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Item No. 10.1.1
Harbour East – Marine Drive Community Council
August 30, 2016

TO: Chair and Members of Harbour East – Marine Drive Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: May 20, 2016

SUBJECT: Case 20296: Development Agreement for 29 Parkstone Road, Dartmouth

ORIGIN

Application by Marta Mihoff and Derek Broughton

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East – Marine Drive Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A of this report, to allow for the conversion of a single unit dwelling to a two unit dwelling on a lot with reduced frontage, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the 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.

BACKGROUND

Marta Mihoff and Derek Broughton are applying to enter into a development agreement at 29 Parkstone Road, Dartmouth to convert a single unit dwelling to a two unit dwelling on a lot with reduced frontage.

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| Subject Site | 29 Parkstone Road |
| Location | Dartmouth |
| Regional Plan Designation | Urban Settlement (US) |
| Community Plan Designation (Map 1) | Residential (R) under the Dartmouth Municipal Planning Strategy (MPS) |
| Zoning (Map 2) | Two-Family Residential (R-2) and Multiple Family Residential (R-3) under the Dartmouth Land Use By-law (LUB) |
| Size of Site | 1486 square metres (16,000 square feet) |
| Street Frontage | 9.57 metres (31.4 feet) of frontage on Parkstone Road |
| Current Land Use(s) | Single unit dwelling |
| Surrounding Use(s) | <ul style="list-style-type: none">• To the northeast along Hilchie Road are several single unit dwellings and one two unit dwelling zoned R-2;• To the southwest along Parkstone Road are single unit dwellings zoned R-2;• To the southeast the neighbourhood is dominated by single and two unit dwellings in the R-2 Zone;• To the northwest is Nadia Drive Park;• To the north on Nadia Drive are a number of townhouses in the R-3 Zone;• To the southwest along Windmill Road in the C-2 Zone are numerous commercial uses including a pizza shop and a bridal store, as well as a nearby multi-unit apartment building at 378 Windmill Road. |

Proposal Details

The applicant wishes to enter into a development agreement with the Municipality to permit the renovation of the existing single unit dwelling at 29 Parkstone Road into a two unit dwelling (duplex). The major aspects of the proposal are as follows:

- The existing building has a footprint of approximately 155 square metres (1675 square feet), covering just over ten percent of the 1486 square metre (16,000 square foot) lot;
- The plans submitted with the proposal are for an internal renovation to the existing building that would convert the lower level to an independent dwelling unit featuring two bedrooms, kitchen, living room, and bathroom with a total floor area unchanged from the existing building.

Enabling Policy and LUB Context

The application is being considered under Policy IP-4 of the Municipal Planning Strategy for Dartmouth. While the R-2 Zone permits two unit dwellings, properties with less than 50 feet of frontage are required to obtain a development agreement in accordance with the policies of the MPS. Policy IP-4 enables this process for parcels that existed prior to August 21, 1987 (the subject parcel has been in existence since at least April 15, 1953). Attachment B contains detailed analysis of the relevant policy.

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, signage posted on the subject site, letters mailed to property owners within the notification area and a public information meeting held on April 18, 2016. No members of the public attended the public information meeting.

A public hearing must be held by Harbour East – Marine Drive 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 consistent with the intent of the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

Attachment A contains the proposed development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement addresses the following matters:

- The agreement varies the minimum required lot frontage for a duplex dwelling to 30 feet.
- Changes to the agreement that are non-substantive include the granting of an extension to the date of commencement, and increasing the length of time for the completion of the development.

The attached development agreement will permit the addition of a second dwelling unit to the existing structure. Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Compatibility of Structure and Use

The existing building was constructed as-of-right under the zone requirements for a single unit dwelling, and meets all zone requirements for a duplex except for lot frontage. Given that the site is relatively large for the area, the use can be easily accommodated. A significant number of two unit dwellings exist in the nearby neighbourhood, as well as some nearby townhouse and apartment dwellings. Staff would advise that the proposed use is therefore consistent with existing uses in the area.

Frontage and Driveway Access

The intent of the R-2 Zone under the Dartmouth Land Use By-law is to provide for two unit dwellings either through specific lot frontage and area requirements or, where lot size and area is deficient, through development agreement for existing undersized lots subject to the criteria of Policy IP-4 of the Dartmouth Municipal Planning Strategy. These policy criteria have been met by the subject application (Attachment B).

The subject property has existing driveway access to Parkstone Road. The intention of requiring a minimum lot frontage is to ensure lots are adequately sized for the provision of municipal services and to ensure access to public streets. As no concerns have been identified by staff with respect to these basic considerations, the proposal to reduce the frontage requirement from 50 feet to 30 feet represents a reasonable relaxation of Land Use By-law requirements.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is consistent with the intent of the MPS. The existing building meets all zone requirements for a two unit dwelling use except for lot frontage, and the relatively large size of the site makes it appropriate for the proposed use. In addition, similar uses are located nearby in the surrounding neighbourhood. Therefore, staff recommend that the Harbour East – Marine Drive Community Council approve the proposed development agreement.

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 2016/2017 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendation 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. Harbour East – Marine Drive Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East – Marine Drive Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

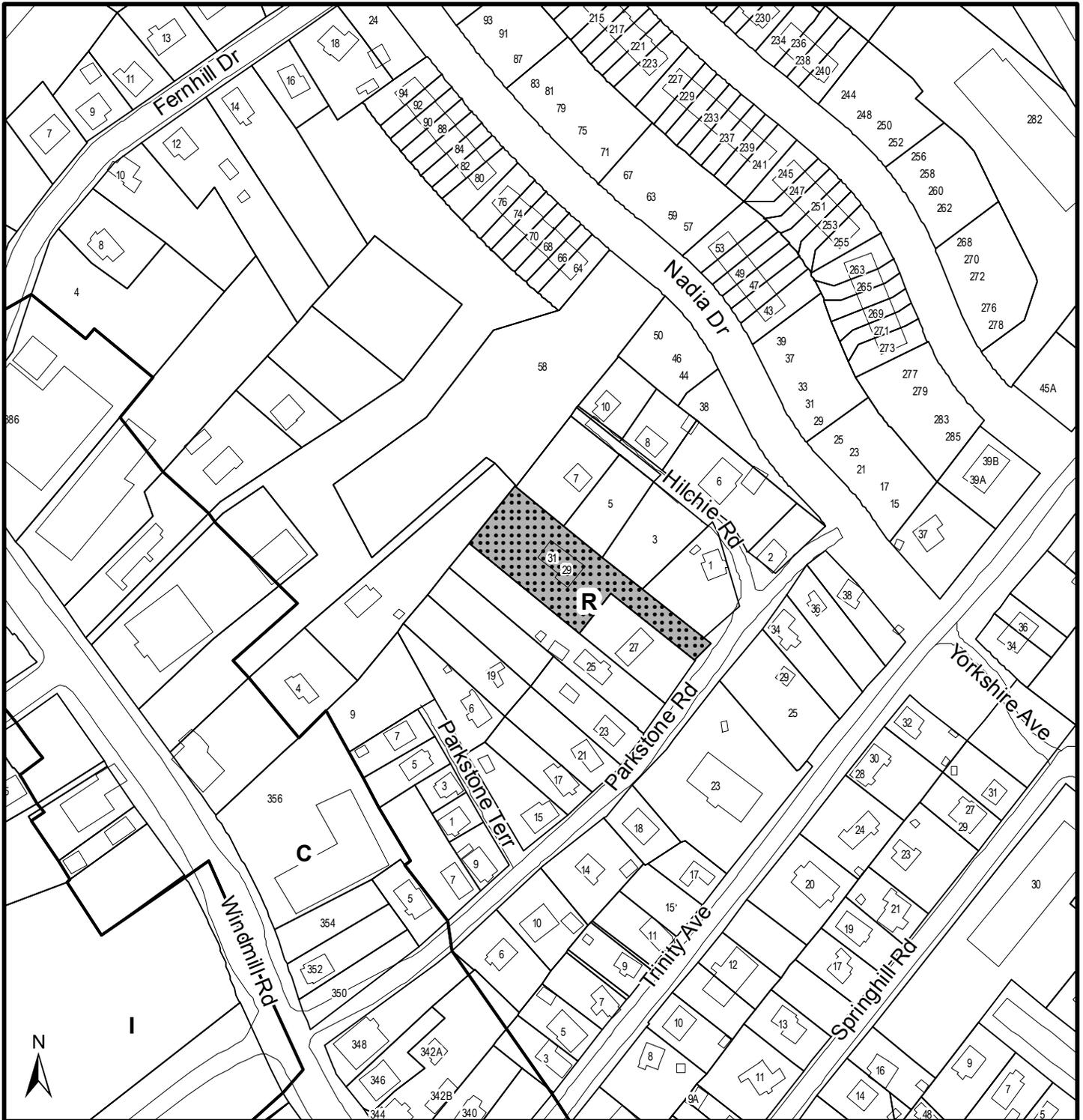
ATTACHMENTS

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|---------------|---------------------------------|
| Map 1: | Generalized Future Land Use |
| Map 2: | Zoning and Notification Area |
| Attachment A: | Proposed Development Agreement |
| Attachment B: | Review of Relevant MPS Policies |

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: Nathan Hall, Planning Intern, Current Planning, 902.490.4726

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



Map 1 - Generalized Future Land Use

29 Parkstone Road,
Dartmouth

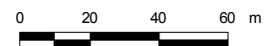
HALIFAX

 Area of Proposed Development Agreement

Designation

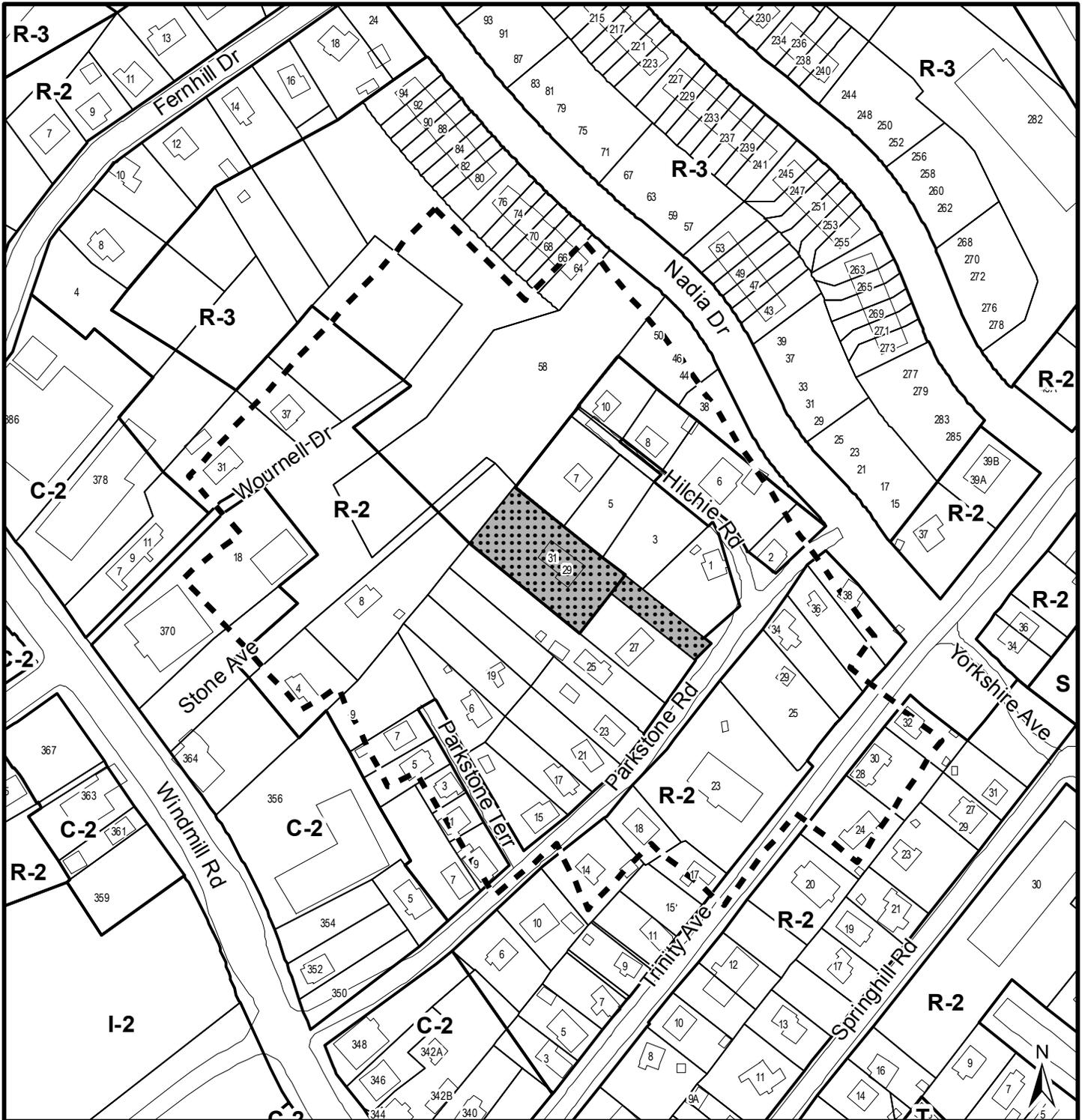
- R Residential
- C Commercial
- I Industrial

Dartmouth
Plan Area



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 and Notification

29 Parkstone Road,
Dartmouth

HALIFAX

 Area of Proposed Development Agreement

 Area of Notification

Zone

- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- C-2 General Business
- I-2 General Industrial
- S 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.

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 and/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: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 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:

Schedule A Legal Description of the Lands

3.2 Requirements Prior to Approval

Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any use permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 Description of Land Use

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

- (a) A duplex dwelling,
- (b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Dartmouth as amended from time to time.

3.3.2 Notwithstanding the requirements of the Land Use By-law for Dartmouth, the minimum required lot frontage for a duplex dwelling on the property shall be thirty (30) feet.

3.3.3 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Dartmouth Land Use By-law, as amended from time to time.

PART 4: AMENDMENTS

4.1 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 5.3 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 5.4 of this Agreement;

4.2 Substantive Amendments

Amendments to any matters not identified under Section 4.1 as non-substantive shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 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.

5.2 Subsequent Owners

5.2.1 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.

5.2.2 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).

5.3 Commencement of Development

5.3.1 In the event that development on the Lands has not commenced within four (4) 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.

5.3.2 For the purpose of this section, commencement of development shall mean issuance of a Construction Permit.

5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.2, 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.

5.4 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 Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as may be amended from time to time.

5.5 Discharge of Agreement

If the Developer fails to complete the development after six (6) 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 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 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.

6.2 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 defense 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

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:

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

Attachment B
Review of Relevant MPS Policies

Policy IP-4: *It shall also be the intention of City Council to permit the development of a semi-detached or duplex dwelling or a basement apartment added to a single family dwelling so that each building contains only two families on an R-2 lot (existing at the time of the adoption of this amendment) where such a lot does not have sufficient area, frontage or both only by Development Agreement.*

It shall also be the intention of City Council to require a site plan showing the proposed development, including the location of buffers and buildings.

In considering the approval of such Agreements, Council shall consider the following:

| Policy IP-4 Criteria | Staff Comment |
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| <i>(i) compatibility of external appearance and scale of buildings (in terms of height, length and width) with existing residential development;</i> | The existing building was constructed as-of-right under the zone requirements for a single unit dwelling, and meets all zone requirements for a duplex except for lot frontage. Any future construction must comply with the provisions of the Land Use By-law for Dartmouth, except as varied by the development agreement. |
| <i>(ii) the criteria set out in Policy IP-1(c) herein.</i> | See below |

Policy IP-1(c): ... In considering zoning amendments and contract zoning, Council shall have regard to the following:

| Policy IP-1(c) Criteria | Staff Comment |
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| <i>(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan</i> | Staff has determined that the proposal generally complies with the policies and intent of the plan |
| <i>(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal</i> | As previously stated, the existing building was constructed as-of-right under the zone requirements for a single unit dwelling, and meets all zone requirements for a duplex except for lot frontage. Any future construction must comply with the provisions of the Land Use By-law for Dartmouth, except as varied by the development agreement. A significant number of two unit dwellings exist in the nearby neighbourhood, as well as some nearby townhouse and apartment dwellings. Staff, therefore advise that the proposed use is consistent with the existing neighbourhood. |
| <i>(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries</i> | The building meets all setback requirements under the Land Use By-law for Dartmouth, therefore no additional buffering measures are necessary. |

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| <p><i>(4) that the proposal is not premature or inappropriate by reason of:</i></p> <ul style="list-style-type: none"> <i>(i) the financial capability of the City is to absorb any costs relating to the development</i> <i>(ii) the adequacy of sewer and water services and public utilities</i> <i>(iii) the adequacy and proximity of schools, recreation and other public facilities</i> <i>(iv) the adequacy of transportation networks in adjacent to or leading to the development</i> <i>(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas</i> <i>(vi) preventing public access to the shorelines or the waterfront</i> <i>(vii) the presence of natural, historical features, buildings or sites</i> <i>(viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized</i> <i>(ix) the detrimental economic or social effect that it may have on other areas of the City.</i> | <p>No concerns have been identified.</p> |
| <p><i>(5) that the proposal is not an obnoxious use</i></p> | <p>No concerns have been identified.</p> |
| <p><i>(6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:</i></p> <ul style="list-style-type: none"> <i>(i) type of use, density, and phasing</i> <i>(ii) emissions including air, water, noise</i> <i>(iii) traffic generation, access to and egress from the site, and parking</i> <i>(iv) open storage and landscaping</i> <i>(v) provisions for pedestrian movement and safety</i> <i>(vi) management of open space, parks, walkways</i> <i>(vii) drainage both natural and sub-surface and soil-stability</i> <i>(viii) performance bonds.</i> | <p>No concerns have been identified.</p> |
| <p><i>(7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock out-croppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors</i></p> | <p>No concerns have been identified.</p> |
| <p><i>(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the</i></p> | <p>A public information meeting was held on April 18, 2016.</p> |

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| <p><i>applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council</i></p> | |
| <p><i>(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:</i></p> <ul style="list-style-type: none"> <i>(i) Council with a clear indication of the nature of proposed development, and</i> <i>(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community</i> | <p>All materials necessary to the review of the proposal have been provided.</p> |
| <p><i>(10) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i></p> | <p>Not applicable</p> |