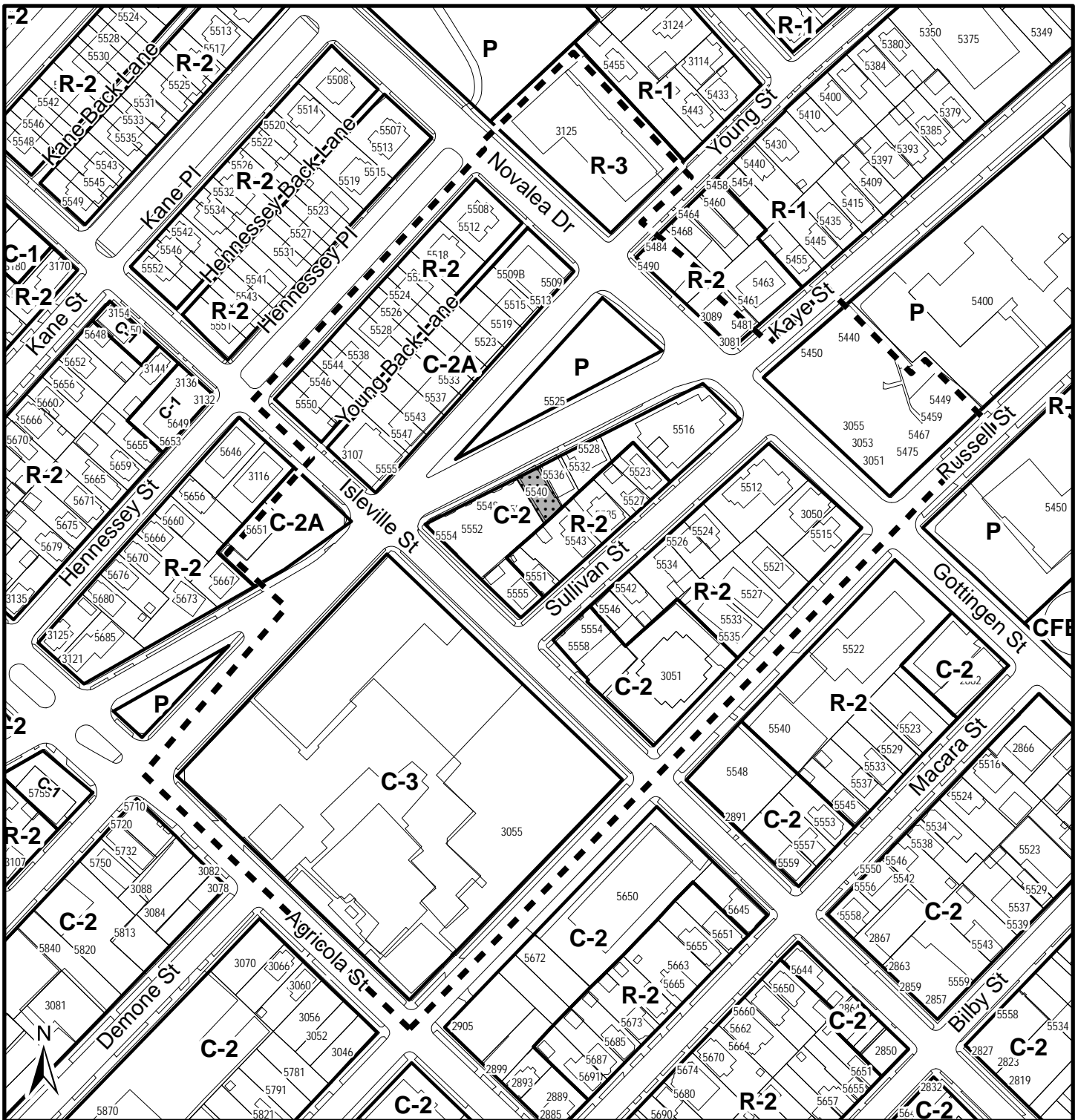
(1) Including community open spaces and other neighbourhood uses.

HALIFAX



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.



The accuracy of any representation on this plan is not guaranteed.



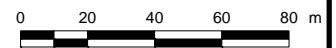
Map 2 - Zoning & Notification Area

5540 Kaye Street
Halifax

HALIFAX

-  Subject Property
-  Area of Notification

- Zone**
- R-1 Single Family Dwelling
 - R-2 General Residential
 - R-3 Multiple Dwelling
 - C-2 General Business
 - C-2A Minor Commercial
 - C-3 Industrial
 - P Park and Institutional



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Halifax Peninsula
Land Use By-Law Area

ATTACHMENT A
Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[INSERT NAME OF REGISTERED PROPERTY OWNER]

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5540 Kaye Street, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a residential penthouse on the sixth level of a commercial building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 4.6 of the Halifax Municipal Planning Strategy and Section 99(5) of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number **20489**;

THEREFORE, in consideration of the benefits accrued to each party from the 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, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Halifax Peninsula and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 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 Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 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 the Municipality 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 or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 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.

1.4.2 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 laws, by-laws, regulations and codes applicable to the 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, SUBDIVISION AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 20489:

Schedule A Legal Description of the Lands(s)

2.2 General Description of Land Use

2.2.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) A single dwelling unit located at the penthouse level; and
- (b) Any uses permitted within the existing zone (C-2) applied to the Lands subject to the provisions contained within the Land Use By-law for Halifax Peninsula as amended from time to time.

2.3 Building and Site Requirements

2.3.1 Any building or portion thereof used for a single dwelling unit shall comply with the following:

- (a) Lot area minimum 2,000 square feet
- (b) Lot frontage minimum 30 feet
- (c) Front yard minimum 0 feet
- (d) Side and rear yard minimum 0 feet
- (e) Maximum lot coverage 99%

2.3.2 Any building or portion thereof used for other purposes, as permitted within the existing zone, shall comply with the requirements of the existing zone applied to the Lands as amended from time to time.

2.3.3 The Development Officer may approve alterations to the building, provided that the alterations are in conformance with Section 2.3.1 and 2.3.2.

2.4 Maintenance

- 2.4.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, 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 and ice control, salting of walkways and driveways.

PART 3: AMENDMENTS

3.1 Non-Substantive Amendments

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

- (a) The granting of an extension to the date of commencement of construction as identified in Section 4.3.1 of this Agreement;

3.2 Substantive Amendments

Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

4.2 Subsequent Owners

- 4.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 4.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

4.3 Commencement of Development

- 4.3.1 In the event that development on the Lands has not commenced within three (3) years from the date of registration of this Agreement at the Registry of Deeds or Land

Registry Office, as indicated herein, the 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.

- 4.3.2 For the purpose of this section, commencement of development shall mean issuance of a Development Permit for a single dwelling unit.
- 4.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 3.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

4.4. Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Peninsula, as may be amended from time to time.

4.5 Discharge of Agreement

- 4.5.1 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.

PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

The Developer agrees 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 to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) 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 defence based upon the allegation that damages would be an adequate remedy;
- (b) 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 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 the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) 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; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Cathy Mellett, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

ATTACHMENT B
Relevant Land Use By-Law Sections

C-2 ZONE

GENERAL BUSINESS ZONE

- 56(1) The following uses shall be permitted in any C-2 Zone:
- (a) R-1, R-2, R-2T, R-2A, R-3, C-1 and C-2A uses;
 - (b) Any business or commercial enterprise except when the operation of the same would cause a nuisance or a hazard to the public and except adult entertainment uses, junk yards and amusement centres;
 - (c) Billboards not to exceed twenty-eight square meters (28 m²) in area and not to extend more than eight meters (8 m) above the mean grade on which it is situated.
 - (d) Uses accessory to any of the foregoing uses.
- 56(2) No person shall in any C-2 Zone, carry out, cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).
- 56(3) No person shall in any C-2 Zone, use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

REQUIREMENTS

- 57(1) No front, side or rear yards are required for C-2 uses in C-2 Zones.
- 57(2) (Deleted)
- 58 The height of a building in a C-2 Zone shall not exceed a height of eighty (80) feet, but for each foot that the building or that portion of the building which would exceed eighty (80) feet in height is set back from the property line, two (2) feet may be added to the height of the building.

R-1, R-2, R-3, C-1, R-2T AND C-2A USES IN C-2 ZONE

- 58A(1) Buildings erected, altered or used for R-1, R-2, R-2T, R-2A, R-3, C-1 and C-2A uses in a C-2 Zone shall comply with the requirements of their respective zones.
- 58A(2) (Deleted)
- 58A(3) (Deleted)

CENTRAL BUSINESS DISTRICT

- 58B(1) Deleted (RC-Jun 16/09;E-Oct 24/09)

ATTACHMENT B
Relevant Land Use By-Law Sections

58B(2) Deleted (RC-Jun 16/09;E-Oct 24/09)

PENINSULA NORTH - AREA 8:

58C(1) Notwithstanding Sections 6, 8 and 58A(1), buildings erected, altered, or used for R-1, R-2, R-2A, R-2T, R-3, RC-3, C-1, C-2A uses in the C-2 zone of the "Peninsula North Area (Area 8)" shall comply with the requirements of the C-2 zone.

58C(2) In the Peninsula North Area - (Area 8), all buildings constructed for commercial or industrial purposes, shall be required to provide direct access to pedestrians from Gottingen Street into the building, which is not more than two feet above grade; for the purposes of this section, grade shall be defined as being the elevation of the ground at any one point along the official street line of Gottingen Street abutting such lot.

58C(3) In the Peninsula North Area - (Area 8), the maximum setback for the first storey of: (1) buildings constructed for commercial or industrial uses, or (2) additions to buildings used for commercial or industrial uses, shall be 2 feet from the official street line of Gottingen Street.

58C(4) In the Peninsula North Area - (Area 8), buildings of over 50 feet width measured parallel to Gottingen Street shall have the appearance of two or more buildings by altering the appearance of the facade and/or roof in increments no greater than 50 feet. In addition, one third of the surface area of the face of the ground floor of the building shall be comprised of windows.

58C(5) In the Peninsula North Area - (Area 8) the following applies:

- (1) for buildings constructed for minor commercial purposes which are on a lot greater than 20,000 square feet in area, parking shall be provided at a rate of 1 space for every 1000 square feet of gross commercial area.
- (2) for additions to existing buildings used for minor commercial purposes that are 50 percent or more of the gross commercial floor area of the existing building, are on a lot greater than 20,000 square feet in area, parking shall be provided at a rate of 1 space for every 1000 square feet of gross commercial floor area of the addition.

58C(6) In the Peninsula North Area - (Area 8), all parking areas shall comply with the following requirements:

- (i) Where commercial or industrial parking abuts a residential zone, an opaque fence a minimum of five feet shall be erected to visually screen abutting properties.
- (ii) Parking areas abutting a street shall be set back a minimum of 5 feet from any street line; the setback area shall be landscaped with natural ground cover to reach a height of no more than 2 feet upon maturity, or other

ATTACHMENT B
Relevant Land Use By-Law Sections

materials, along that part of the street not required for any parking pedestrian entrance.

- (iii) Parking shall be constructed with a stable surface such as asphalt or concrete.
- (iv) Lighting for parking area shall be directed away from any adjacent residential properties and from the street.

ATTACHMENT C

Review of Relevant Policies from the Halifax MPS

Halifax Municipal Planning Strategy (MPS) Policy

Policy 4.6: *For any proposed development, the City may permit modification of the yard or lot area or width provisions of the Peninsula and Mainland Zoning By-laws under the authority of Section 33(2)(b) of the Planning Act. A decision of the Council of the City of Halifax to permit such modification may be preceded by a public hearing if deemed necessary and such modification shall be granted provided that:*

Policy 4.6 Development Standards	Comment
(a) <i>the amenity, convenience, character and value of neighbouring properties will not be adversely affected;</i>	Residential uses are typical to this neighbourhood. The proposed residential unit would be an internal conversion so the impact to neighboring properties by allowing this modification is minimal. The addition of a single residential unit would not adversely affect neighbouring properties.
(b) <i>conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;</i>	Small lot size is typical to this area of North End Halifax. Under the C-2 Zone, commercial lots can be created where no minimum lot size is required. This lot was created in 1968 subject to the commercial lot requirements of the C-2 Zone. As such, the conditions necessitating the modification to the lot area have not been created by the applicant. The lot is not eligible for a variance for lot area as it was not in existence on the effective date of the by-law as per the <i>Halifax Regional Municipality Charter</i> requirements.
(c) <i>the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;</i>	This lot was created pursuant to the requirements of the C-2 zone which has no minimum lot size for commercial uses. The applicant has received a building permit for a six (6) storey commercial building and as such the lot has been appropriately developed.
(d) <i>the modification is consistent with Section II of this Plan; and</i>	The proposal contributes to the variety of housing types for Peninsula North, in accordance with Section II of this Plan.
(e) <i>the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.</i>	The agreement referenced here is the proposed development agreement contained in Attachment A.

Halifax Peninsula Land Use By-law (LUB)

99(5) Lot Modification

Council may, by development agreement, pursuant to the Implementation Policies of the Municipal Planning Strategy, permit any use permitted by the zoning designation which would not otherwise be permitted by the minimum lot frontage, lot area and yard requirements of this by-law, in accordance with Policies 4.4 and 4.6

Attachment D
District 7 & 8 Planning Advisory Committee Meeting Minutes



DISTRICTS 7 & 8 PLANNING ADVISORY COMMITTEE
MINUTES
September 26, 2016

PRESENT: Ms. Sunday Miller, Chair
Mr. Ashley Morton, Vice Chair
Mr. Michael Bradfield
Mr. Grant Cooke
Ms. Katherine Kitching
Ms. Sarah MacDonald
Councillor Waye Mason
Ms. Amy Siciliano
Councillor Jennifer Watts

REGRETS Mr. Joe Metlege

STAFF: Ms. Melissa Eavis, Urban Designer 1
Mr. Carl Purvis, Planning Applications Manager
Ms. Cailin MacDonald, Legislative Support

The following does not represent a verbatim record of the proceedings of this meeting.

The agenda, supporting documents, and information items circulated to the Districts 7 & 8 Planning Advisory Committee are available online: <http://www.halifax.ca/boardscom/D78PAC/160926d78pac-agenda.php>.

The meeting was called to order at 4:21 p.m. and adjourned at 5:15 p.m.

1. CALL TO ORDER

The Chair called the meeting to order at 4:21 p.m. in Halifax Hall, 2nd Floor City Hall, 1841 Argyle Street.

• **Community Announcements**

The following reminders were noted:

- September 28 and 29 – Integrated Mobility Plan Meetings, Alderney Landing, Harbour City East Community Room, afternoon and evening sessions and feedback can be provided online at Shape Your City <http://www.halifax.ca/shapeyourcity/index.php>
- October 11 – Centre Plan Objectives & Policies Public Launch Event, Alderney Landing at 7 p.m.
- October 19 – Centre Plan Urban Structure Release & Presentation
- October 26 – Community Design Advisory Committee meeting re: Discussion and Release of the Full Draft Centre Plan
- November 9, 14, 16 & 17 – Draft Centre Plan Neighbourhood Discussion Workshops
- September 27 – Dalhousie History Department hosting a forum on the future of Halifax in District 8

2. APPROVAL OF MINUTES – July 25, 2016

MOVED by Councillor Mason, seconded by Mr. Morton

THAT the minutes of July 25, 2016 be approved as presented.

MOTION PUT AND PASSED.

3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

MOVED by Mr. Bradfield, seconded by Ms. MacDonald

THAT the agenda be approved as presented.

MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES

Mr. Bradfield inquired about the resolution to the Committee's concerns related to the way forward for 6067 Quinpool Road. Mr. Morton responded that he worked with the Clerk's Office to have further clarification and context reflected in the minutes.

5. CALL FOR DECLARATION OF CONFLICT OF INTERESTS – NONE

6. CONSIDERATION OF DEFERRED BUSINESS – NONE

7. CORRESPONDENCE, PETITIONS & DELEGATIONS

7.1 Correspondence – None

7.2 Petitions – None

8. INFORMATION ITEMS BROUGHT FORWARD – NONE

9. REPORTS/DISCUSSION

9.1 Case 20489: Application by Studioworks International Inc. to enter into a development agreement for 5540 Kaye Street, Halifax to allow a single residential unit penthouse at the 6th floor of a commercial building already under construction

The following was before the Committee:

- Staff memorandum dated August 16, 2016

Ms. Melissa Eavis, Urban Designer 1 presented Case 20489: Application by Studioworks International Inc. to enter into a development agreement for 5540 Kaye Street, Halifax to allow a single residential unit penthouse at the 6th floor of a commercial building already under construction. The following points were noted:

- The current zone requirements do not allow for residential development on the site
- The building has been mostly constructed and the applicant is proposing a residential penthouse, with no proposed changes to the building's exterior
- The application is being considered under Policy 4.6 of the Municipal Planning Strategy (MPS)
- Staff is seeking advice on whether the proposal meets the requirements of Policy 4.6 and whether it is an appropriate use on this property

A copy of staff's presentation is on file.

In response to a question about the public correspondence received, Ms. Eavis shared that comments varied, noting that staff received the following: one in favour of the development, some opposing the design and some expressing concerns about parking in the area.

Councillor Watts expressed concern that as area councillor she was not informed or consulted that an alternative form of public consultation was taking place instead of a Public Information Meeting (PIM). She also expressed concern that correspondence in this consultative process are provided directly to planning staff and therefore is not circulated to the Committee. She commented that it is problematic that there is no public documentation of the correspondence received and suggested that the implications of this be explored by the Clerk's Office.

The Committee further discussed the public consultation process and the need to see all feedback provided by the public.

In response to questions raised, the following clarification was provided to the Committee:

- Currently the lot area meets a commercial zone but does not meet the requirements of a residential zone
- As a commercial property, parking is not required; residential requires some form of parking either vehicular or bicycle
- The floorplan does not clearly indicate whether or not there is outdoor space
- The neighbouring site is residential and has a penthouse which was likely built through a variance process
- The proposed changes will be made through a development agreement and not non-conforming

Mr. Carl Purvis, Planning Applications Manager addressed concerns raised by the Committee about the public consultation for this application. He further commented that staff is working on a framework to standardize the level of public consultation and engagement required for various applications.

MOVED by Mr. Bradfield, seconded by Mr. Cooke

THAT although the Districts 7 & 8 Planning Advisory Committee believes that not all criteria of Policy 4.6 are met, the Committee recommends that the proposed changes to Case 20489 have merit.

The Committee discussed the application and the provisions to include in the motion.

MOVED by Mr. Morton, seconded by Mr. Cooke

THAT the motion be amended to include that the Committee:

- Values mixed-use developments, in general;
- Values the additional residential density in the neighbourhood;
- Believes that the change will reduce concerns regarding parking and traffic; and
- Recognizes the changes as consistent with neighbouring properties, which have mixed use.

MOTION TO AMEND PUT AND PASSED.

The motion now reads:

MOVED by Mr. Bradfield, seconded by Mr. Cooke

THAT although the Districts 7 & 8 Planning Advisory Committee believes that not all criteria of Policy 4.6 are met, the Committee recognizes that the proposed changes to Case 20489 have merit. The Committee:

- Values mixed-use developments, in general;
- Values the additional residential density in the neighbourhood;
- Believes that the change will reduce concerns regarding parking and traffic; and
- Recognizes the changes as consistent with neighbouring properties, which have mixed use.

MOTION AS AMENDED PUT AND PASSED.

10. ADDED ITEMS – NONE

11. DATE OF NEXT MEETING – October 24, 2016

12. ADJOURNMENT

The meeting adjourned at 5:15 p.m.

Cailin MacDonald,
Legislative Support

Attachment E – Legislative Authority

Development Agreements By Community Council

The *Community Council Administrative Order*, subsection 3 (1) “Subject to subsection (3) of this section, sections 29, 30 and 31 of the *Halifax Regional Municipality Charter* apply to each Community Council.”

Halifax Regional Municipality Charter (“HRM Charter”), including:

Development agreements by community councils

31 (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.

(2) Where a municipal planning strategy of the Municipality provides for development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.

(3) A development agreement, or amendment to a development agreement, entered into by a community council must be signed by the Mayor and the Clerk on behalf of the Municipality.

(4) Where a development agreement entered into by a community council purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council. 2008, c. 39, s. 31.

Development agreements

240 (1) The Council may consider development by development agreement where a municipal planning strategy identifies

- (a) the developments that are subject to a development agreement;
- (b) the area or areas where the developments may be located; and
- (c) the matters that the Council must consider prior to the approval of a development agreement.

(2) The land-use by-law must identify the developments to be considered by development agreement. 2008, c. 39, s. 240.

Content of development agreements

242 (1) A development agreement may contain terms with respect to

- (a) matters that a land-use by-law may contain;
- (b) hours of operation;
- (c) maintenance of the development;
- (d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
- (e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
- (f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
- (g) the subdivision of land;
- (h) security or performance bonding.

(2) A development agreement may include plans or maps.

(3) A development agreement may

- (a) identify matters that are not substantive or, alternatively, identify matters that are substantive;
- (b) identify whether the variance provisions are to apply to the development agreement;
- (c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
- (d) provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by the Council;
- (e) provide that, where the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by the Council without the concurrence of the property owner. 2008, c. 39, s. 242.

Attachment E – Legislative Authority

Requirements for effective development agreement

243 (1) A development agreement must not be entered into until

- (a) the appeal period has elapsed and no appeal has been commenced; or
- (b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.

(2) The Council may stipulate that a development agreement must be signed by the property owner within a specified period of time.

(3) A development agreement does not come into effect until

- (a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board;
- (b) the development agreement is signed by the property owner, within the specified period of time, if any, and the Municipality; and
- (c) the development agreement is filed by the Municipality in the registry.

(4) The Clerk shall file every development agreement, amendment to a development agreement and discharge of a development agreement in the registry. 2008, c. 39, s. 243.

Plans, by-laws and strategies under other legislation

271 A municipal development plan and zoning by-law or municipal planning strategy and land-use by-law adopted pursuant to the *Municipal Government Act* or a former *Planning Act* are a municipal planning strategy and land-use by-law within the meaning of this Act, to the extent they are consistent with this Act. 2008, c. 39, s. 271.