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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 19238: Development Agreement, 2631A&B - 2639 Fuller Terrace, Halifax**

SUPPLEMENTARY INFORMATION REPORT

ORIGIN

- Application by Peter McInroy, on behalf of Lucas Dambergs, to convert commercial space at 2631 A&B – 2639 Fuller Terrace, Halifax to a single residential unit.
- November 25, 2014 Motion of Halifax and West Community Council giving Notice of Motion to consider the proposed Development Agreement, as contained in Attachment A of the staff report dated November 10, 2014, to permit the conversion of an existing non-conforming commercial space into a residential unit at 2631A&B-2639 Fuller Terrace, Halifax.

LEGISLATIVE AUTHORITY

Refer to Attachment A.

BACKGROUND

An application was submitted by Peter McInroy in 2014 to convert an existing non-conforming commercial space into a residential unit at 2631A&B-2639 Fuller Terrace, Halifax. As the proposal was not permitted through the existing zoning on the property, the applicant requested that the proposed conversion be considered by development agreement. This request was assessed by HRM planning staff, and a report was forwarded to Halifax and West Community Council. It was considered at their November 25, 2014 meeting, at which time the following motion was passed:

MOVED by Councillor Watts, seconded by Councillor Mason that Halifax & West Community Council give Notice of Motion to consider the proposed Development Agreement, as contained in Attachment A of the staff report dated November 10, 2014, to permit the conversion of an existing non-conforming commercial space into a residential unit at 2631A&B-2639 Fuller Terrace, Halifax, and schedule a public hearing.

The staff report considered by Community Council at that time can be found at the link below:

<http://www.halifax.ca/commcoun/west/documents/141125hwcc1013.pdf>

DISCUSSION

Following Council providing notice of motion to consider the proposed development agreement, the property owner contacted staff regarding concerns around the timing of a public hearing. The owner indicated that he only recently learned that if the proposed development agreement were to be approved, building code requirements would require the creation of barrier free units. More time was requested to assess the cost and extent of the work required to ensure the project was financially feasible for the owner.

On November 28th, 2014, staff received a formal request on behalf of the owner to postpone the public hearing. As such, the public hearing was not held and notice was provided to property owners within the notification area advising them that the hearing would be postponed to a later date.

In 2015, staff communicated with the owner on multiple occasions to discuss options regarding the application of the National Building Code should the application be approved. As a result of these meetings, the owner has now indicated that the concerns preventing him from moving forward with the proposed development agreement have been resolved. As such, a public hearing may now be scheduled.

Given the unusual length of time between notice of motion and the holding of the public hearing, this report is to inform Community Council of the reason for the delay, and that a public hearing will be scheduled for the matter in the near future. No formal motion or action of Community Council is required, as notice of motion was already provided in November, 2014.

FINANCIAL IMPLICATIONS

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

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

Report Prepared by: Dali Salih, Planner II, Current Planning, 902-490-1948

Report Approved by: Original Signed

Kelly Denty, Manager, Current Planning, 902.490.4800

Attachment A – 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”),

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.

HRM Charter, Part VIII, Planning and Development, including:

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;

Attachment A – Legislative Authority

(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.

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.