



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

Item No. 13.1.1
North West Community Council
December 13, 2021
January 17, 2022

TO: Chair and Members of North West Community Council

SUBMITTED BY: - Original Signed -
Kelly Denty, Executive Director Planning and Development

DATE: November 29, 2021

SUBJECT: Case 23532: Discharging Agreement and Amending Development Agreement for 636 Bedford Highway

ORIGIN

Application by Bluenose Inn & Suites Ltd.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

Discharge Agreement:

1. Approve, by resolution, the Discharge Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharge Agreement be signed by the property owner within 240 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; and

Amending Agreement:

3. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment B, to allow a non-substantive amendment to an existing development agreement extending the commencement and completion dates for development;
4. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment B; and
5. Require the amending agreement be signed by the property owner within 240 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

Bluenose Inn & Suites Ltd. is applying for a non-substantive amendment to an existing development agreement at 636 Bedford Highway, Halifax, to extend the date of commencement and completion of construction of the development by five (5) years.

Subject Site	636 Bedford Highway, Halifax (PID 41072778)
Location	At the north western intersection of Larry Uteck Blvd and Bedford Highway
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	HC (Highway Commercial) under the Bedford Highway Secondary Plan of the Halifax Municipal Planning Strategy
Zoning (Map 2)	C-2B (Highway Commercial Zone) under the Halifax Mainland Land Use By-law
Schedule (Map 3)	Schedule R of the Halifax Land Use By-law
Size of Site	9220m ² (99,241 square feet)
Street Frontage	Bedford Highway – Approximately 77m (253 feet) Larry Uteck Blvd.- Approximately 110m (361 feet)
Current Land Use(s)	Hotel / Motel
Surrounding Use(s)	The surrounding area is primarily higher density residential and mixed use: <ul style="list-style-type: none">- To the south is Larry Uteck Boulevard and a 4-storey apartment building- To the West is a 4-storey apartment building- To the north is a vacant lot with an approved DA for 52 units (Case 20781)- To the east is the Bedford Highway and 4.5 storey mixed use building

Proposal Details

On February 6, 2017, North West Community Council approved a development agreement to allow an eight-storey mixed use building with a maximum of 102 residential units and 650m² of commercial space at 636 Bedford Highway (Case 20747). The original agreement required construction to commence and complete within five years from the date of registration of the agreement resulting in a commencement and completion date of June 15, 2022.

The original staff report and development agreement can be found here:

<http://legacycontent.halifax.ca/Commcoun/central/documents/161115NWCCItem13.1.4.pdf>

Enabling Policy and LUB Context

The property is designated HC (Highway Commercial) and is with Schedule R of the Bedford Highway Secondary Plan of the Halifax Municipal Planning Strategy. The site is zoned C-2B (Highway Commercial) under the Halifax Mainland Land Use By-law which allows a variety of residential and commercial uses.

The existing development agreement was approved under Policy 1.8 of the Bedford Highway secondary plan that allows for the consideration of taller development through the development agreement process.

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 creation of a HRM planning applications website and signage posted on the subject site. The application received 87 unique webpage views and the average time on the page was 1 minute and 49 seconds. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendment is made by resolution of Community Council.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Halifax Mainland MPS and the Bedford Highway Secondary Plan. Attachment C provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Discharging Agreement

On October 6, 2003 a development agreement was approved by the former Chebucto Community Council to allow a four-storey 24-unit apartment building. Due to an administrative oversight, this agreement remains on title for this property and both agreements regulate the lands. This renders the site virtually undevelopable as the requirements of both agreements must be met to issue a permit. Staff recommend Council approve the discharge agreement as shown in Attachment A to remove this agreement from the property title.

Proposed Amending Development Agreement

Attachment B contains a proposed amending development agreement to the February 2017 development agreement which allows an eight-storey mixed use building with a maximum of 102 residential units and 650m² of commercial space at 636 Bedford Highway (Case 20747).

The proposed amending agreement allows for an extension to the commencement and completion dates by five years. As stated previously, the current construction and commencement date is June 15, 2022. According to the applicant, preliminary work is underway, however, the development has been delayed due to the pandemic, changing market conditions, and labour shortages. If approved, the time extension would result in a new construction commencement and completion date of 2026. The precise date will be based on the date of registration of the amending agreement.

Timeframes for signing of Agreements

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances present, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the Halifax MPS and the Bedford Highway Secondary Plan. The proposed structure remains unchanged from the original development agreement which is consistent with the applicable policies. Therefore, staff recommend that the North West Community Council approve the proposed development agreement.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM cost associated with processing this planning application can be accommodated with the approved 2021-2022 operating budget for C310 Urban and Rural Planning Applications.

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 amending development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

Discharge Agreement

1. North West Community Council may choose to refuse to discharge the existing development agreement that allows the construction of a four-storey building, and therefore, development on the property would remain subject to the conditions of both agreements. A decision of Council to refuse to discharge a development agreement is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the HRM Charter.

Amending Development Agreement

2. North West Community Council may choose to approve the proposed amending 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*.
3. North West Community Council may choose to refuse the proposed amending 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*.

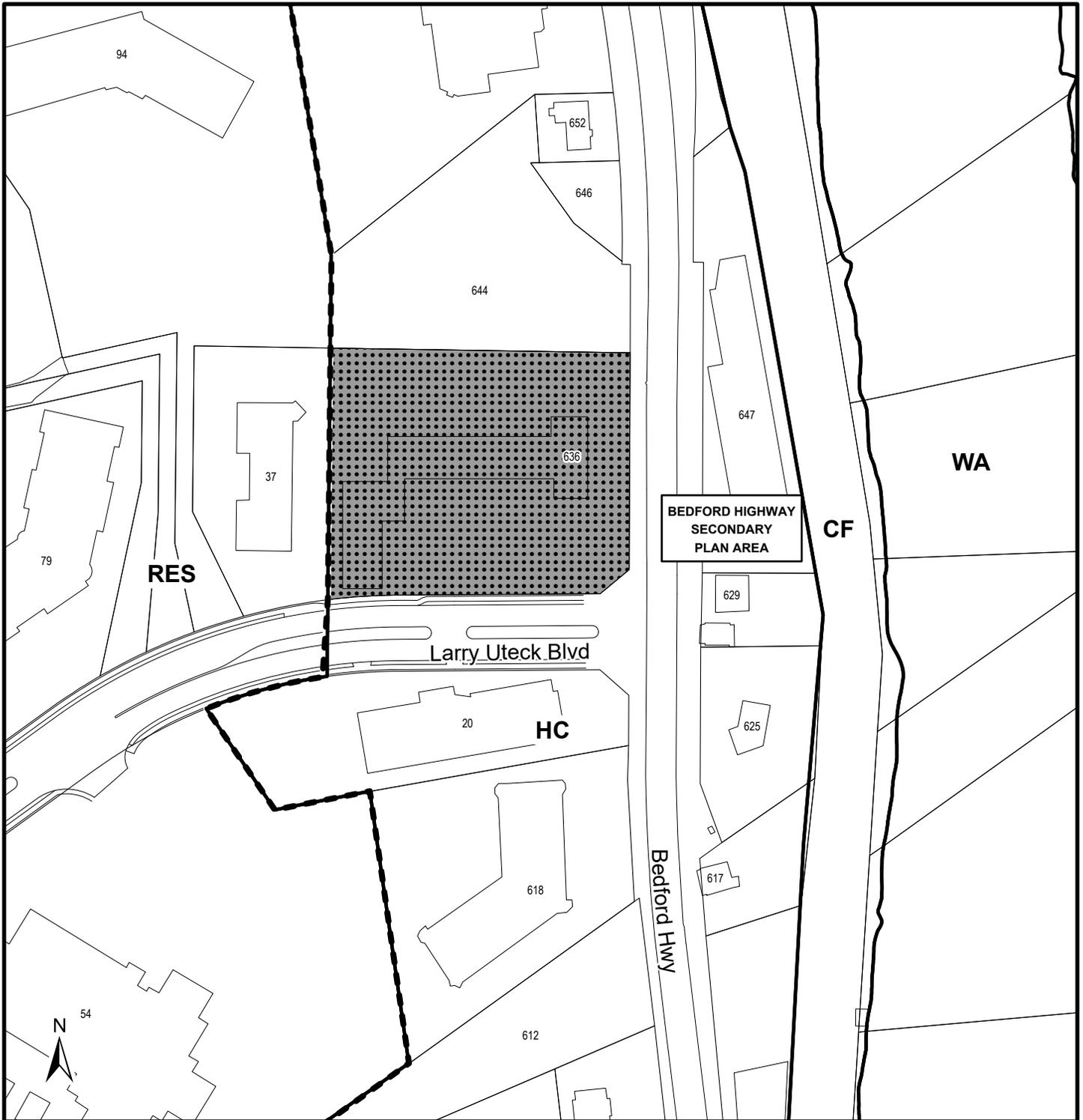
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area
Map 3: Schedule R

Attachment A: Proposed Discharge Agreement
Attachment B: Proposed Amending Development Agreement
Attachment C: Review of Relevant Halifax MPS Policies

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

Report Prepared by: Melissa Eavis, Planner 3, 902.237.1216



Map 1 - Generalized Future Land Use

636 Bedford Highway,
Halifax

HALIFAX

 Subject Property

Halifax Plan

Designation

RES Residential Environments
WA Water Access Area

0 40 m

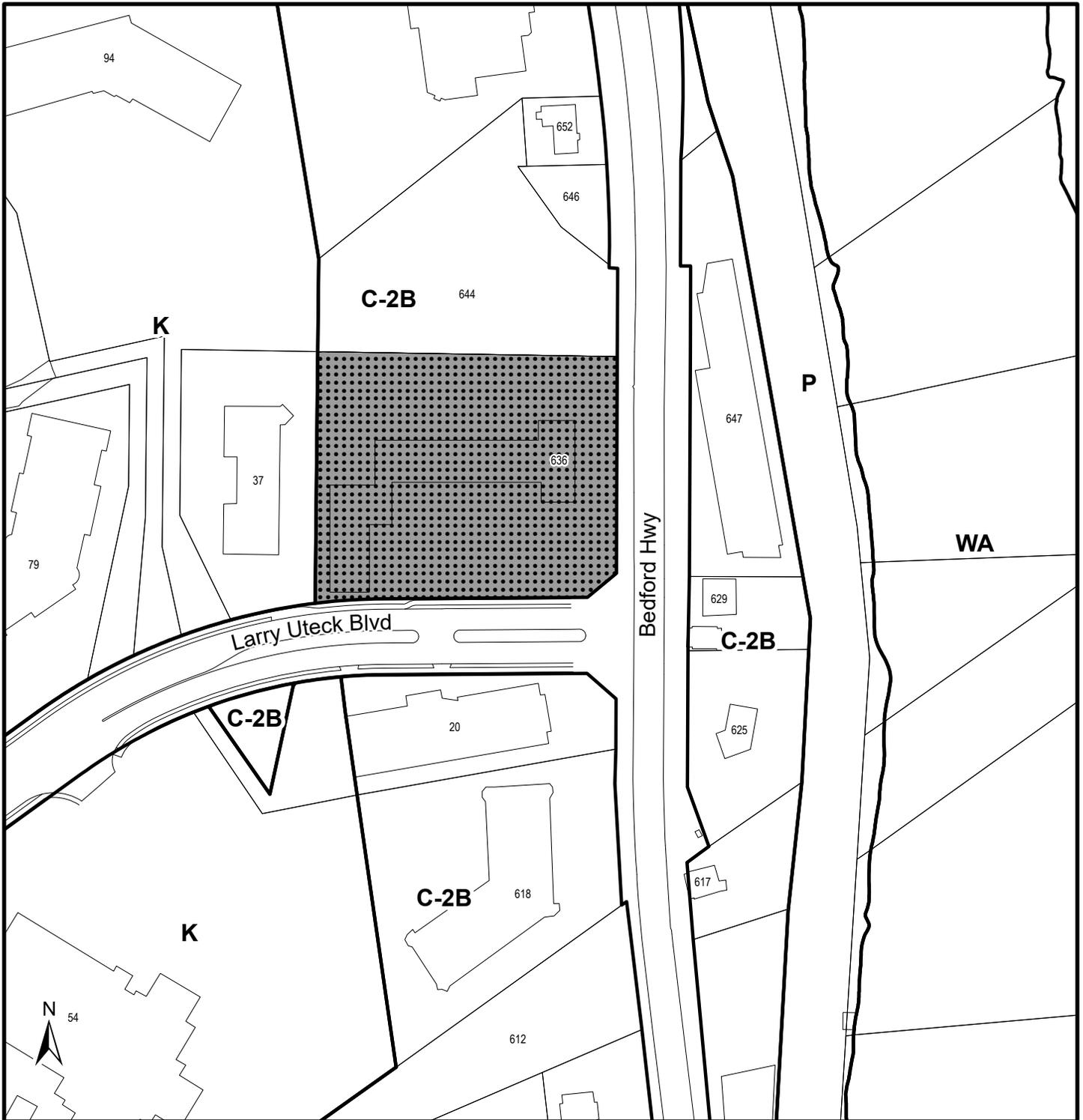

Bedford Highway
Secondary Plan

CF Community Facilities
HC Highway Commercial
LDR Low Density Residential

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.

Halifax Mainland Plan Area
Bedford Highway Secondary Plan Area



Map 2 - Zoning

636 Bedford Highway,
Halifax

HALIFAX

 Subject Property

Zone

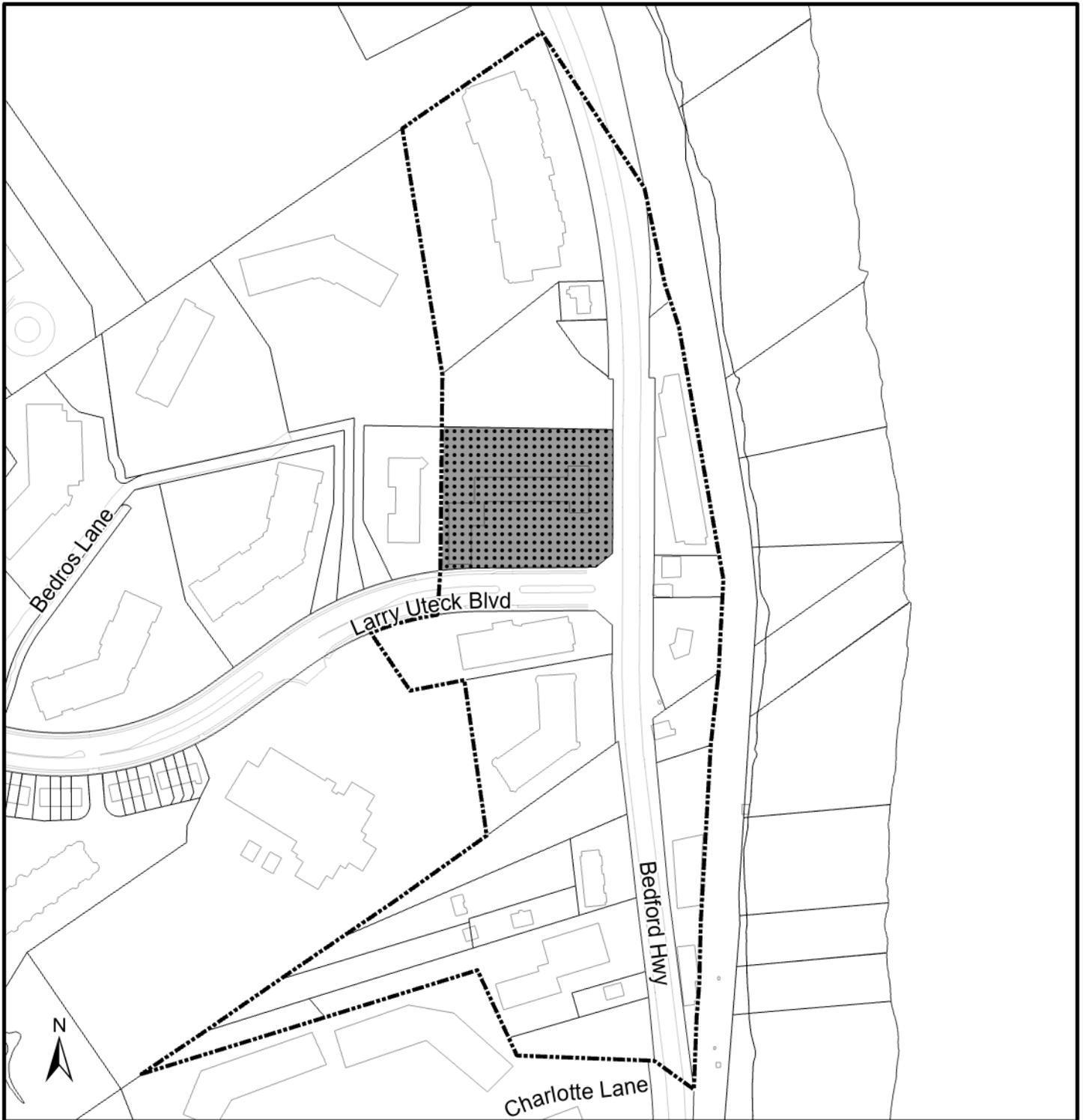
C2-B	Highway Commercial
K	Schedule K
P	Park and Institutional
WA	Water Access



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 Mainland
Land Use By-Law Area



Map 3 - Schedule R

636 Bedford Highway,
Halifax

 Area of proposed
development agreement

 Area of Schedule R

Halifax Mainland
Land Use By-Law Area

HALIFAX



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

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

Attachment A: Proposed Discharge Agreement

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

BETWEEN:

BLUENOSE INN & SUITES HALIFAX 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 636 Bedford Highway, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on October 6, 2003 the former Chebucto Community Council approved an application to enter into a Development Agreement to allow the construction of a multiple unit residential building on the Lands pursuant to Implementation Policy 3.3 of the Halifax Municipal Planning Strategy and Section 68 of the Halifax Mainland Land Use By-law and referenced as Case 00488, and which said development agreement was registered at the Registry of Deeds in Halifax on November 25, 2003 in Book 7546 and page 638-656 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested that the Existing Agreement be discharged from the Lands;

AND WHEREAS Section 244(2) of the *Halifax Regional Municipality Charter* states that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owners;

AND WHEREAS the North West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 23532;

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

1. The Existing Agreement is hereby discharged as it applies to the Lands and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Halifax Mainland Land Use By-law, as amended from time to time.

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: _____

—

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

HALIFAX REGIONAL MUNICIPALITY

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 Iain MacLean, 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: Proposed Amending Development Agreement

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

BETWEEN:

BLUENOSE INN & SUITES HALIFAX 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 636 Bedford Highway, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on February 6, 2017 the North West Community Council approved an application to enter into a Development Agreement to allow for a mixed use, commercial and multiple unit residential building on the Lands (Case 20747), which said Development Agreement was registered at the Land Registration Office in Halifax on June 15, 2017 as Document Number 110925980 (hereinafter called the "Original Agreement") and which applies to the Lands;

AND WHEREAS the Developer has requested an amendment to the Original Agreement to allow for a five (5) year extension to the commencement and completion of the development dates on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 1.8 of the Bedford Highway Secondary Plan of the Halifax Municipal Planning Strategy and Section 74 of the Halifax Mainland Land Use By-law;

AND WHEREAS the North West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 23532;

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

1. Except where specifically varied by this First Amending Agreement, all other conditions and provisions of the Original Agreement as amended shall remain in effect.
2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this First Amending Agreement, and the Original Agreement.

3. Section 7.3.1 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

7.3.1 In the event that development on the Lands has not commenced within five (5) years from the date of registration of this **First Amending** Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

4. Section 7.5 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

7.5 Discharge of Agreement

If the Developer fails to complete the development after five (5) years from the date of registration of this **First Amending** 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.

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, personally came and appeared _____, the 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, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Iain MacLean 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 C: Review of Relevant Halifax MPS Policies

Section VIII: Bedford Highway Secondary Planning Strategy	
Policy	Staff Comment
<p>1.8 <i>In order to promote investment in mixed use redevelopment within two specific nodes along the Bedford Highway, that being at the north end of the Halifax plan area and adjacent the intersection of the Bedford Highway and Larry Uteck Boulevard, and to prevent conflict between new and existing uses the Municipality may, through the land use by-law, identify areas that provide an opportunity for and will benefit from a mix of residential and commercial uses. In those areas identified in the land use by-law as Schedule "R", all mixed residential/commercial developments or residential developments that exceed 35 feet in height shall be considered by development agreement in accordance with Sections 242 to 245 and 249 of the Halifax Regional Municipality Charter and as illustrated on Map ZM-2.</i></p>	<p>The policies remain unchanged since the building was approved. No changes have been proposed to any other aspect of the development agreement other than the commencement and completion of construction dates. As such, this request is in keeping with the policy intent.</p>
<p>1.8.1 <i>In considering land use by-law amendments to allow inclusion of a specific property within Schedule "R", the lands must be within the Bedford Highway Secondary Plan area, designated Highway Commercial, zoned C-2B (Highway Commercial Zone) and be immediately adjacent to lands currently identified in the land use by-law as Schedule "R".</i></p>	<p>The lands are presently within Schedule R.</p>
<p>1.8.2 <i>In considering development agreements pursuant to Policy 1.8, Council shall consider the following:</i></p> <p><i>(a) the relationship of new development to adjacent properties and uses; and, the mitigation of impacts on the amenity, convenience and development potential of adjacent properties through effective urban design and landscape treatment;</i></p> <p><i>(b) direct access to and sufficient frontage on Bedford Highway;</i></p>	<p>Other than the commencement and completion of construction dates, no changes have been proposed to the existing development agreement.</p>

<p><i>(c) the architectural design of the building(s) including high quality building materials, articulation of and variation to the building(s) facades; and fine-grained architectural detailing;</i></p> <p><i>(d) the scale of the building(s) having regard for the retention of views of the Bedford Basin from public spaces including streets, and active transportation corridors;</i></p> <p><i>(e) safe vehicular and pedestrian access to the site and building(s);</i></p> <p><i>(f) the adequacy of vehicle and bicycle parking facilities;</i></p> <p><i>(g) the location of the majority of the vehicular parking below or to the side or rear of the building(s) with a minimal amount of parking accommodated in the front of the building(s) only where appropriate landscape measures along the street edge are provided; Halifax Municipal Planning Strategy Page 126</i></p> <p><i>(h) the provision of both interior and exterior amenity areas and open space of a high quality, of a size and type adequate for the active and passive use of the residents;</i></p> <p><i>(i) the adequacy of the servicing capacity of the site;</i></p> <p><i>(j) the provision of appropriate buffering and landscape treatment;</i></p> <p><i>(k) the potential impact of shadowing on surrounding residential buildings beyond what currently exists;</i></p> <p><i>(l) demonstrated incorporation of Crime Prevention Through Environmental Design (CPTED) principles in the site and building design; and</i></p> <p><i>(m) the provision of active transportation linkages, where needed.</i></p>	
<p>1.8.3 Pursuant to Policy 1.8.1, where Commercial uses are proposed to be</p>	<p>Other than the commencement and completion of construction dates, no changes</p>

<p><i>provided, Council shall consider the following:</i></p> <ul style="list-style-type: none"><i>(a) commercial uses which comply with the C-1 (Local Business) Zone;</i><i>(b) commercial uses on no more than the first and second floors or in standalone buildings;</i><i>(c) physical separation from abutting existing residential uses;</i><i>(d) transparent and interactive facades along street frontages;</i><i>(e) ground and fascia signage should be designed to complement the development and be consistent throughout the site;</i><i>(f) adequate accommodation and screening of refuse/recycling, odours, mechanical equipment and service areas.</i>	<p>have been proposed to the existing development agreement.</p>
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