



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

**Item No. 13.1.7**  
**North West Community Council**  
**February 8, 2016**

**TO:** Chair and Members of the North West Community Council

Original Signed

**SUBMITTED BY:**

\_\_\_\_\_  
Bob Bjerke, Chief Planner and Director, Planning and Development

**DATE:** January 18, 2016

**SUBJECT:** **Case 20239: Non-Substantive Amendment to Development Agreement for 91 and 97 Dartmouth Road, Bedford**

---

**ORIGIN**

Application by Phillip Kahil and Christine Dib-Kahil

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that North West Community Council:

1. Approve the proposed amending development agreement, in substantially the same form as set out in Attachment A of this report, to extend the date of completion for the existing development agreement at 91 and 97 Dartmouth Road, Bedford; and
2. Require that the proposed amending development 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**

Phillip Kahil and Christine Dib-Kahil are applying for a non-substantive amendment to the development agreement for 91 and 97 Dartmouth Road, Bedford (Case 00949) to extend the date of completion. The existing development agreement allows for the creation and development of a flag lot. The Municipal Planning Strategy and Land Use By-law for Bedford require flag lots to be considered through the development agreement process.

<b>Subject Site</b>	Comprised of two properties – 91 and 97 Dartmouth Road
<b>Location</b>	Southern side of Dartmouth Road
<b>Regional Plan Designation</b>	Urban Settlement
<b>Community Plan Designation (Map 1)</b>	Residential under the Bedford Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	RSU (Residential Single Unit Dwelling) under the Bedford Land Use By-law (LUB)
<b>Size of Site</b>	91 Dartmouth Road – 557.4 square metres (6,000 square feet) 97 Dartmouth Road – 1,282.1 square metres (13,800 square feet)
<b>Street Frontage</b>	91 Dartmouth Road – 18.3 metres (60 feet) 97 Dartmouth Road – 9.1 metres (30 feet)
<b>Site Conditions</b>	The site is sloped towards Dartmouth Road and is treed in the rear yard
<b>Current Land Uses</b>	91 Dartmouth Road – developed as a single unit dwelling 97 Dartmouth Road – vacant
<b>Surrounding Land Uses</b>	The surrounding area is mainly comprised of single unit dwellings

### **Enabling Policy and Zoning Context**

The existing development agreement was considered under Policy R-27 of the Bedford MPS, which allows for the consideration of flag lots through the development agreement process.

Since the existing development agreement was approved in 2007, Policy R-27 has been amended to include enhanced eligibility and evaluation requirements to enable the creation of flag lots in existing residential areas while protecting the character of the neighbourhood (Attachment B). Any amendments to the existing development agreement are subject to the revised policy.

The RSU Zone permits single unit dwellings and requires a minimum lot area of 557.4 square metres (6,000 square feet) and minimum street frontage of 18.3 metres (60 feet).

### **Existing Development Agreement**

North West Community Council approved the existing development agreement on July 5, 2007 to permit the creation of a flag lot. A flag lot is a lot that is irregularly shaped and has reduced street frontage. It often resembles a fully outstretched flag, where the “pole” portion provides the frontage and driveway access and the “flag” portion serves as the developable area of the lot. HRM approved the subdivision for the flag lot (97 Dartmouth Road) on September 21, 2010.

The development agreement further permits the development of a single unit dwelling on the flag lot and includes requirements related to the siting and scale of the building, access and parking, and landscaping and buffering.

The existing development agreement anticipates that the development will be complete within 9 years from its registration. The existing development agreement was registered on January 10, 2008, which means the 9 year time frame will expire on January 10, 2017.

### **Proposal**

The applicant is requesting a 10 year extension to the date of completion. The applicant has expressed that the amendment is needed due to the downturn in the real estate market. The additional time will provide ample time to enable the applicant to sell the property and have it developed.

### **DISCUSSION**

Staff has reviewed the proposal relative to all relevant policies and advise that it is consistent with the intent of the MPS and the existing development agreement. Attachment B provides an evaluation of the proposed amending development agreement in relation to the relevant MPS policies.

The requested amendment to the existing development agreement is to extend the deadline for completion to January 10, 2027. Although a 10 year extension may be considered long for other types of developments, the development of the proposed flag lot will have minimal impact on the area as the existing development agreement requires the retention of vegetation where the flag lot abuts neighbouring properties. Further, as the surrounding area is mainly developed with single unit dwellings, it is unlikely that the development of the flag lot with a single unit dwelling will be considered unacceptable over the next 10 years.

Given that the requested changes relate only to dates, all other provisions of the existing development agreement will remain unchanged. Therefore, it is recommended that the date for completion of construction be extended as outlined in the proposed amending development agreement (Attachment A).

### **FINANCIAL IMPLICATIONS**

There are no financial 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 Amending Development Agreement. The administration of the Amending Development Agreement can be carried out within the approved 2015/16 budget with existing resources.

### **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 prior to approval of the existing development agreement through a Public Information Meeting and a Public Hearing. Further, as required by the existing development agreement, adjacent property owners were notified of the proposed amendment by mail as shown on Map 2.

As the existing development agreement identifies completion of the development as a non-substantive matter, a public hearing on the proposed amendment is not required. The decision is made by resolution of North West Community Council. In the event North West Community Council approves the proposed amending development agreement, a notice will be placed in the local newspaper setting out the right to appeal.

The proposed amending development agreement will potentially impact the following stakeholders: local residents.

### **ENVIRONMENTAL IMPLICATIONS**

No additional concerns have been identified beyond those raised in this report.

### **ALTERNATIVES**

1. North West Community Council may choose to approve proposed amending development agreement subject to modifications. This may necessitate further negotiation with the applicant and the preparation of a supplementary staff report. A decision of North West Community Council to approve this amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. North West Community Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. A decision of North West Council to refuse the proposed amending development 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
Attachment A	Proposed Amending Development Agreement
Attachment B	Review of Relevant Municipal Planning Strategy Policies for Bedford

---

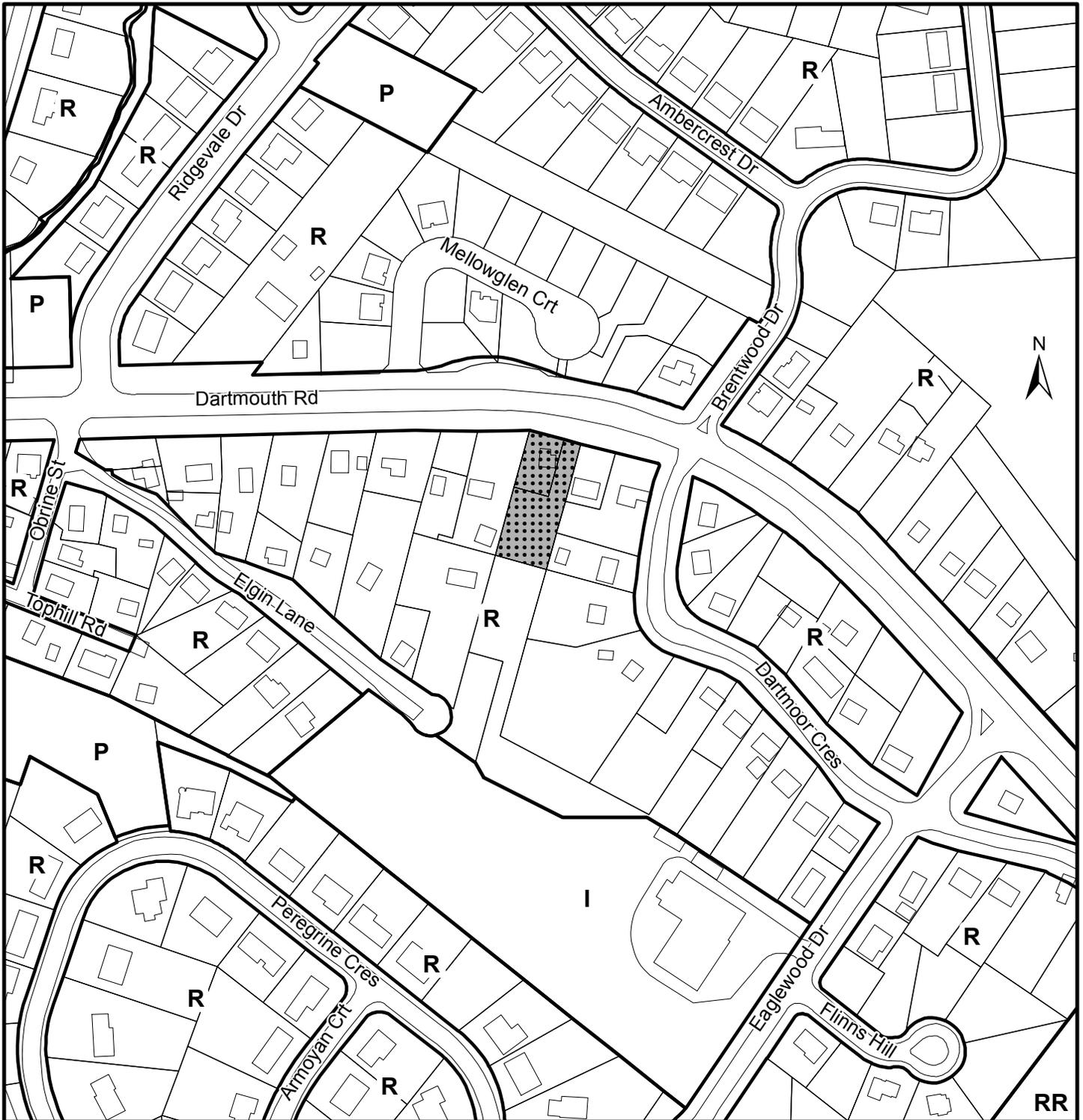
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Jillian MacLellan, Planner, Development Approvals, 902.490.4423

Original Signed

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager of Development Approvals, 902.490.4800

---



**Map 1 - Generalized Future Land Use**

**HALIFAX**

91 & 97 Dartmouth Road,  
Bedford

 Subject Properties

**Designation**

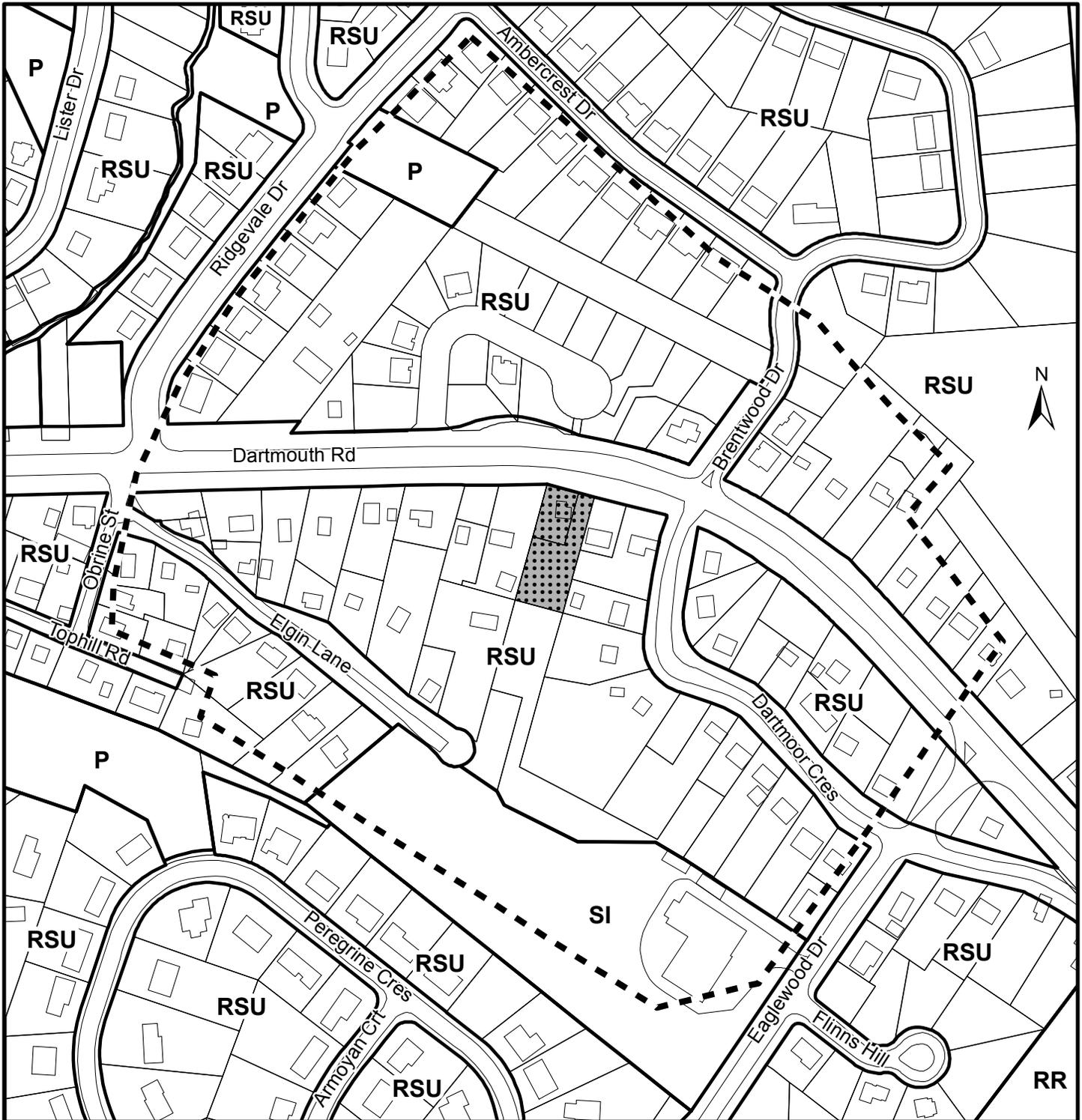
- R Residential
- RR Residential Reserve
- P Park and Recreation
- I Institutional



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.

Bedford  
Plan Area



### Map 2 - Zoning and Notification

91 & 97 Dartmouth Road,  
Bedford

**HALIFAX**

 Subject Properties

 Area of Notification

Bedford  
Plan Area

**Zone**

- RSU Single Unit Dwelling
- R Residential Reserve
- SI Institutional
- P Park



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.

**ATTACHMENT A  
PROPOSED AMENDING DEVELOPMENT AGREEMENT**

THIS AMENDING AGREEMENT made this      day of **[Insert Month]**, 20\_\_\_,

BETWEEN:

**[Insert Name of Corporation/Business LTD.]**,  
individuals, in the Halifax Regional Municipality,  
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 91 and 97 Dartmouth Road, Bedford, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the North West Community Council of the Municipality approved an application by the Developer to enter into a development agreement to allow for the creation of a flag lot and a single unit dwelling (referenced as Municipal Case Number 00949), which said Development Agreement was registered at the Halifax County Land Registration Office on January 10, 2008 as Document Number 89710140 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested a non-substantive amendment to the Existing Agreement [(pursuant to Section 6.1, clause (b))] to allow for an extension to the date of completion;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 20239;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

The Existing Agreement is amended as follows:

1. Amend Section 8.4 by inserting the following text as shown in bold and deleting text as shown in strikeout as follows:

"Upon the completion of the development or portions thereof, or after ~~9~~ **19** years from the date of registration of this Agreement with the Registry of Deeds or Land Registration Office, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Bedford, as may be amended from time to time."

2. All other terms of the Existing Agreement shall remain in full force and effect.

**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

\_\_\_\_\_  
**(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 Municipal Planning Strategy Policies for Bedford**

Policy Criteria	Comment
<p><i>Policy R-27:</i>  <i>It shall be the intention of Town Council to consider applications to infill within existing residential areas. Infilling shall be encouraged to enable efficient use of municipal infrastructure. Town Council shall permit reduction of lot frontage requirements for subdivision of lots within the Single Unit Dwelling (RSU) and Two Unit Dwelling (RTU) Zones which existed prior to October 9, 1991, provided the existing land uses are in conformance with the zoning on the property. Infilling activity within existing residential neighbourhoods zoned Single Unit Dwelling (RSU) or Two Unit Dwelling (RTU) Zones shall be regulated through provisions in the Land Use By-law permitting a reduction to 50 feet of frontage for existing lots. Council shall permit the creation of flag lots by development agreement within the Single Unit Dwelling (RSU) and Two Unit Dwelling (RTU) Zones where a property cannot be subdivided by under the Land Use By-law. Such development agreements will require that:</i></p>	<p>91 Dartmouth Road was originally created in 1950. The existing development agreement allows for the creation of a flag lot (97 Dartmouth Road), and the development of a single unit dwelling. The existing development agreement further requires 91 Dartmouth Road to retain 18.3 metres (60 feet) of frontage.</p>
<ul style="list-style-type: none"> <li>• <i>the application for a development agreement shall include the specifications for the building envelope for the proposed dwelling such that the new dwelling is in keeping with the bulk, scale and the average height and building footprint of the existing dwellings in the immediate neighbourhood of the vacant lot;</i></li> </ul>	<p>The existing development agreement outlines the building envelope for the proposed dwelling and includes bulk and scale requirements that are consistent with the neighbourhood.</p>
<ul style="list-style-type: none"> <li>• <i>the minimum rear yard separation distances between the proposed new dwelling and the existing dwellings shall be 40 feet;</i></li> </ul>	<p>The existing development agreement requires a minimum setback of 12.2 metres (40 feet) from existing dwellings on neighbouring properties.</p>
<ul style="list-style-type: none"> <li>• <i>minimum front, side and rear yards shall be provided in accordance with the zone requirements</i></li> </ul>	<p>The existing development agreement requires larger setbacks than required by the RSU zone for development on the flag lot.</p>

<ul style="list-style-type: none"> <li>• <i>minimum lot area for a flag lot shall be 7,000 sq. ft.; and,</i></li> </ul>	<p>The existing development agreement requires a lot area of approximately 1,272.8 square metres (13,700 square feet) for the flag lot.</p> <p>It is important to note that the area of the flag lot, which was approved in September 21, 2010, has a lot area of 1,282.1 square metres (13,800 square feet).</p>
<ul style="list-style-type: none"> <li>• <i>the lot must be located within an area which is zoned single (RSU Zone) or two-unit (RTU Zone) dwellings;</i></li> </ul>	<p>The subject site is zoned RSU.</p>
<ul style="list-style-type: none"> <li>• <i>on any lot adjacent to a watercourse or body of water, no area of land which has been infilled shall be included in the minimum lot area or minimum yard setback required under this policy or the Land Use By-law;</i></li> </ul>	<p>The subject site is not adjacent to a watercourse or body of water.</p>
<ul style="list-style-type: none"> <li>• <i>the application shall include provisions for visual screening, such as fencing and tree retention, to manage potential impact on adjacent residential properties;</i></li> </ul>	<p>The existing development agreement requires the retention of existing vegetation where the flag lot abuts other residential uses.</p>
<ul style="list-style-type: none"> <li>• <i>controls related to the design of the new dwelling, such as the management of wall openings (i.e., windows and doors) are established to ensure that it is compatible with that of the surrounding residential environment;</i></li> </ul>	<p>The existing development agreement requires that the single unit dwelling to be developed on the flag lot to be sited such that the front façade and main entrance of the dwelling are oriented to face Dartmouth Road.</p>
<ul style="list-style-type: none"> <li>• <i>no application to create a new lot for the development of a two unit dwelling shall be considered on any lot which abuts a property that is zoned RSU and which is undeveloped or contains a single unit dwelling;</i></li> </ul>	<p>The existing development does not permit the development of a two unit dwelling.</p>
<ul style="list-style-type: none"> <li>• <i>where a proposal includes a two unit dwelling, the application shall include adequate outdoor amenity space such as decks, patios or other open space;</i></li> </ul>	<p>The existing development does not permit the development of a two unit dwelling.</p>

<ul style="list-style-type: none"> <li>• <i>the creation of a flag lot shall not be in combination with any other development agreement option permitted under the Plan, including but not limited to Policy R-8, auxiliary dwelling units; and</i></li> </ul>	<p>The existing development agreement was not considered in combination with other development agreement options permitted under the Plan.</p>
<ul style="list-style-type: none"> <li>• <i>consideration of limiting home based businesses due to the configuration of the lot. (RC-Jan 13/09;E-Feb 28/09)</i></li> </ul>	<p>The existing development agreement does not limit home based businesses, as permitted by the LUB.</p>