



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

Item No. 15.1.4
Halifax Regional Council
May 9, 2023

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed

SUBMITTED BY: _____
Cathie O'Toole, Chief Administrative Officer

DATE: April 27, 2023

SUBJECT: **Case 24276: Incentive or Bonus Zoning Agreement**
1266 Barrington Street, Halifax (Waverley Inn)

ORIGIN

On October 5, 2022, the Design Review Committee approved the qualitative elements of the substantive site plan application for a ten-storey addition to the Waverley Inn at 1266 Barrington Street. The Committee recommended that the Development Officer accept the preservation or enhancement of the heritage resource.

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter:*
 - Section 245A(1): Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
 - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.

- Section 12(7), Downtown Halifax Land Use By-law (LUB) (Attachment 1)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt and authorize the Mayor and Clerk to enter into and execute the Incentive or Bonus Zoning Agreement, which shall substantially be of the same form as set out in Attachment 2 of this report, for the ten-storey, mixed-use development at 1266 Barrington Street, Halifax.

BACKGROUND

ZZap Consulting Inc., on behalf of Sterling Hotel Limited, has proposed a ten-storey addition to the Waverley Inn at 1266 Barrington Street, Halifax. On October 5, 2022, HRM's Design Review Committee (DRC) approved an application for substantive site plan approval.

The following highlights the major elements of the proposal:

- 10-storey (approximately 28 metre-tall) addition to the existing inn;
- Approximately 104 guest rooms in addition to the existing 14 rooms;
- Approximately 32 stackable underground parking spaces; and
- Rehabilitation of the existing inn, a heritage resource.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum floor area ratios (FAR) may only be attained when a developer provides a public benefit. Where a public benefit is not provided, the developer may only build to a lower FAR. This approach is often referred to as "density bonusing" but is enabled under the *Halifax Regional Municipality Charter* as "bonus zoning." A list of eligible public benefits is found in subsection 12(7) of the LUB (Attachment 1).

The applicant is requesting to use the costs associated with restoring the contributing heritage resource as their public benefit. The proposal includes an additional requested 2,916 square metres of floor area resulting in a total required public benefit of \$150,465.24. This proposed public benefit category is allowed under the LUB.

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee (DRC) is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC's advice is provided in the form of a recommendation on the public benefit category for the development at the time the Committee makes its decision on the substantive site plan application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

At the October 5, 2022, meeting of the DRC, it was recommended that the public benefit be preservation or enhancement of the heritage resource. The *Halifax Regional Municipality Charter* requires Council approval of the incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council's approval of the agreement.

DISCUSSION

DRC Approval

The LUB requires projects that exceed the maximum pre-bonus FAR limit provide a public benefit as part of the project. The developer proposes to use the costs associated with restoring the contributing heritage resource as their public benefit contribution. The DRC recommended that the Development Officer accept the public benefit as proposed and specifically, their motion in this regard is as follows:

“MOVED BY Nathan Guy, seconded by Stanley North,

That the Design Review Committee:

Recommend that the Development Officer accept the costs associated with restoring the contributing heritage resource as the post-bonus FAR public benefit for the development.

MOTION PUT AND PASSED”

Public Benefit Value

The extent of the required public benefit is determined by a formula set out in the Downtown Halifax LUB. The by-law determines the extent of the required public benefit by assigning a value to any proposed floor area beyond the maximum pre-bonus floor area ratio. Projects that exceed the maximum pre-bonus floor area ratio (FAR) are required to contribute a public benefit with a value that is the equivalent to or greater than the minimum value set out in the By-law.

The LUB establishes a calculation of the required benefit specific to Precinct 2, Old South Suburb Heritage Conservation District, as set out in section 12(6) of the Downtown Halifax LUB. The applicant is requesting an additional 2,916 square metres of floor area, which results in a total public benefit value of \$150,465. The proposal from the developer is to exceed this amount and to provide approximately \$1,125,000 (Schedule B) in value. The proposed work includes the rehabilitation of various indoor and outdoor elements of the Inn and repairing various architectural details.

As the proposed public benefit exceeds the minimum required benefit, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment “2” of this report for the mixed-use development located at 1266 Barrington Street, Halifax.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the proposed 2023-2024 operating budget for Planning and Development.

RISK CONSIDERATIONS

There are no risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVE

Regional Council may defeat the staff motion recommending the Incentive or Bonus Zoning Agreement substantially of the same form as set out in Attachment 2 of this report. This would necessitate further submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

Attachment 1. Section 12 (7) of the LUB Public Benefit Categories

Attachment 2. Incentive or Bonus Zoning Agreement

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: Alex Wilson, Planner I, Planning & Development, 902.719.9248
Stephanie Norman, Principal Planner/Development Officer, Planning & Development,
902.719.9248

Attachment 1

Section 12(7) of the LUB - Public Benefit Categories

- (7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the preservation or enhancement of the heritage resource;
 - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
 - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
 - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
 - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
 - (f) the provision of public art;
 - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
 - (h) investment in public transit or active transportation infrastructure;
 - (i) the provision of exemplary sustainable building practices.
 - (j) the undergrounding of overhead electrical and communication distribution systems. (RC-Dec 13/11;E-Mar 10/12)**

THIS AGREEMENT made this ____ day of _____, A.D., 2023.

BETWEEN:

STERLING HOTEL LIMITED, a body corporate,

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a body corporate,

(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Developer is the owner of the Property and has proposed a Development related that exceeds the maximum pre-bonus floor area ratio identified on Map 12 of the *Downtown Halifax Land Use By-law*;

AND WHEREAS Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed above the Pre-Bonus Floor Area Ratio;

AND WHEREAS it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

AND WHEREAS the Developer has selected to provide the preservation or enhancement of the heritage resource on site to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS on October 5, 2022 the Design Review Committee approved the Development;

AND WHEREAS on October 5, 2022 the Design Review Committee recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the preservation or enhancement of the heritage resource on site as the Public Benefit for the Development;

WITNESS THAT in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

Definitions

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means a 10-storey hotel addition to the existing building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1266 Barrington Street, Halifax, Nova Scotia, known as PID 00092924 and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide the preservation or enhancement of the heritage resource on site, as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule B.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule B in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

Term of Agreement

4. This Agreement is in effect until discharged by the Council.

Reporting of Public Benefit

5. Prior to the issuance of the Occupancy Permit the Developer agrees to provide a report, to a Development Officer confirming that the Public Benefit has been completed.

Construction of Public Benefit

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with Schedule B;
- (iv) as the preservation or enhancement of the heritage resource; and
- (v) in compliance with all Applicable Laws;

(b) to complete construction of the Public Benefit by the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

Restoration of Public Benefit During The Term of the Agreement

7. If, at any time during the term of this Agreement, :

- (a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or
- (b) the Development Officer determines that any repairs or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

Release and Indemnity

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or

performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

10. 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 Property.

Applicability of Laws

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. 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 Property or any statute or regulation of the Provincial or 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 Property.

Schedules

13. The following Schedules shall form part of this Agreement:

- Schedule “A” - Legal Description of the Property;
- Schedule “B” - Post Bonus Cost Estimates

Amendments

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

Conflict

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. 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.

Provisions Severable

17. 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.

Registration and Subsequent Owners

18. 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.

19. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

Discharge of Agreement

21. If the Developer fails to complete the Development after **three (3)** 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.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

Breach of Agreement and Failure to Comply

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer;
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the

Municipality has given the Developer thirty (30) calendar 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 Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and
- (c) 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.

Time

25. Time shall be the essence in this Agreement.

THE REST OF THIS PAGE IS BLANK.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in
the presence of

Per: _____

Name:

Office held:

Witness

Per: _____

Name:

Office held:

SEALED, DELIVERED AND

**HALIFAX REGIONAL
MUNICIPALITY**

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

Per: _____

Mayor

Witness

Per: _____

Clerk

Witness

SCHEDULE A

ALL that certain lot of land situate, lying and being at Halifax, County of Halifax, Province of Nova Scotia, and being shown as Lot 3W on a plan recorded at the Registry of Deeds at Halifax on August 13, 2003 as Number 35894.

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HALIFAX COUNTY

Registration Year: 2003

Plan or Document Number: 35894

SCHEDULE B – Post Bonus Cost Estimates



Grafton Developments Inc.
1646 Barrington St. Suite 800
Halifax, NS, B3J 2A3
Tel: 425-1998

Quote

March 8, 2023

To: Sterling Hotel limited
1266 Barrington st. Halifax, NS

We are pleased to offer the following quote for the restoration of 1266 Barrington st

Scope of Work

- Rehabilitating the breakfast nook on the southern wall;
- Reinstating an ornamental rooftop structure with a standing-seam copper roof;
- Restoring paired columns on both sides of the decorative front entryway;
- Reinstating standing-seam copper roofs on the east-facing bay windows;
- Repairing or replacing wood windows (within existing openings); and
- Repairing or replacing architectural detailing, such as brackets, modillions, and projecting lintels.

Total: \$1,125,000.00 + HST

The quote above is subject to change depending on price increases.