



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

Item No. 13.1.2
North West Community Council
February 28, 2022

TO: Chair and Members of North West Community Council

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

DATE: February 8, 2022

SUBJECT: Case 23834: Development Agreement for 5 Bridle Path, Hammonds Plains

ORIGIN

Application by Anson Lee-Pearn and Martin Pearn

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A, to allow the expansion of a commercial recreation use, "The Little Gym of Halifax" at 5 Bridle Path, Hammonds Plains, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Approve, by resolution, the proposed discharging agreement which shall be substantially of the same form as set out in Attachments B; and
4. Require the development agreement and 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.

BACKGROUND

Anson Lee-Pearn and Martin Pearn are the applicants, property owners, and owners of a business called “The Little Gym of Halifax” which currently occupies a portion of the main floor within an existing mixed use building located at 5 Bridle Path in Hammonds Plains. They are applying to expand the existing business throughout the remainder of the main floor. “The Little Gym of Halifax” offers structured classes designed for physical development of children. The business offers activities such as parent/child classes, gymnastics, dance, parties, and day camps.

Subject Site	5 Bridle Path
Location	Hammonds Plains
Regional Plan Designation	RC (Rural Commuter)
Community Plan Designation (Map 1)	MUB (Mixed Use “B”)
Zoning (Map 2)	MU-1 (Mixed Use) 1 Zone
Size of Site	10,005.3 square metres (2.47 acres)
Street Frontage	38.97 metres (127.86 feet)
Current Land Use(s)	Commercial and residential
Surrounding Use(s)	Commercial, residential and vacant properties

Proposal Details

“The Little Gym of Halifax” occupies 185.8 square metres (2,000 square feet) of floor area in the existing building at 5 Bridle Path, Hammonds Plains. The applicant wishes to expand the use throughout the remainder of the main floor of the existing building. While the MU-1 Zone permits a maximum commercial floor area of 185.8 square metres (2,000 square feet), an expansion can be considered by development agreement (Policy P-27). The major aspects of the proposal are as follows:

- Expand beyond 185.8 square metres (2,000 square feet) of floor area to the remainder of the main floor for a total of approximately 371.6 square metres (4,000 square feet).
- Expansion of “The Little Gym of Halifax” use is internal to the existing building and entirely within the main floor; no further additions or uses are proposed at this time.
- The residential units within the building are intended to remain.

Existing Development Agreement

On March 24, 2011, North West Community Council approved a development agreement, referenced as Case No. 16415, which allows a kennel use. To date, the kennel use has not commenced and the applicant wishes to discharge the existing development agreement and enter into a new development agreement for the expansion of the “Little Gym of Halifax”. The proposed discharge agreement is included as Attachment B of this staff report.

Enabling Policy and LUB Context

This property is designated MUB (Mixed Use “B”) under the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy (MPS) and zoned MU-1 (Mixed Use 1) under the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law (LUB). The current MU-1 zoning of the property enables commercial uses up to 185.8 square metres (2,000 square feet) of floor area. Policy P-27 of the MPS enables commercial recreation uses without a maximum floor area requirement through the development agreement process, provided all aspects of the policy are satisfied.

The Land Use By-Law defines commercial recreation as: *a building or lot or part of a building or lot used solely for commercial recreation or sport purposes and without limiting the generality of the foregoing, may include animal or vehicle racing tracks, rifle ranges, marinas, golf courses, amusement parks and centres, and commercial camping grounds, and may include a dwelling unit or dwelling units for maintenance or security personnel.* The intent of the applicable plan policy enabling commercial recreation uses by development agreement is to ensure that potential impacts due to traffic generation, noise, and garbage do not negatively impact the character of the community. The “Little Gym of Halifax” use fits into the definition of commercial recreation use, but the impacts of the use are minimal.

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 letters mailed to property owners within the notification area. The public comments received include the following topics:

- The Little Gym of Halifax is an important service to families in Halifax and the surrounding area;
- The gym needs extra space for the number of children who are currently attending/who are anticipated to attend as the business grows; and
- There is a need for a larger viewing area for parents.

A public hearing must be held by North West Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact the local residents and property owners; however, the commercial use is presently permitted on the property and the proposal is for an expansion of the use within the existing building.

North West Planning Advisory Committee

On December 8, 2021, the North West Planning Advisory Committee (PAC) considered this application and recommended that this application be approved by North West Community Council. A report from the PAC to Community Council will be provided under separate cover.

DISCUSSION

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

Proposed Development Agreement

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

- Location and size of commercial recreation use,
- Conditions applicable for an addition to the existing building,
- Parking, circulation, and access,
- Landscaping, lighting, and maintenance,
- Signage, and
- Non-substantive amendments, which include the location of the commercial recreation use; and length of time for the completion of the development.

The attached development agreement will permit “The Little Gym of Halifax” as a commercial recreation use, subject to the controls identified above. Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Intent of Plan

The intent of the Beaver Bank, Hammonds Plains and Upper Sackville MPS is to allow commercial recreation uses to develop where it can be demonstrated that the use will not negatively impact the surrounding community by way of traffic generation, noise, and garbage. It is the intention that commercial recreation uses enhance the existing community character rather than detract from it. The subject property

has an existing commercial building. During the public engagement phase of this planning process, members of the community expressed favour toward the proposed expansion based on previous positive experiences with the use in that building. The expansion of the use is internal to the building and therefore the generation of noise and garbage are not anticipated.

Site Characteristics and Context

The subject property is located within the Voyager Lakes neighbourhood in Hammonds Plains. The existing building was constructed in 2009 with the intention of it containing both residential and commercial uses, and it is appropriate for the community context. The surrounding land uses are also commercial and residential, with vacant lots on either side of the subject property. The property is of sufficient size to support the existing building and existing on-site septic system. The existing building was designed for commercial uses and has the capacity to entirely contain all aspects of the operation within the main floor.

Development Controls

Policy P-27 requires controls be placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses. The controls relate to type of use, size, location, and conditions applicable for an addition to the existing building. Where aspects of the development are not regulated within the development agreement, the agreement refers to the MU-1 zoning of the applicable Land Use By-Law. For example, height, open storage, signage, and parking continue to be regulated through the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law.

Through the development agreement, the type of use permitted on the property is limited to commercial recreation uses internal to the existing building and located entirely on the main floor, and any use permitted within the MU-1 Zone. Any future addition shall be limited to 93 metres (1,000 square feet) in floor area, shall not be located within the front yard, and shall meet all other requirements of the MU-1 Zone.

Landscaping

The existing property has grassed landscaping in the front yard, which provides a buffer between the existing building and parking lot, and the road. The development agreement requires that this existing landscaping be maintained. The rear of the lot is currently forested, and the adjacent properties are currently vacant.

Traffic Volume and Circulation

Policy P-27 requires that consideration be given to the potential for traffic generation from the commercial recreation use. The applicant submitted a Traffic Impact Study which addresses any increase in traffic that the expansion may generate. The Traffic Impact Study was reviewed by HRM Development Engineering and Traffic Management staff and was found to be acceptable. No impact on traffic circulation, sighting distances and entrances and exits to the site is anticipated.

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 MPS. The existing use on the property has been well-received by the community to date. The proposed expansion is internal to the existing building, therefore the impacts to traffic, the environment, the height and bulk of the existing building, and to the surrounding residents are minimal. Therefore, staff recommend that the North West Community Council approve both the discharging agreement and the proposed development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2021-2022 operating budget for Planning and Development.

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 are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are anticipated as the proposed expansion is to an existing use which is located internal to an existing commercial building. The proposal utilizes the existing on-site septic system and there are no proposed alterations to the grade, nor are there any nearby watercourses.

ALTERNATIVES

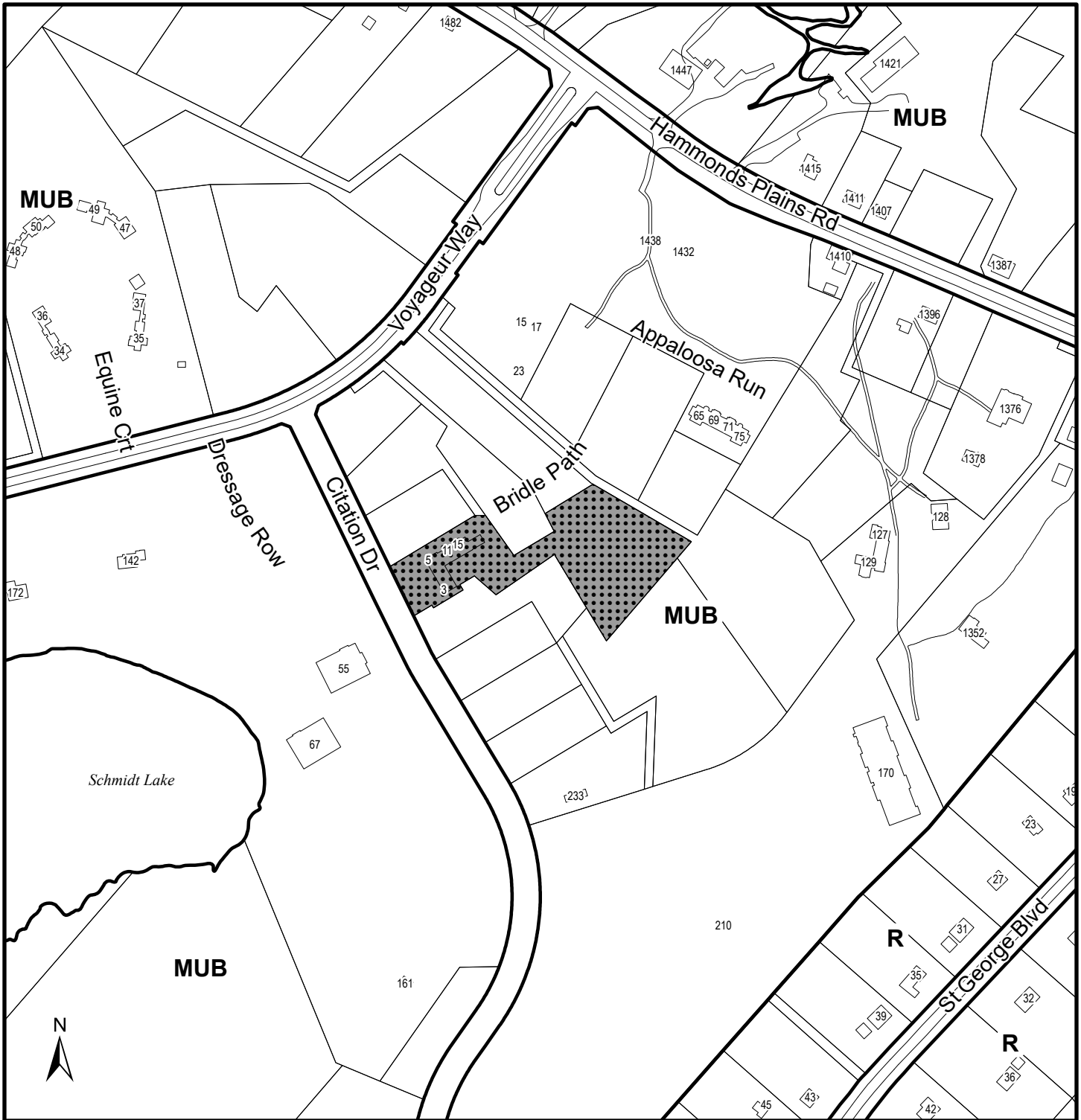
1. North West Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. North West Community Council may choose to refuse the discharge of the existing development agreement and the proposed development agreement, and in doing so, must provide reasons why the proposal 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
Attachment A:	Proposed Development Agreement
Attachment B:	Proposed Discharge Agreement
Attachment C:	Review of Relevant 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: Claire Tusz, Planner II, 902.430.0645



Map 1 - Generalized Future Land Use

3, 5, 11, 15 Bridle Path,
Hammonds Plains

 Subject Property

Designation

MUB Mixed Use B
R Residential

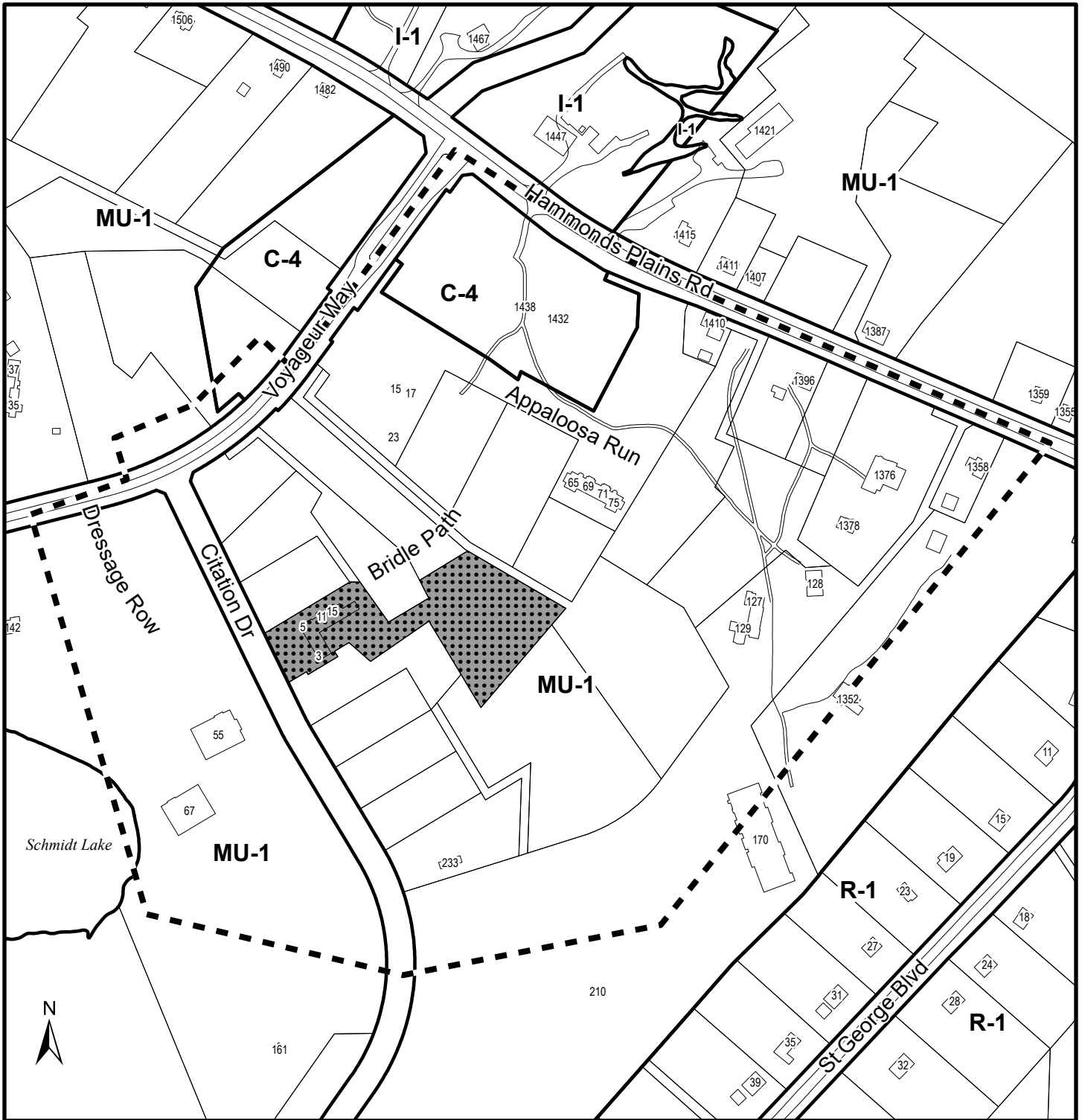
0 40 80 120 m



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.



Beaver Bank, Hammonds Plains and Upper Sackville
Land Use By-Law Area



Map 2 - Zoning and Notification Area

3, 5, 11, 15 Bridle Path,
Hammonds Plains

HALIFAX

-  Subject Property
-  Area of Notification

Zone

- R-1 Single Unit Dwelling
- MU-1 Mixed Use 1
- C-4 Highway Commercial
- I-1 Mixed Industrial



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.

Beaver Bank, Hammonds Plains and Upper Sackville
Land Use By-Law Area

**Attachment A:
Proposed Development Agreement**

THIS AGREEMENT made this day of **[Insert Month]**, 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 5 Bridle Path, Hammonds Plains (PID 41233610) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on March 24, 2011 the North West Community Council approved an application to enter into a Development Agreement to allow a kennel at 5 Bridle Path, which said Development Agreement was registered at the Registry of Deeds in Halifax on May 30, 2011 as Document Number 98403984 (hereinafter called the "Original Agreement");

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

AND WHEREAS the North West Community Council approved the discharge of the Original Agreement at a meeting held on **[Insert - Date]**, referenced as Municipal Case 23834;

AND WHEREAS the Developer has requested that the Municipality enter into a new Development Agreement to allow a commercial recreation use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, and pursuant to Policies P-27 and P-137 of the Beaver Bank, Hammonds Plains, and Upper Sackville Municipal Planning Strategy and Section 3.6 (a) of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law (hereinafter called "this Agreement");

AND WHEREAS the North West Community Council approved this request to enter into a new Development Agreement at a meeting held on **[Insert - Date]**, referenced as Municipal Case 23834;

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 applicable Land Use By-law and the Regional Subdivision By-law, as amended from time to time.
- 1.2.2 Variances to the requirements of the applicable Land Use By-law shall be permitted in accordance with the *Halifax Regional Municipality Charter* on the whole site.

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, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer 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

- 1.6.1 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.

2.2 Definitions Specific to this Agreement

- 2.2.1 The following words used in this Agreement shall be defined as follows:
- 2.2.2 **Landscaping:** means any combination of trees, shrubs, flowers or other vegetative ground cover, decorative stonework, or other hard surfacing material of a different texture than adjacent paving and screening, berming, or similar elements.

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 23834:

Schedule A Legal Description of the Lands(s)

3.2 General Description of Land Use

- 3.2.1 The use(s) of the Lands permitted by this Agreement are the following:
- (a) Commercial recreation uses which are;
 - i) Internal to the building; and
 - ii) Located on the main floor;
 - (b) Commercial uses limited to 186 square metres (2000 square feet); and
 - (c) Any use permitted within the MU-1 (Mixed Use) 1 Zone, subject to the provisions contained within the applicable Land Use By-law.
- 3.2.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the applicable Land Use By-law, as amended from time to time.

3.3 Detailed Provisions for Land Use

3.3.1 Further to Section 3.2.1(a) which allows commercial recreation use(s) internal to the building and located on the main floor, and notwithstanding additions to the building permitted within the MU-1 zone, an addition to the existing building shall be permitted for commercial recreation uses, provided the following conditions are met:

- (a) The addition shall be limited to 93 metres (1,000 square feet) in floor area; and
- (b) The addition shall not be located within the front yard; and
- (c) The addition meets all other provisions of the applicable Land Use By-law.

3.4 Parking, Circulation and Access

3.4.1 The parking requirements shall be in accordance with the applicable Land Use By-Law as amended from time to time and shall be hard surfaced or gravelled.

3.5 Outdoor Lighting

3.5.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.6 Landscaping

3.6.1 Landscaping (as defined in Section 2.2) shall be provided along the streetline to a minimum depth of 4.5 metres (15 feet) and shall exclude areas used for motor vehicle access and egress.

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.

3.8 Signs

3.8.1 The sign requirements shall be accordance with the applicable Land Use By-law as amended from time to time.

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.

4.3 On-Site Water System

4.3.1 The Lands shall be serviced through a privately operated on-site water distribution system.

4.4 On-Site Sanitary System

4.4.1 The Lands shall be serviced through privately owned and operated sewer systems and treatment facilities. The Developer agrees to have prepared by a qualified professional and submitted to the Municipality, the Nova Scotia Environment and Climate Change and any other relevant agency, a design for all private sewer systems.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Private Storm Water Facilities

5.1.1 All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

5.2 Stormwater Management Plans and Erosion and Sedimentation Control Plan

5.2.1 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 have been issued a Grade Alteration Permit in accordance with By-law G-200 Respecting Grade Alteration and Stormwater Management Associated with Land Development, as amended from time to time.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

6.1.1 The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) To allow the commercial recreation use(s) to occur beyond the main floor of the building.
- (b) The granting of an extension to the date of commencement of construction as identified in this Agreement;
- (c) The length of time for the completion of the development as identified in this Agreement;

6.2 Substantive Amendments

6.2.1 Amendments to any matters not identified under Section 6.1 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 Lands shall conform with the provisions of the Land Use By-law.
- 7.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Development Permit for a commercial recreation use.
- 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 6.1.1, 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

- 7.4.1 Upon the completion of the whole development, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.
- 7.4.2 For the purpose of this section, completion of development shall mean the issuance of an Occupancy Permit for a commercial recreation use.
- 7.4.3 Upon the completion of the whole development or complete phases of the development, or at such time that policies applicable to the lands have been amended, 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.
- 7.4.4 In the event that development on the Lands has not been completed within five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law.

7.5 Discharge of Agreement

- 7.5.1 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement

PART 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 thirty (30) days written notice of the failure or default, then in each such case:
- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any 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

**Attachment B:
Proposed Discharging Agreement**

THIS DISCHARGING AGREEMENT made this day of **[Insert Month]**, 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 5 Bridle Path, Hammonds Plains (PID 41233610) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on March 24, 2011 the North West Community Council approved an application to enter into a Development Agreement to allow a kennel at 5 Bridle Path, which said Development Agreement was registered at the Registry of Deeds in Halifax on May 30, 2011 as Document Number 98403984 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested that the Original 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 Case 23834;

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

1. The Original 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 Beaver Bank, Hammonds Plains and Upper Sackville 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: _____

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 C:
Review of Relevant MPS Policies**

Beaver Bank, Hammonds Plains, Upper Sackville Municipal Planning Strategy

Policy Provision	Staff Comment
<p><i>P-27 Within the Mixed Use A, B and C Designations, it shall be the intention of Council through the land use by-law to provide for the continued use of commercial recreation uses to the extent they presently exist (Policy P-9 and P-12). Further, Council may consider any proposed expansion of existing commercial recreation uses as well as the development of new commercial recreation uses by development agreement and according to the provisions of the Municipal Government Act. In considering any new or expanded commercial recreation use, Council shall have regard to the following:</i></p>	
<p><i>(a) that the site exhibits characteristics which make the location particularly suitable for the proposed use;</i></p>	<p>The subject property is zoned Mixed Use which allows for commercial uses up to a maximum of 2000 square feet of floor area. Both the building and the use are existing, and the building is of sufficient size to support an internal expansion. A development permit was issued in the spring of 2021 to allow occupancy of “The Little Gym of Halifax”, up to 2000 square feet of floor area. The development agreement allows the consideration of the expansion of this use on the property and is a suitable location for this use and utilizes an existing commercial building.</p>
<p><i>(b) the potential for adversely affecting adjacent residential and community facility development by virtue of noise, visual intrusion, traffic generation and littering;</i></p>	<p>At present, the adjacent properties are vacant. The proposal is for the use to be internal to the building, therefore it is anticipated that there will not be any adverse effects to adjacent residential and community facility development in the future. The applicant has submitted a Traffic Impact Study which addresses any increase in traffic that the expansion may generate. The Traffic Impact Study was reviewed by HRM Development Engineering and Traffic</p>

	Management and it was found to be acceptable.
<i>(c) the provision of landscaping or buffering from adjacent development and the public road to which it has access in order to reduce the impact of the proposed development;</i>	At present, the adjacent properties are vacant. However, the existing property has grassed landscaping in the front yard, which provides a buffer between the existing building, parking lot and the road. There is also grassed landscaping along the right side yard. The rear of the lot is currently forested. This landscaping is maintained through the development agreement.
<i>(d) the availability of a site and site design which will entirely contain all aspects of the operation within the boundary of the proposed site;</i>	This site is already developed with an existing building. The proposal is for an expansion to a use which is internal to the existing building.
<i>(e) the impact on traffic circulation and in particular sighting distances and entrances and exits to the site.</i>	The applicant has submitted a Traffic Impact Study which addresses any increase in traffic that the expansion may generate. The Traffic Impact Study was reviewed by HRM Development Engineering and Traffic Management and it was found to be acceptable. No impact on traffic circulation is anticipated; in particular, no impact is anticipated to sighting distances and entrances and exits to the site.
<i>(f) the layout and design of the facility;</i>	The layout and design of the facility are existing and conducive to the expansion of the proposed commercial recreation use.
<i>(g) general maintenance of the facility;</i>	The use is existing, and the general maintenance of the facility will continue to be ongoing.
<i>(h) where any sewage treatment plant is proposed, the location and level of treatment of the sewage treatment plant;</i>	The property is serviced with an on-site septic system which has the capacity to support the entire building, including the expansion to the commercial recreation use.
<i>(i) that the appearance of all buildings and structures related to the use shall be compatible with the surrounding area in terms of scale, exterior finish and signage;</i>	The building is three stories with a combination of stone masonry and vinyl exterior cladding. The building was approved in 2009 and is compatible with the surrounding neighbourhood in terms of scale, exterior finish and signage.

<p><i>(j) an assessment of environmental concerns related to the proposed development and in particular, potential effects on watercourses;</i></p>	<p>There are no watercourses located nearby and the internal expansion of the use has a low impact on the surrounding environment.</p>
<p><i>(k) the requirement for any applicable provincial approvals; and</i></p>	<p>N/A</p>
<p><i>(l) hours of operation; and</i></p>	<p>The hours of operation are typically regulated for uses that are external to the building and/or may generate noise, light, and traffic. This use is internal to the building and therefore those negative impacts are not anticipated and it is not necessary to regulate the hours of operation through the development agreement.</p>
<p><i>(m) the provisions of Policy P-137.</i></p>	<p>See below.</p>
<p><i>P-137 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters:</i></p>	
<p><i>(a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;</i></p>	<p>The subject site has an existing use which meets the requirements of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law. A development agreement is required to allow for the internal expansion of the use from 2000 square feet to 4000 square feet. Policy P-27 allows for the consideration of a commercial recreation use in the Mixed Use designation through the development agreement process. The criteria listed in P-27 (above) exist to reduce the impacts that commercial recreation uses have on the surrounding residential environment. The surrounding properties are also designated Mixed Use and eligible for the same development agreement request.</p>
<p><i>(b) that the proposal is not premature or inappropriate by reason of:</i></p>	
<p><i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i></p>	<p>The proposed development does not impose any costs to the Municipality.</p>

<i>(ii) the adequacy of central or on-site sewerage and water services;</i>	The property is serviced with an on-site septic system which has the capacity to service the entire building, including the expansion of the commercial recreation use.
<i>(iii) the adequacy or proximity of school, recreation or other community facilities;</i>	The proposal does not pose any significant demand for surrounding community facilities and schools.
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	See Policy P-27 (e).
<i>(v) the potential for damage to or for destruction of designated historic buildings and sites</i>	The subject property and adjacent properties are not designated historic buildings or sites.
<i>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	
<i>(i) type of use;</i>	The use exists and the internal expansion of the use is not expected to create any conflict with adjacent or nearby land uses.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	The use is contained within an existing building which satisfies the requirements of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law.
<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	See Policy P-27 (e). There are an adequate number of parking spaces to meet the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law parking requirements and the expansion of the commercial recreation use.
<i>(iv) open storage;</i>	No outdoor storage is proposed.
<i>(v) signs; and</i>	The property owner has obtained the necessary permits for signage.
<i>(vi) any other relevant matter of planning concern.</i>	No other concerns are identified at this time.

<p><i>(d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</i></p>	<p>There are no proposed changes to lot grading. The building is existing.</p>
<p><i>(e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy P-81", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i></p>	<p>N/A</p>