



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

Item No. 13.1.4
Halifax and West Community Council
June 11, 2019

TO: Chair and Members of Halifax and West Community Council

-ORIGINAL SIGNED-

SUBMITTED BY: _____
Steve Higgins, Acting Director of Planning and Development

DATE: May 9, 2019

SUBJECT: **Case 21984: Development Agreement for 2486 Creighton Street, Halifax**

ORIGIN

Application by EDM Planning Services Limited, on behalf of OGH Holdings Limited.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give notice of motion to consider approval of the proposed development agreement, as set out in Attachment A, to allow for a single unit dwelling with a professional office or home occupation, with modified lot standards, at 2486 Creighton Street, Halifax and schedule a public hearing; and
2. Refuse to approve the proposed development agreement, as set out in Attachment A, as it is not reasonably consistent with the Halifax Municipal Planning Strategy 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

EDM Planning Services Ltd. has applied for a development agreement for 2486 Creighton Street, Halifax. The applicant represents the property owner, OGH Holdings Limited, who wish to allow for the construction of a single unit dwelling with a professional office (architectural practice), or home occupation, as well as a larger gross floor area than is permitted as-of-right on the site, and a higher lot coverage to allow for the larger dwelling and a detached garage in the rear. The proposal requires modification of several Land Use By-law requirements which can be considered through the development agreement process utilizing Implementation Policy 4.6 (referred to as a "lot modification" development agreement).

Subject Site	2486 Creighton Street, Halifax (Lot 67B)
Location	West side of Creighton Street, just south of Charles Street
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Medium Density Residential (MDR), Peninsula North Area #6 of the Halifax Municipal Planning Strategy (MPS)
Zoning (Map 2)	General Residential (R-2) Zone - Halifax Peninsula Land Use Bylaw
Size of Site	240 sq. m. (2,587 sq. ft.)
Street Frontage	8m (26 ft.) on Creighton Street
Current Land Use(s)	Vacant
Surrounding Use(s)	A mix of commercial, residential and institutional uses, including: <ul style="list-style-type: none">- Low, medium & high-density residential uses and Joseph Howe elementary school to the north;- Medium and high-density residential uses to the south;- Major commercial uses and residential apartments to the west; and- High-density residential uses to the east.

Proposal Details

The applicant proposes to modify several Land Use By-law requirements for the subject site to enable the proposed single unit dwelling to include his architectural practice or, alternatively, a home occupation located on the ground floor of the building. Additionally, an allowance for a larger building on the site than is permitted by the LUB is being requested through this process (Attachments A and B). The required modifications to the LUB for the subject site are as follows:

- An increase in the maximum lot coverage, from 35% to 60%, to allow a larger dwelling (42.5% coverage) and a detached garage (combined total of 60% coverage);
- A decrease in the minimum lot frontage, from 30 feet to 26 feet;
- A decrease in the minimum lot area, from 3,000 square feet to 2,587 square feet;
- A decrease in the minimum left side yard, from 4 feet to 0 feet; and
- An increase in the maximum gross floor area ratio (FAR), from 0.75 to 1.18 (approximately 36% larger main/dwelling structure).

It should be noted that some of the zone requirements differ substantially for a single unit dwelling versus a dwelling with a professional office/ home occupation. The zone requirements for only a single unit dwelling on the subject site are:

- Maximum lot coverage of 50%;
- Minimum lot frontage of 20 feet;
- Minimum lot area of 2,000 square feet; and
- Minimum side yards of 0 feet.

The draft development agreement which would enable the proposal is presented in Attachment A. The applicant's submission, including a proposed description and rationale, is presented in Attachment B.

Building elevations are not included, as the development agreement primarily regulates the use and lot standards.

Enabling Policy and LUB Context

The subject site is designated Medium Density Residential (MDR) within the Peninsula North Secondary Planning Strategy, which is Section XI of the Halifax Municipal Planning Strategy (Attachment C and Map 1). The site lies within Area 6 of the Peninsula North Secondary Planning Strategy and is zoned R-2 (General Residential) pursuant to the Land Use By-Law for Halifax Peninsula (Map 2).

The proposal is being considered pursuant to Implementation Policy 4.6 which allows for the modification of Land Use Bylaw requirements through the development agreement process. The R-2 Zone permits residential buildings containing between one and four dwelling units, with different lot requirements depending on the number and type of units. On the subject lot, a one family dwelling is currently permitted by the LUB. Variances to specific zone requirements are permitted for lot coverage and yards. However, there are no variances permitted to the lot area and frontage requirements unless the lot existed prior to 1950. In this case, the lot was approved one year ago. Therefore, the lot modification development agreement is the only process available to enable the proposal.

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 and approximately 480 postcards mailed to residents within the notification area in January of 2019. The public comments received (1 email, 1 phone) included the following topics:

- Construction noise;
- Concern whether there is enough room on the site for the proposed building and driveway; and
- Concern about how building maintenance can occur along a 0 foot side yard.

A public hearing must be held by Halifax and West Community Council before it 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 3 will be notified of the hearing by regular mail. The HRM website will also be updated to indicate notice of the public hearing.

The proposal will potentially impact neighbouring property owners and residents.

Halifax Peninsula PAC

On February 25, 2019, the Halifax Peninsula Planning Advisory Committee (PAC) recommended that the application be approved subject to considerations. The motion of the PAC was as follows:

THAT the Halifax Peninsula Planning Advisory Committee recommends that the Halifax & West Community Council proceed with the development agreement of Case 21984 with the following considerations:

The Planning Advisory Committee:

- *Agrees that the design is a creative and an appropriate use of the space; and*
- *Values a single unit with ground floor professional use over a 2-unit dwelling.*

The recommendations of the PAC on the application are sent to Community Council by means of a separate report.

As a result of feedback from the PAC and staff, the proposal was changed to remove the option for a two-unit dwelling.

DISCUSSION

Staff have reviewed the proposal relative to all relevant policies and advise that it is not reasonably consistent with the intent of the MPS. Attachment C provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Notwithstanding the departure from the intent of the existing policy, staff acknowledge that combining a professional office or home occupation with a single residential unit could generally be seen as appropriate. Furthermore, allowing for an increase in the gross floor area by approximately 650 sq. ft. is unlikely to have significant negative impacts on the community. However, staff are obliged to provide Council with recommendations based on existing policy content and the current application is not consistent with the intent of those policies. The following sections of the report outline the existing policy framework and its application to this proposal.

Application of Lot Modification Policy 4.6

The only manner by which this request may be considered under the existing MPS is through Implementation Policy 4.6 (lot modification). Clause (b) of Policy 4.6 requires that the condition necessitating the modification is unique to the lot and has not been created by the applicant.

The subject lot is rectangular in shape, was subdivided in 2018 by a former property owner and a single-unit dwelling can be built on the property. While it can be argued that this situation has not been created by the applicant, the situation is not unique to the area. There are many similarly-sized and configured lots throughout this area of Halifax, several of which have been developed consistently with the requirements of the LUB, without the need for a lot modification development agreement.

The lot modification policy enables development on lots that cannot otherwise be 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. However, as indicated, a single-family dwelling can be built on the site and is considered appropriate for the area.

In terms of the compatibility of the proposal with the character of the neighbourhood (clauses (a) and (d) of Policy 4.6), the proposed dwelling size and professional office use fit in with the surrounding buildings and land uses. The properties on the east side of Creighton Street are zoned R-3 (Multiple Dwelling) and are generally high-density residential in nature. Properties to the immediate west are zoned C-2 (General Business) and are developed with major commercial and multi-unit residential uses. The R-2 zoned properties in the area contain buildings of various sizes, many of which were built prior to existing zoning regulations and match the size of the proposed dwelling. Due to the varied mix of uses in the area, the proposal is compatible with its surroundings.

Permitting, Traffic and Servicing

No concerns have been raised pursuant to the technical review of this application regarding future construction permitting, traffic and site servicing. The applicant will be required to confirm any technical requirements are met prior to the issuance of a Construction Permit.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is not reasonably consistent with Implementation Policy 4.6 of the MPS. 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. Therefore, staff recommend that the Halifax and West Community Council refuse the proposed LUB amendments. However, in the event that Council wishes to approve the proposed development, the draft agreement (Attachment A) would enable the applicant's proposal.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2019-2020 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 is contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVE

1. Halifax and West Community Council may choose to approve the proposed development agreement as contained in Attachment A of this report. A decision of Council to approve the proposed agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications, and such modifications may require a supplementary report. A decision of Council to approve the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

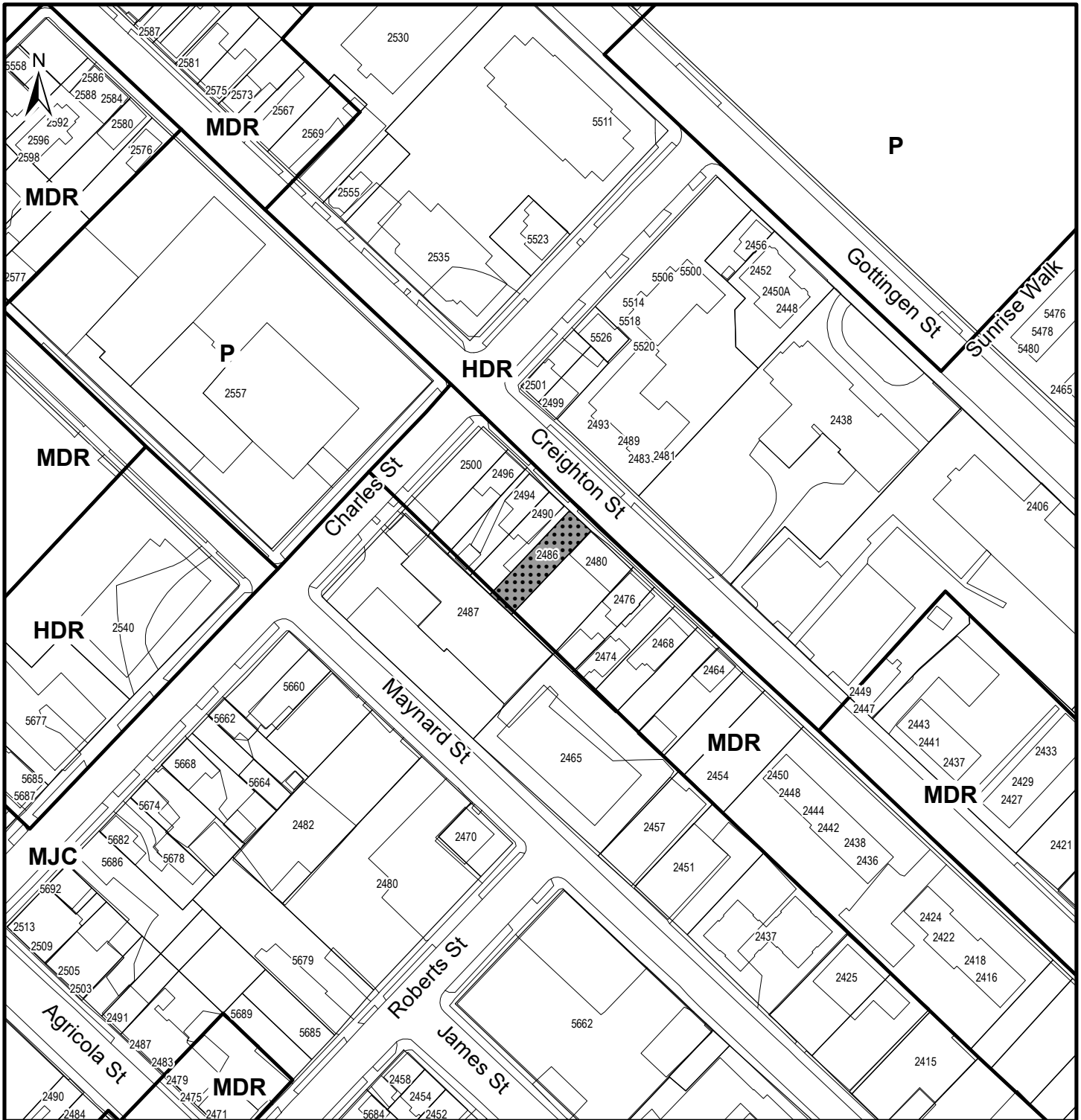
Map 1	Generalized Future Land Use
Map 2	Zoning
Map 3	Area of Notification
Attachment A	Proposed Development Agreement
Attachment B	Applicant's Submission
Attachment C	Review of Relevant Sections of the Halifax Municipal Planning Strategy

A copy of this report can be obtained online at www.halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Paul Sampson, Planner II, Urban Enabled Applications, 902.490.6259

-ORIGINAL SIGNED-

Report Approved by: Carl Purvis, Acting Manager, Current Planning, 902.490.4797



Map 1 - Generalized Future Land Use

2486 Creighton Street,
Halifax



 Subject Property

Designation

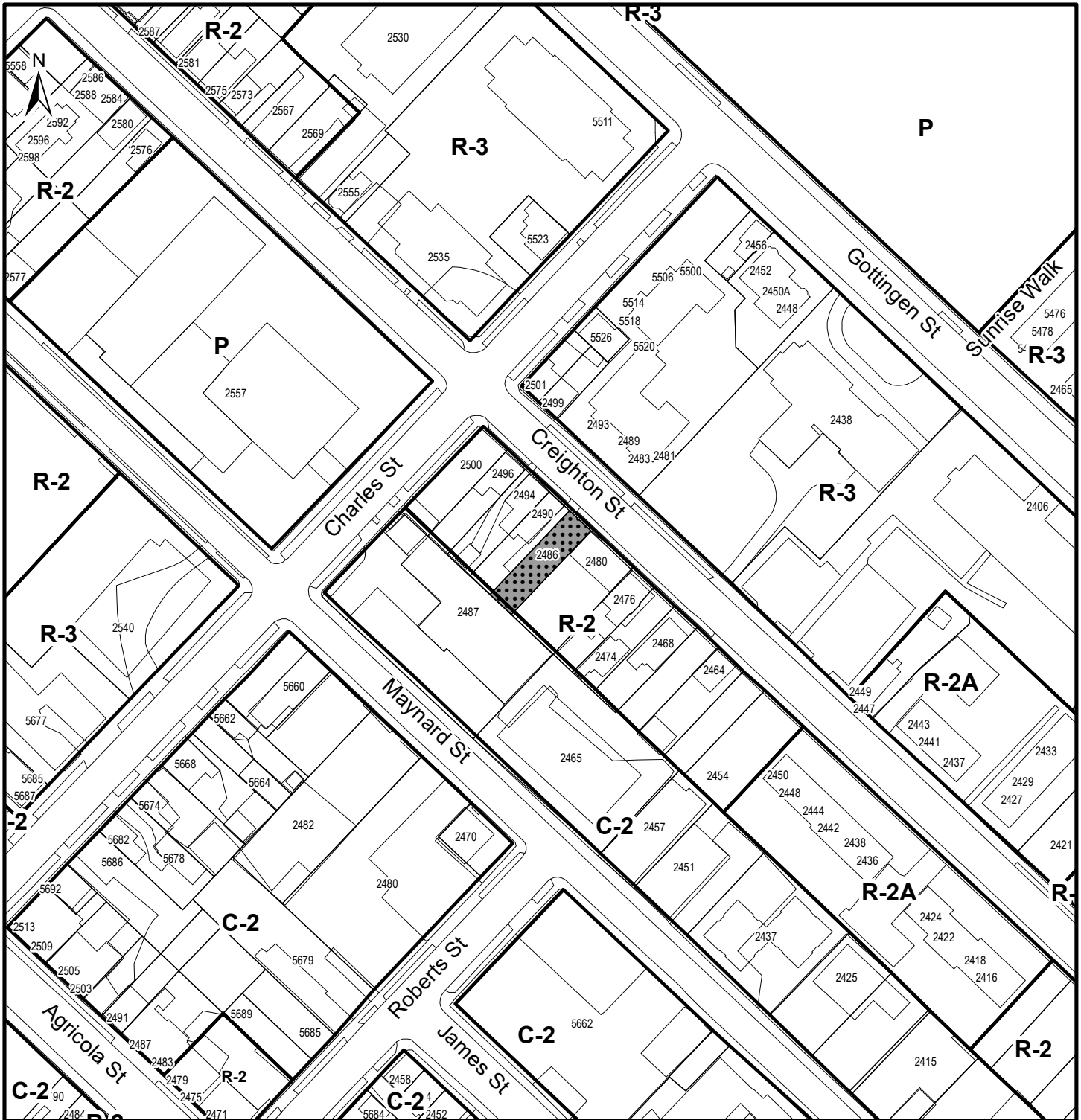
- HDR High Density Residential
- MDR Medium Density Residential
- MJC Major Commercial
- P Park and Institutional



Halifax Plan Area
Peninsula North Secondary 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
 2486 Creighton Street,
 Halifax



 Subject Property

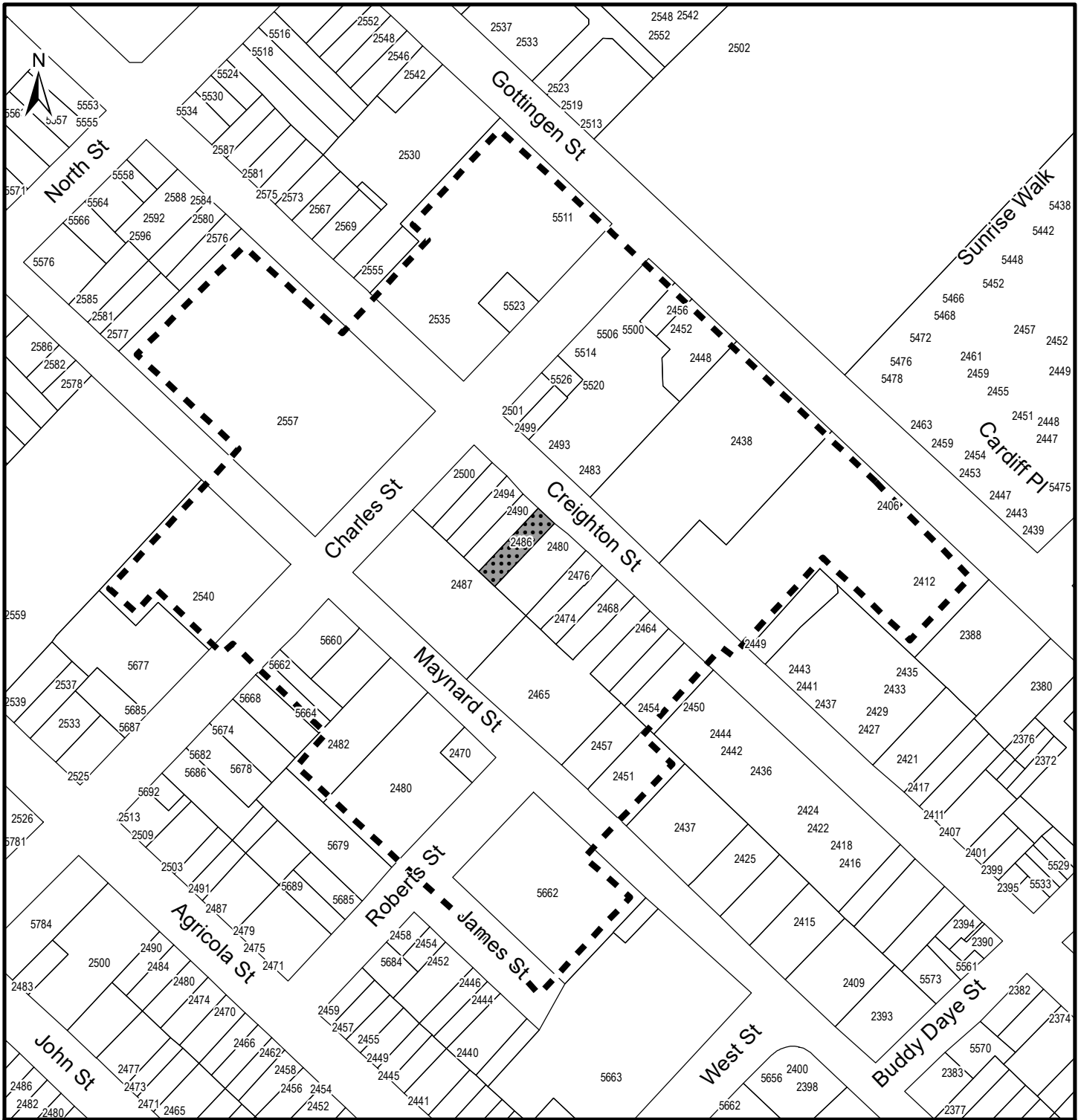
- Zone**
- C-2 General Business
 - P Park and Institutional
 - R-2 General Residential
 - R2-A General Residential Conversion
 - R-3 Multiple Dwelling



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



Map 3 - Area of Notification

2486 Creighton Street,
Halifax



 Subject Property



Halifax Peninsula
Land Use By-Law Area

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

**ATTACHMENT A
PROPOSED DEVELOPMENT AGREEMENT**

THIS AGREEMENT made this ___ day of _____, 20___,

BETWEEN:

[Insert Name of Corporation/Business LTD.]

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 2486 Creighton 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 permit the construction of a single unit dwelling with an office of a professional person or a home occupational use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Implementation Policy 4.6 of the Halifax Municipal Planning Strategy;

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 21984;

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

- 1.1.1 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

- 1.2.1 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.
- 1.2.2 Variances to the requirements of the Land Use Bylaw for Halifax Peninsula shall not be permitted in accordance with the *Halifax Regional Municipality Charter*.

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, 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

- 1.5.1 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

- 16.1.1 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.

1.7 Lands

- 1.7.1 The Developer hereby represents and warrants to the Municipality that the Developer is the owner of the Lands and that all owners of the Lands have entered into this Agreement.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

- 2.1.1 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, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 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 21984:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan

3.2 Requirements Prior to Approval

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses 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 applicable 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 General Description of Land Use

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

- (a) A one-family dwelling house;
- (b) An office of a professional person or home occupation, located in and occupying a portion or all of the first floor of the dwelling house; and
- (c) Accessory uses and buildings permitted by the underlying zone applied to the Lands subject to the provisions contained with the Land Use By-law for Halifax Peninsula as amended from time to time.

3.4 Building Siting and Scale

- 3.4.1 The development and use of the Lands shall comply with the Land Use By-law for Halifax Peninsula, with the following exceptions:

- (a) the lot coverage shall not exceed 60%;
- (b) the minimum lot area shall be 2,500 square feet and the minimum lot frontage shall be 25 feet;

- (c) the maximum gross floor area ratio (FAR) shall be 1.18; and
- (d) the minimum left side yard and minimum front yard shall be 0 feet.

3.5 Architectural Requirements

- 3.5.1 The following external cladding materials shall be prohibited: vinyl, plastic, plywood, exterior insulation and finish systems (where stucco is applied to rigid insulation), metal siding using exposed fasteners, and darkly tinted or mirrored glass.

3.6 Signs

- 3.6.1 One sign shall be permitted for the professional office or home occupation and such sign shall not exceed four square feet in area of the sign face.

3.7 Maintenance

- 3.7.1 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 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

- 4.1.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

4.2 Off-Site Disturbance

- 4.2.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plan

- 5.1.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:
 - (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
 - (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted

on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and

- (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

- 6.1.1 The following items are considered by both parties to be non-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 7.3.1 of this Agreement; and
 - (b) The length of time for the completion of the development as identified in Section 7.4.1 of this Agreement.

6.2 Substantive Amendments

- 6.2.1 Amendments to any matters not identified under Section 6.1.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

- 7.1.1 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.

7.2 Subsequent Owners

- 7.2.1 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.
- 7.2.2 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).

7.3 Commencement of Development

- 7.3.1 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 for Halifax Peninsula.
- 7.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Building Permit for the construction of the building.

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, 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.

7.4 Completion of Development and Discharge

7.4.1 If the Developer fails to complete the development after **five (5)** years from the date of registration of this Agreement at the 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;
- (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.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

8.1.1 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

8.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer **sixty (60)** 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:

Witness

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 Kevin Arjoon, 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 - Applicant's Submission



PLANNING SERVICES LTD

info@edm.ca
T: 1 (902) 425-7900
F: 1 (902) 425-7990

2111 Maitland Street, Suite 300
Halifax, NS B3K 2Z8

Revision Date: April 22, 2019

October 1, 2018

Carl Purvis, MCIP, RPP
Planning Applications Program Manager
Planning and Development
Halifax Regional Municipality
Via email: [REDACTED]

Re: Development Agreement Application - 2486 Creighton Street (PID 41463225)

Dear Carl:

We are pleased to submit an application for a development agreement to modify the lot requirements to permit ground floor uses at 2486 Creighton Street, as permitted in the R-2 zone.

In support of this application, we submit the following information:

- Application form
- Application fee (\$1830)
- Site plan
- Building elevations

Proposal

Omar Gandhi owns and operates a highly successful architectural practice in the South End of Halifax. He also has an office in Toronto and regularly commutes between them. Mr. Gandhi wishes to relocate his small South End office to the North End where he can operate it out of the ground floor private garage/workshop space of a single family dwelling to be constructed on a vacant lot on Creighton Street. The house will also be his primary residence. As a Professional Architect, the Mr. Gandhi is generally permitted to operate an Office of a Professional Person from their home.

Issue

The lot, like most other R-2 lots in the area, is undersized and cannot meet the lot requirements required to permit a Professional Office use. Properties that have been created prior to the bylaw—most in the area—are eligible to use the standard variance process to permit this use. As the subject property was only created in 2018, the owner is unable to modify the lot area and frontage through the standard variance process. The Halifax MPS and Peninsula LUB does, however, permit Council to consider lot modifications by development agreement, so long as the uses proposed are permitted in the zone.

Request

On behalf of the property owner, we request a lot modification development agreement to allow the ground-level of the proposed building to be used as an Office of a Professional Person. This use is permitted within the R-2 zone.

The following table outlines the existing lot area requirements for the proposed use and the minor variances necessary to permit the proposed uses:

	LUB Requirements based on Use		Proposal	LUB Satisfied?
	Single Family Dwelling (S. 43M)	Professional Office (S. 43H)		
Lot Area	2000 sf	3,000 sf	2587	No - DA Required
Coverage %	50%	35%	60%	No - DA Required
GFAR	0.75		1.18	No - DA Required
Frontage	20 feet	30 feet	26	No - DA Required
Left Side Yard	0'	4'	0	No - DA Required
Right Side Yard	0'	4'	5' 4 3/4"	Yes
Rear Yard	-		0	Yes
Front Yard	Streetline		0	Yes
Parking	1	0	2	Yes

It is important to note that while the proposed use requires variances to frontage, lot area, lot coverage and side yards, a main building of the same size and scale can already be built as-of-right as a single family dwelling without any variances.

Council recognizes the value in giving consideration to reasonable proposals for uses permitted in the zone, but where lot requirements could not be met. The Halifax MPS and Halifax Peninsula LUB addresses the challenges of infill development on small lots in the Plan Area by providing a development agreement mechanism to modify the lot requirements to permit additional zone-appropriate uses with input from the community.

Enabling Policy

This application is made under Section 99(5) of the Halifax Peninsula Land Use Bylaw and in accordance with Implementation Policy 4.6 of the Halifax Municipal Planning Strategy:

Section 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

development as-of-right with no setback from the subject property. For example, the permitted GFAR permitted on site could be as high as 5, based on 100% coverage and current 50-foot high maximum. Permitted GFARs on much of Gottingen Street are also 5 or more. In the immediate R-2 zoned area, GFARs range as high as 2, some of which have been recently achieved through the standard variance process. In this regard, permitting a GFAR of approximately 1.2, with a site coverage of 60% or less will result in a building that fits well within the existing fabric of the neighbourhood and contribute to the area as a walkable, urban neighbourhood.



Figure 2: (top) The subject property, highlighted in red, is surrounded by a wide range of uses, including single family, multi-family, institutional, light industrial and commercial uses; (bottom) The subject property is situated within a small R-2 portion of a larger block zoned C-2 and R-2A. Properties across the street are zoned for high-density residential uses (R-3).

Directly across from the subject property is a large contiguous block of R-3 lands, which includes more dense forms of housing such as over/under or stacked townhomes owned by the Nova Scotia Housing Development Corporation, the former Victoria Hall, which has been converted into apartments (and having

significant area for expansion of the building), and Sunrise Manor, a 10-storey, 165-room seniors facility. Joe Howe Elementary School is located nearby at the intersection of Creighton and Charles Street. This section of Charles Street is an important pedestrian corridor, linking a popular commercial area on Agricola to Gottingen Street and terminating at the George Dixon Community Centre.

The majority of the properties in the area are used for two-dwellings or more; major commercial uses already abut the subject property. The ability to include an office use is in keeping with the existing character of the area and is appropriate given the intensive uses and zones abutting the rear yard and directly across Creighton Street.

(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.

This lot was created in 2018 by the previous owner. The current owner did not create the lot but purchased it intending to build a primary residence and relocate a small architectural practice to the ground floor, a use permitted in the R-2 zone.

The lot area and dimensions of the subject property is common in the area, yet the restriction of permitted uses on the subject property is not. As most, if not all, R-2 properties in the surrounding area were created prior to the adoption of the bylaw, owners in the area may apply through a standard variance process to relax the minimum lot requirements in order to permit other R-2 uses such as home occupations, professional offices, two-unit dwellings and apartment buildings up to 4 units. However, as this lot was created in 2018, it cannot apply through a standard variance process. In this regard, the property is limited to a single use, which is not in keeping with the intent of the Halifax Municipal Planning Strategy (MPS), the Peninsula North Secondary Planning Strategy and the direction given in the draft Centre Plan. The difficulty experienced was not created by the owner or applicant and is likely unique to this property.

(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

This lot faces development restrictions that do not apply to other lots in the area. The modification is necessary to enable any use other than a single family dwelling. Given the fact that the property is designated medium density residential and zoned R-2, we submit that the lot cannot be appropriately developed based on the intent of the land use designation without modification of the lot.

EDM discussed other options and possible mechanisms, including rezoning, with the property owner and with HRM Staff. It was determined that a development agreement would be more appropriate than a rezoning for a commercial uses, which would be more restrictive for residential uses and more permissive of a wide range of commercial uses. This is not desired by the owner and would not be in alignment with the existing character of the area. In meeting with Staff, it was also clear that the request made through the development agreement aligns well with the direction presented in the draft Centre Plan, where small-scale, compatible commercial uses and secondary suites are encouraged in residential areas.

This request is limited to varying the lot requirements by development agreement, a request that most if not all surrounding properties can request through a standard variance process. In this regard, we submit that

the request for a development agreement is in alignment with the intent of the Municipal Planning Strategy. The lot modifications requested are within the range of standard variances granted to older lots in the area.

We submit that the subject property faces the maximum restrictions possible in regard to “as-of-right” development options—it is located in a “Medium Density Residential” area, is not zoned “Single Family Residential” (R-1), and directly abuts a “Major Commercial” area, yet it cannot obtain a permit for anything other than a single family dwelling. In this regard, we submit that the lot modification by development agreement is necessary to secure an appropriate development of the lot.

(d) the modification is consistent with Section II of this Plan.

Section II of the Halifax MPS consists of city-wide objectives and policies, as well as policies to guide future planning in residential environments. The proposal is consistent with Section II of the Plan, as the uses requested to be enabled by development agreement are already uses supported by the Plan and permitted by regulations for the R-2 zone in the LUB. The policies support and encourage rehabilitation and compatible infill within existing neighbourhoods. Compatibility generally refers to the scale of the building. The proposed building is appropriately scaled, as its form is already permissible in the zone by-right.

We trust that our submission is sufficient for your review. We look forward to discussing the application and next steps with you as soon as possible. Please don't hesitate to contact me if you have any questions.

Sincerely,
EDM Planning Services Ltd.

Jessica Harper, BCD, MCIP, LPP

Attachment C
Review of Relevant Sections of the Halifax Municipal Planning Strategy

Implementation Policies	
Policy	Staff Comment
<p>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:</p>	<p>The application proposes to modify:</p> <ul style="list-style-type: none"> • <u>lot area</u> to allow a larger gross floor area ratio of 1.18 instead of 0.75 (equivalent to a 4,100 sq. ft. lot at 0.75 GFA), • <u>lot width</u> (frontage) from 20 ft. to 30 ft., • left <u>side yard</u> setback from 4 ft. to 0 ft., and • lot <u>coverage</u> from 35% to 60% (the percentage of land that can be built on and covered over, to allow the larger dwelling size and detached rear garage). <p>Generally, lot coverage, like other LUB requirements, can be modified through the development agreement process. However, in this case, Policy 4.6 does not specifically identify coverage. The applicant contends that, since all yards are eligible to be modified, the end result would be similar to modifying the lot coverage. This may be the case in some instances but not others.</p>
<p>(a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;</p>	<p>Despite the modifications that would be required to allow for the proposed building size, location and uses, the proposed dwelling size and professional office use fit in with the surrounding area. The properties on the east side of Creighton Street are zoned R-3 (Multiple Dwelling) and properties to the immediate west are zoned C-2 (General Business). There is a wide range of land uses and building sizes in the area. Therefore, the proposal is compatible with its surroundings and the character of the area will not be adversely affected.</p>
<p>(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;</p>	<p>The subject property was created by subdivision on May 18, 2018 and allows for the construction of a single unit dwelling with no side yards, 50% lot coverage and a Gross Floor Area of 1,940 sq. ft. There are numerous lots throughout the area which have a similar size and shape as the subject site. Therefore, the conditions necessitating the modification are not unique to the lot and the proposal is not consistent with this policy.</p>
<p>(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;</p>	<p>A single unit dwelling with a GFA of 1,940 square feet would be an appropriate development of the lot. LUB Section 43M already enables reduced requirements (eg. 2,000 sq. ft.) for new single unit dwelling lots, as indicated below. Therefore, the proposed modification is considered unnecessary and is not consistent with this policy.</p>
<p>(d) the modification is consistent with Section II of this Plan; and</p>	<p>The proposed size of dwelling, combined with a professional office or home occupation, can be</p>

	considered consistent with Section II of the MPS (see below).
<i>(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.</i>	Attachment A of the staff report contains a draft development agreement which the applicant has requested, based on the current proposal.
Section XI – Peninsula North Secondary Plan - Residential Environments	
Policy	Staff Comment
1.3 <i>In areas shown as medium-density residential on the Generalized Future Land Use Map of Section XI, residential development in the following forms shall be permitted: (i) single family dwellings; (ii) duplex housing; (iii) semi-detached housing; and (iv) buildings containing three or four units.</i>	The subject lot is designated for Medium Density Residential uses and a single-unit dwelling with professional office/ home occupation is proposed.
1.3.4 <i>The conversion of buildings existing on 14 July 1979 in the Medium Density area bounded by North, Gottingen, Cogswell, North Park and Agricola Streets (NIP I) for more intensive residential uses shall be encouraged in order to promote investment in the existing residential buildings and to strengthen the residential character of the area. 1.3.4.1 <i>In the area described in Policy 1.3.4 above, the conversion of an existing building to a maximum of four residential units per structure shall be permitted provided that: (a) there is no increase in the height and volume of the building; (b) at least one of the units in the converted building contains two or more bedrooms.</i></i>	These policies enable the conversion of existing buildings only, up to 4 units, in order to promote neighbourhood stability and investment in the housing stock of Peninsula North. The LUB allows various requirements to be waived for existing buildings. However, for new buildings, the variance and development agreement processes are generally required, except as noted below.
1.3.7 <i>In Areas 6 and 8 of this Section, the land use by-law shall include specific provisions for the development of one family dwelling houses with respect to lot size, side yard setbacks, and lot coverage, in order to maintain the traditional development pattern characterized by the size of lots and building placement.</i>	This policy, via LUB Section 43M, enables reduced requirements (eg. 2,000 sq. ft.) for new single unit dwelling lots. This enabled the subdivision and creation of the subject lot in 2018.
1.3.8 <i>In Areas 6 and 8 of this Section, the land use by-law shall include a provision to allow the development of any lot existing on the date of adoption of this Section for a one family dwelling house if the lot does not meet minimum lot frontage and lot area requirements.</i>	This policy, via LUB Section 43MA, eliminates the lot area, frontage and side yard requirements altogether for existing lots that are used for single-unit dwellings.
Section II – City-Wide Policies	
Policy	Staff Comment
2.4 <i>Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age</i>	The proposed residential use is limited to one dwelling unit. The allowance for a professional office or home occupation is in keeping with other residential areas of Halifax and is limited to the ground-floor of the building, in order to limit the

<p><i>and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.</i></p>	<p>intensity of use. Due to the wide range of land uses and building sizes in the area, the proposal is compatible with the surrounding neighbourhood.</p>
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