



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

Item No. 10.1.1
Halifax and West Community Council
June 13, 2023
July 25, 2023

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: - Original Signed -
For Brian MacDonald, Chair, Heritage Advisory Committee

DATE: May 24, 2023

SUBJECT: **Case PLANAPP-2023-00034 - Substantive amendment to a development agreement, 2720 Gottingen Street, Halifax**

ORIGIN

May 24, 2023 meeting of Heritage Advisory Committee, Item 9.1.2.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

The Heritage Advisory Committee recommends that Halifax and West Community Council:

1. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment A of the staff report dated May 17, 2023, to allow the extension of a restaurant use into the rear yard of the existing building located at 2720 Gottingen Street, Halifax, and schedule a public hearing;
2. Approve the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of the staff report; and
3. Require the agreement be signed by the property owner within 120 days or longer if warranted, 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

Heritage Advisory Committee received a staff recommendation report dated May 17, 2023 to consider the amendment of the existing development agreement to allow for the extension of the restaurant use onto an exterior patio at the rear of heritage building located at 2720 Gottingen Street, Halifax.

For further information refer to the attached staff report dated May 17, 2023.

DISCUSSION

Heritage Advisory Committee considered the staff report dated May 17, 2023 and approved the recommendation to Halifax and West Community Council as outlined in this report.

FINANCIAL IMPLICATIONS

Financial implications are outlined in the attached staff report dated May 17, 2023.

RISK CONSIDERATION

Risk consideration is outlined in the attached staff report dated May 17, 2023.

COMMUNITY ENGAGEMENT

The Heritage Advisory Committee is comprised of nine citizen members and two Councillors. Meetings are live webcast on Halifax.ca. The agenda, reports, video, and minutes of the Committee are posted on Halifax.ca.

For further information on Community Engagement refer to the attached staff report dated May 17, 2023.

ENVIRONMENTAL IMPLICATIONS

Environmental implications are outlined in the staff report dated May 17, 2023.

ALTERNATIVES

Alternatives are outlined in the attached staff report dated May 17, 2023.

ATTACHMENTS

Attachment 1 – Staff recommendation report dated May 17, 2023.

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: Dorothy Maponga, Legislative Assistant, Municipal Clerk's Office 902.478.2408



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

Item No. 9.1.2
Heritage Advisory Committee
May 24, 2023

TO: Chair and Members of Heritage Advisory Committee

-ORIGINAL SIGNED-

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

DATE: May 17, 2023

SUBJECT: **Case PLANAPP-2023-00034 – Substantive amendment to a development agreement, 2720 Gottingen Street, Halifax**

ORIGIN

Application by Patrick Kane and Myles Baldwin for a substantive amendment to a development agreement at 2720 Gottingen Street, Halifax, to allow for exterior restaurant uses on a patio in the rear yard of the Narrows Public House.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that the Heritage Advisory Committee recommend that Halifax and West Community Council:

1. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment A of this report, to allow the extension of a restaurant use into the rear yard of the existing building located at 2720 Gottingen Street, Halifax, and schedule a public hearing;
2. Approve the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the agreement be signed by the property owner within 120 days or longer if warranted, 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

Patrick Kane and Myles Baldwin, registered owners of 2720 Gottingen Street, have applied for a substantive amendment to an existing development agreement on their property to extend the restaurant use to an exterior patio at the rear of the heritage building (Map 1). The restaurant use is currently limited to the interior main level of the building, under the development agreement.

The property is listed on the municipal heritage registry and, as such, the property owners have the ability under Policy CHR-7 of the Regional Centre Secondary Municipal Planning Strategy to apply for a substantive amendment to an existing development agreement with the municipality to extend the commercial use on the property provided the heritage value of the property is not diminished, and any impact on adjacent uses is minimized.

The property owners applied for the existing development agreement under Policy 6.8 of the previous Halifax Municipal Planning Strategy (MPS), which was the preceding version of Policy CHR-7. This development agreement allows for a restaurant use on the main floor, within the existing heritage building. It also allows for up to three residential units on the second and third floors. It requires the conservation of the heritage value of the property and parking and landscaping that are sensitive to the surrounding residential context of the neighbourhood. The restaurant has been operating since February 2022.

Subject Site	2720 Gottingen Street (PID 00166850)
Location	North End Halifax
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	Established Residential of the Regional Centre Secondary Planning Strategy
Zoning (Map 2)	Established Residential (ER-1) Zone
Size of Site	840s/m (9,000s/ft)
Street Frontage	30m (60ft)
Current Land Use(s)	Mixed Use Commercial (Restaurant) and Multi Unit Dwelling
Surrounding Use(s)	Single, duplex and multi-unit residential to the north, west and south; Military uses to the east

Proposal Details

The applicant proposes to amend the existing development agreement to allow for the extension of the restaurant use onto an exterior patio at the rear of the heritage building located at 2720 Gottingen Street, Halifax.

The major aspects of the proposal are as follows:

- Extending the existing restaurant use onto a patio in the rear yard;
- Limiting the hours of restaurant operation on the rear patio as follows:
Rear Patio Hours of Operation
Sunday-Thursday: 11 a.m. - 9:30 p.m.¹
Friday & Saturday: 11 a.m. - 10:00 p.m.²
- Changing the off-street parking requirements to require a total of four parking spaces³ and one bicycle rack in the rear yard;

Heritage

The subject property is listed on the municipal heritage registry. It is protected under the *Nova Scotia*

¹ DA currently allows operation until 11 p.m., Sunday to Thursday, and these hours of operation will continue within the main building.

² DA currently allows operation until 12 p.m., Friday and Saturday, and these hours of operation will continue within the main building.

³ DA currently requires three commercial parking spaces and one parking space for each residential unit.

Heritage Property Act. The building itself has been restored by the current owners. There are no changes to the exterior of the building proposed through this application that would negatively affect the heritage value of the property. The development agreement will continue to require ongoing maintenance to preserve the integrity and heritage value of the property.

Enabling Policy and LUB Context

This proposal is being considered under Policy CHR-7 of the Regional Centre Secondary Municipal Planning Strategy (SMPS). This policy allows owners of registered heritage properties to apply for a development agreement to permit a use not allowed by the underlying zone. In this case, the policy is used to amend an existing development agreement to extend a restaurant use onto an exterior patio, within a residential neighbourhood. Policy CHR-7 is the updated version of the preceding Policy 6.8 of the former Halifax SMPS that was in place when the original agreement was adopted. The new policy provides clearer direction on preserving heritage value and considering impacts on surrounding uses.

The subject property is situated within the Established Residential Designation of the Regional Centre Secondary Municipal Planning Strategy. This designation is intended to retain the scale of existing low-density residential neighbourhoods while providing opportunities for additional housing units. The designation permits local commercial uses by development agreement to provide opportunities for small-scale businesses in residential areas.

The subject property is currently zoned Established Residential (ER-1) which seeks to retain the character and scale of existing neighbourhoods. The ER-1 Zone limits permitted uses to single-unit dwellings, secondary suites, backyard suites, small shared housing, bed and breakfast uses, home occupations, and home office uses.

COMMUNITY ENGAGEMENT

The community engagement process used for this case 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 property, and notices mailed to 97 households within the notification area (Map 2). Staff received correspondence from a total of fourteen (14) members of the public. Comments range from serious objections to complete support for the outdoor commercial use. Generally, objections derive from neighbours nearer to the subject property.

The public comments received include the following topics:

- Concerns:
 - increased noise;
 - obnoxious behaviour of customers;
 - odours from the commercial kitchen; and
 - reduced privacy and property values for adjacent properties.
- Support:
 - expansion of the restaurant is seen as an asset to the neighbourhood.

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 as shown on Map 2 will be notified of the hearing by regular mail.

DISCUSSION

Staff have reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Regional Centre Plan (SMPS). Attachment B provides an evaluation of the proposed amendments to the development agreement in relation to the relevant SMPS policies.

Proposed Amending Development Agreement

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

- The proposed uses on the property, including the restaurant use at ground level in the rear yard of the property;
- The hours of operation of the restaurant in the rear yard; and
- Reduced off-street parking requirements.

Of the matters addressed by the proposed amending development agreement to satisfy the SMPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Consistency with Relevant Policies

Heritage Conservation

Policy CHR-7 of the Regional Centre SMPS allows for the consideration of development or change in use not otherwise permitted by the Land Use By-law to support the integrity, conservation and adaptive re-use of registered heritage buildings, so long as certain criteria are considered and addressed (see Attachment B). A key criteria of this policy is for the development to maintain the heritage value of any registered heritage property of which it is part. The existing building is being retained and restored in its original form. Since the original development agreement was adopted in 2018, all vinyl siding was removed, rotten wood removed, and the exterior of the building was scraped, primed and painted. The roof and eaves troughs were replaced. The foundation walls and chimneys were repointed. The entire landscape was regraded and the dry-stacked stone retaining wall was reinstated. There were many more costs associated with rehabilitating the building for a commercial use and there are more costs associated with the ongoing maintenance of the property.

Land Uses Impacts

Another key criteria of Policy CHR-7 is that any development minimizes the impact on adjacent uses, particularly residential uses. The amending development agreement removes the special definition for restaurant in the development agreement where Restaurant is defined as a “building or part of a building wherein food is prepared and offered for sale to the public primarily for consumption within the building and may also be licensed to serve alcoholic beverages under the *Nova Scotia Liquor Control Act*.”

The proposed amending agreement brings the development into conformity with the new Regional Centre LUB by replacing the special definition with the definition for restaurant use⁴ in the Regional Centre LUB which would permit the restaurant use to extend into the rear yard patio. The amending development agreement limits the hours of operation of the restaurant on the patio (outside of the building) to between the hours of 11:00am and 9:30pm from Sunday to Thursday and between the hours of 11:00am and 10:00pm on Friday and Saturday. The amending development agreement will continue to place requirements on fencing, outdoor lighting, landscaping, and vegetative buffering. It will require the planting of a treed buffer to the rear and south side of the patio.

Development Abutting Registered Heritage Properties

Policy CH-16 of the Regional Municipal Planning Strategy sets out provisions for developments abutting

⁴ In the RC LUB, Restaurant Use is defined as a premises, excluding a catering use, whose primary purpose is to prepare, serve, and sell food and non-alcoholic beverages for consumption on or off the premises. A restaurant use may be licensed to serve alcoholic beverages, but this shall be incidental to the preparation, serving, and selling of food.

registered heritage properties. In this case, the neighbouring property (2730 Gottingen Street) is a municipally registered heritage property, as shown on Map 1. As the subject property is also a registered heritage property, many of the ways of conserving its heritage value also result in meeting the provisions of Policy CH-16, such as visual screening of parking areas and equipment and conforming to the *Standards and Guidelines for the Conservation of Historic Places in Canada*. Since the proposal does not consider the construction of new buildings or additions to the existing structure, the objectives of Policy CH-16 are being met. Landscaped open space in front of the building will be preserved and improved by relocating the parking area to the rear yard. There will be loss of open space in the rear yard but this space is not visible from the street. Surface parking will be relocated from the front yard to the rear yard and reduced to four parking spots in total to improve compatibility with the registered heritage buildings (see Attachment B).

Policy Criteria for Discretionary Approvals

Policy IM-7, under Regional Centre SMPS Section 9.5, Discretionary Approvals, seeks to ensure that a proposal is consistent with the vision, Core Concepts, urban design goals, and all applicable objectives and policies set out in the Regional Plan and in the Regional Centre SMPS. The subject property is located within the Established Residential Designation, as shown on Map 1. An objective of the Established Residential Designation is to support the retention and rehabilitation of the existing housing stock while creating opportunities for new housing units. Another objective of this Designation is to support complete communities and opportunities for home occupations and local commercial uses.

The proposed development supports the retention and rehabilitation of an existing residential building by allowing the creation of three additional residential units. It supports the objective of complete communities and opportunities for local commercial uses in the form of a restaurant. The development regulations in the proposed amending development agreement will adequately mitigate potential conflict between the proposed development and nearby land uses. Uses accessory to the restaurant such as washrooms, office, storage, and commercial kitchen shall be confined to the interior of the main building. Storage, accessory to the restaurant use, shall also be confined within an accessory structure in the rear yard.

Policy E-5 of the Regional Centre SMPS allows for the consideration of local commercial uses not exceeding 200 square metres in the Established Residential Designation. The total seating and dining area for the restaurant on the subject property will be approximately 160 square metres (including the patio space), and it will not exceed 200 square metres. There is a commercial use to the north on the corner lot on the same block as the subject property.

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 Regional Centre SMPS. The main purpose of Policy CHR-7 is to incentivize the retention and restoration of heritage properties through additional land use flexibility. In this case, the property owner has agreed to measures that will limit the potential impacts of the development on neighbouring properties and provides a public benefit in the continued preservation and rehabilitation of the registered municipal heritage building. Therefore, staff recommend that the Heritage Advisory Committee recommend that Halifax and West Community Council approve the proposed amending development agreement as contained in Attachment A.

FINANCIAL IMPLICATIONS

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this proposed amending development agreement. The administration of the proposed development agreement can be carried out within the approved 2023/2024 operating budget under Cost Centre C340 – Heritage and Planning Information Services.

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 have been identified.

ALTERNATIVES

1. The Heritage Advisory Committee may recommend that the Halifax and West Community Council 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*.
2. The Heritage Advisory Committee may recommend that Halifax and West Community Council 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 amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

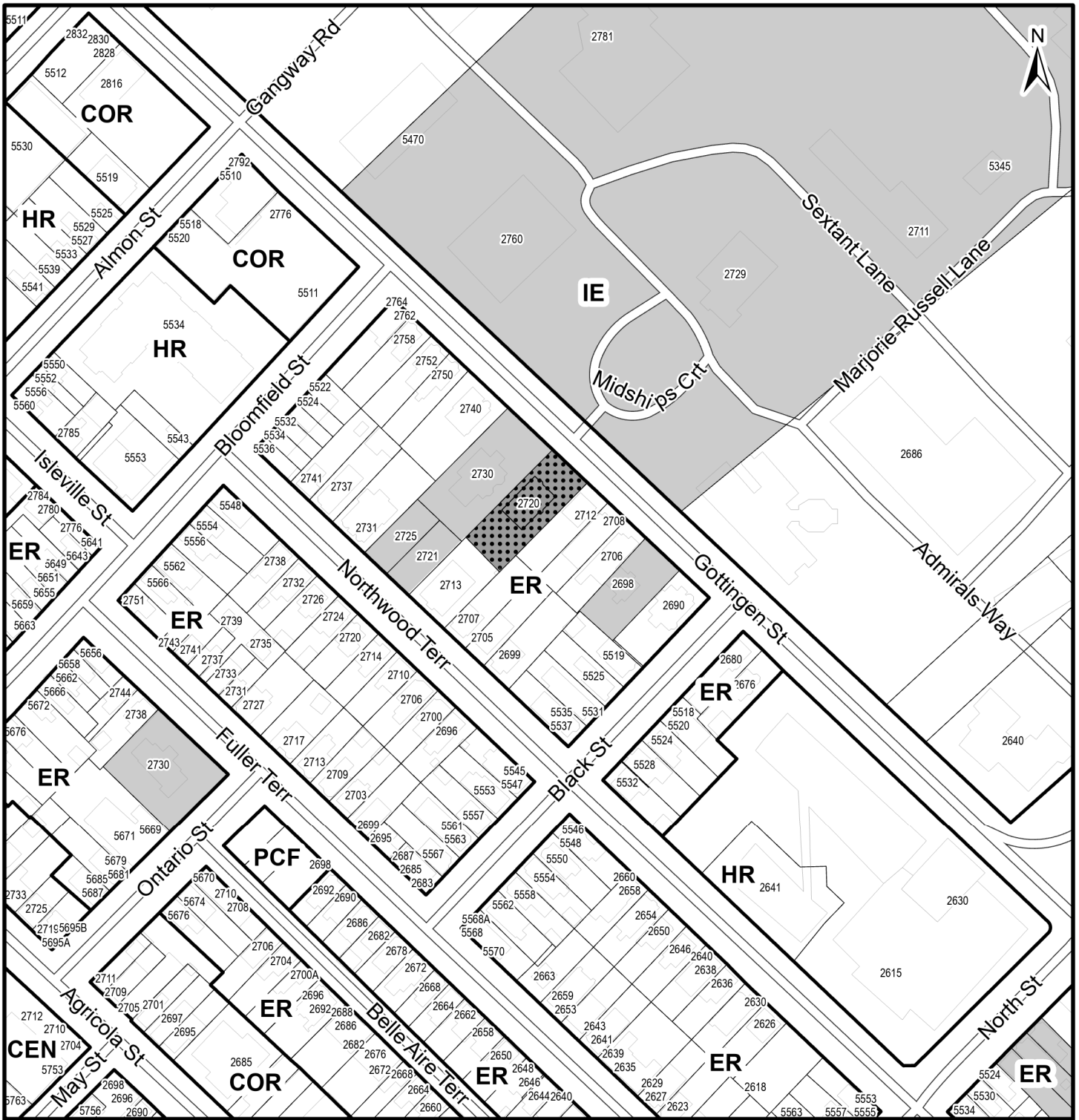
ATTACHMENTS

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

Attachment A: Proposed Amending Development Agreement
Attachment B: Regional MPS and Regional Centre SMPS Policy Review

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: Seamus McGreal, Planner III, Planning and Development, 902.717.1568





Map 1 - Generalized Future Land Use

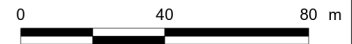
2720 Gottingen Street
Halifax

HALIFAX

Designation

-  Subject Property
-  Registered Heritage Properties

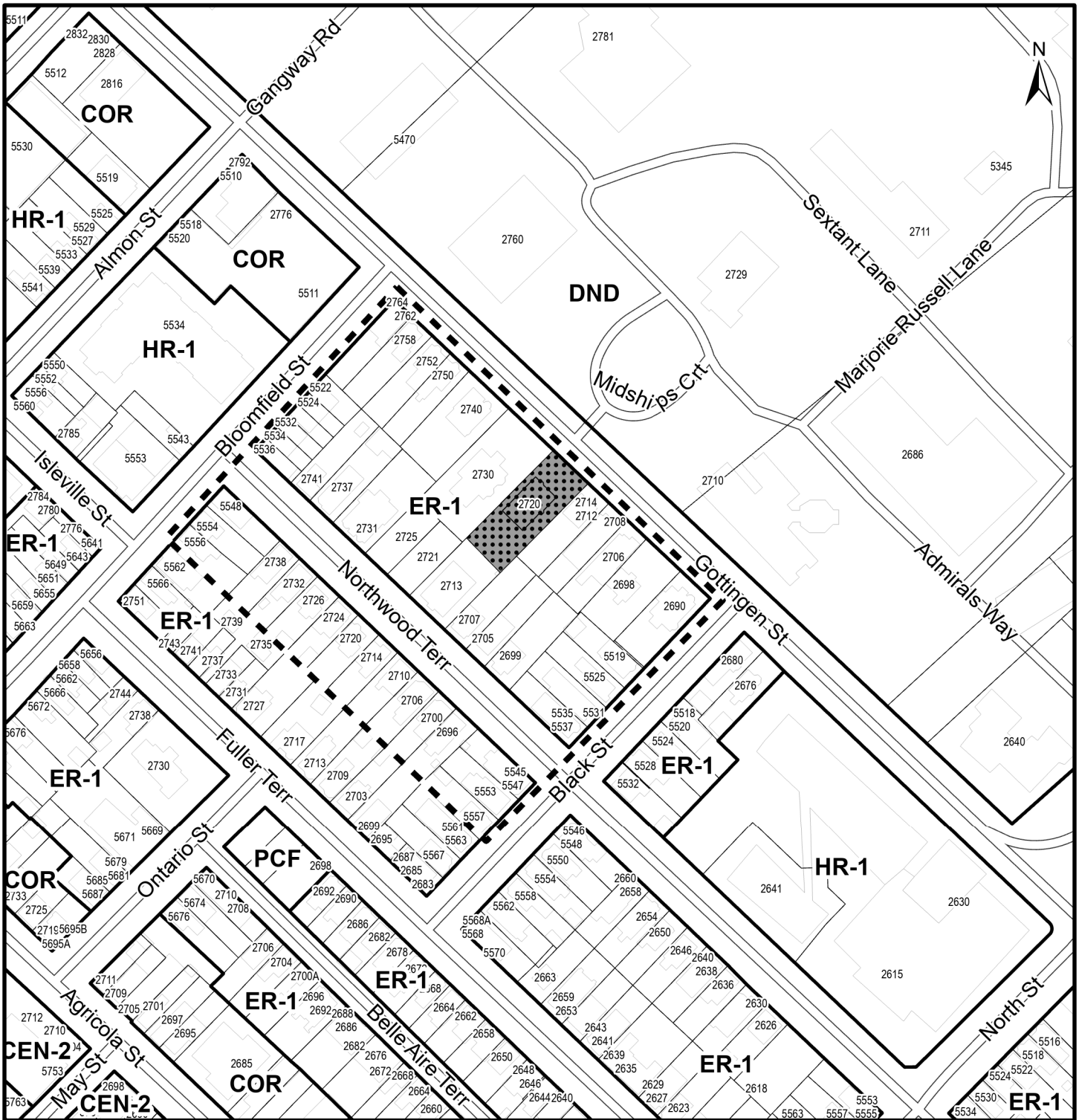
- CEN Centre
- COR Corridor
- ER Established Residential
- HR Higher-Order Residential
- IE Institutional Employment
- PCF Parks and Community Facilities



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.

Regional Centre
Land Use By-Law Area





Map 2 - Zoning and Notification Area

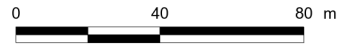
2720 Gottingen Street
Halifax

HALIFAX

Zone

-  Subject Property
-  Area of Notification

- CEN-2 Centre 2
- COR Corridor
- DND Department of National Defense
- ER-1 Established Residential 1
- HR-1 Higher-Order Residential 1
- PCF Parks and Community Facilities



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.

Regional Centre
Land Use By-Law Area

**Attachment A
Amending Development Agreement**

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

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality
in the Province of Nova Scotia **[or other Province]**, (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 are the registered owners of certain lands located at 2720 Gottingen Street, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Lands have been registered as a municipal heritage property pursuant to the provisions of the Municipality's Heritage Property By law (By-law H-200) as amended from time to time;

AND WHEREAS on June 12, 2018, Halifax and West Community Council approved an application to enter into a Development Agreement to allow for a restaurant and residential dwelling units (municipal case 20923) on the Lands, and which said Development Agreement was registered at the Land Registration Office in Halifax on December 20, 2018, as Document 113777057 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested amendments to the Original Agreement to allow for an outdoor restaurant use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies CHR-7 and IM-7 of the Regional Centre Secondary Municipal Planning Strategy;

AND WHEREAS the Halifax and West Community Council of the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as municipal case 2003-00034;

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 1.2 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold, as follows:
 - 1.2 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 for ~~Halifax Peninsula~~ and the Regional Subdivision By-law, as may be amended from time to time.
4. Section 2.2 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold, as follows:

2.2 Definitions Specific to this Agreement

The following words used in this Agreement shall be defined as follows:

~~“Restaurant” means a building or part of a building wherein food is prepared and offered for sale to the public primarily for consumption within the building and may also be licensed to serve alcoholic beverages under the Nova Scotia Liquor Control Act.~~

Restaurant Use means a premises, excluding a catering use, whose primary purpose is to prepare, serve, and sell food and non-alcoholic beverages for consumption on or off the premises. A restaurant use may be licensed to serve alcoholic beverages, but this shall be incidental to the preparation, serving, and selling of food.

5. Section 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:

3.1 Schedules

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 case numbers~~ **20923 and 2023-00034:**

List all applicable Schedules:

Schedule A Legal Description of the Lands(~~s~~)

~~Schedule B Site Plan~~

Schedule B-1 Site Plan

Schedule C-1 Basement Floor Plan

Schedule C-2 Main Floor Plan
Schedule C-3 Second Floor Plan
Schedule C-4 Attic Floor Plan

6. The Original Agreement shall be amended by deleting the following Schedule:

Schedule B Site Plan

And inserting the following Schedule:

Schedule B-1 Site Plan (attached)

7. The Original Agreement shall be amended by deleting all text references to Schedule B and replacing them with the respective reference to Schedule B-1.
8. Section 3.3 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in **bold**, as follows:

3.3 General Description of Land Use

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

- (a) A ~~R~~restaurant **use situated on the main floor of the building; and**
- (b) Uses accessory to the restaurant **use within the basement and second floor of the building; and**
- (c) Up to three (3) residential dwelling units; or
- (d) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the **applicable** Land Use By-law ~~for Halifax Peninsula~~ as amended from time to time.

3.3.2 The Development Officer may permit **an accessory structure or** 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 ~~Halifax Peninsula~~ **applicable** Land Use Bylaw as amended from time to time.

9. Section 3.4.6 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in **bold**, as follows:

Signage

3.4.6 Any sign installed after the date of this Agreement shall meet the "Signage on Heritage Properties: Six Basic Principles" as set out in Bylaw H-200, and the requirements of the ~~Halifax Peninsula~~ **applicable** Land Use Bylaw as may be amended from time to time.

10. Section 3.5.1 of the Original Agreement shall be amended by deleting the text shown in strikeout and inserting the text shown in bold, as follows:

3.5.1 On-site parking spaces shall be provided as per the following requirements:

- (a) One space ~~per occupied dwelling unit~~ **for all occupied dwelling units**; and
- (b) Up to three (3) spaces exclusively for the use of restaurant patrons inclusive of accessible spaces as required under the **applicable** Land Use Bylaw; and
- (c) **One bicycle rack which can contain a minimum of five bicycles.**

11. Section 3.7 of the Original Agreement shall be amended by deleting the text shown in strikeout and inserting the text shown in bold, as follows:

3.7 Landscaping and Fencing

3.7.1 Fences shall be constructed in accordance with the following provisions:

- (a) A fence shall be required along the entirety of the north property boundary abutting 2730 Gottingen Street as shown on Schedule B-1. The fence shall be **not less than 1.8m (6ft)** in height adjacent to the parking area and extending from the rear property boundary to a line perpendicular to the Southeast corner of the building at 2730 Gottingen Street, then stepping down to 1.2m (4ft) for the remainder of the property boundary.
- (b) A fence shall be maintained along the rear property boundary as shown on Schedule B-1. This fence shall be constructed of wood and/or masonry and shall be not less than 1.5m (5ft) and no more than 2.4m (8ft) in height.
- (c) A fence shall be required along the South property line abutting 2714 Gottingen Street as shown on Schedule B-1. This fence shall be made of wood and constructed so as to provide visual privacy to the abutting residential property.
- (d) Fencing shall be constructed as shown in Schedule B-1 within the front yard so as to restrict pedestrian movement to paved walkways only. Such fences shall be 1.2m (4ft) in height and constructed of either wood pickets or black metal.
- (e) **A wooden privacy fence shall be required along the northern edge of the outdoor commercial patio as shown on Schedule B-1. The fence shall be not less than 1.8m (6ft) in height adjacent to the parking area and extend from the rear property boundary to the outdoor staircase at the rear of the building.**

3.7.2 Areas of the front, rear and side yards not used for walkways, patios, parking, manoeuvring or storage shall be grassed or landscaped and well maintained.

- 3.7.3 Sections of fence abutting the South property boundary which are also within 6m (20ft) of the rear restaurant entrance shall be screened with evergreen hedges, trees or bushes. Such plantings shall be of no less than 1.8m (6ft) in height and spaced no less than 0.9m (3ft) apart **at the time of planting as generally shown on Schedule B.**
- 3.7.4 Existing mature trees on the Lands shall be retained so long as they do not pose a safety concern as identified by a certified arborist.
- 3.7.5 A minimum of three deciduous trees shall be planted and maintained in the rear yard, between the commercial patio and the abutting property to the rear. Such plantings shall be of no less than 1.8m (6ft) in height and spaced no less than 0.9m (3ft) apart at the time of planting.**
12. Section 3.11 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold, as follows:
- 3.11 Hours of Operation**
- 3.11.1 **Inside of the building, the** ~~The~~ restaurant use shall be permitted to operate between the hours of 11:00am and 11:30pm from Sunday to Thursday and between the hours of 11:00am and 12:30am on Friday and Saturday.
- 3.11.2 Deliveries to the building, and the collection of refuse and recyclables shall occur only between the hours of 7:00am and 7:00pm everyday.
- 3.11.3 On the outdoor commercial patio, the restaurant use shall be permitted to operate between the hours of 11:00am and 9:30pm from Sunday to Thursday and between the hours of 11:00am and 10:00pm on Friday and Saturday.**
13. Section 3.12 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold, as follows:
- 3.12 Commercial Occupancy**
- ~~The seating and dining area of the restaurant shall be confined to the main level of the building as shown on Schedule C with uses accessory to the restaurant such as washrooms, office and storage permitted on the second level and within the basement.~~
- 3.12.1 The seating and dining area of the restaurant use shall not exceed 200 square metres in total. It shall be confined to the main level of the building and to an area, not exceeding 75 square metres, on the ground level in the rear yard as shown on Schedules B-1 and C (the "commercial patio"). The capacity of the restaurant use outside of the building shall be limited to 25 customers.**
- 3.12.2 Uses accessory to the restaurant use such as washrooms, office, storage,**

and commercial kitchen shall be confined to the interior of the main building.

3.12.3 Storage, accessory to the restaurant use, may also be confined within an accessory structure in the rear yard as shown on Schedule B-1.

3.12.4 Amplified music is prohibited within the main level of the building and outside of the building. Live music shall be limited to the main level of the building and shall not be amplified.

14. Section 5.4 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold, as follows:

5.4. Completion of Development

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;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the **applicable** Municipal Planning Strategy and Land Use By-law for ~~Halifax Peninsula~~ as may be 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:

Witness

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

Witness

Witness

(Insert Registered Owner Name)

Per: _____

—

HALIFAX REGIONAL MUNICIPALITY

Per: _____

MAYOR

Per: _____

MUNICIPAL CLERK

Appendix B – Regional MPS and Regional Centre SMPS Policy Review

CHAPTER 7 REGIONAL MUNICIPAL PLANNING STRATEGY	
7.4 DEVELOPMENT ABUTTING REGISTERED HERITAGE PROPERTIES	
CH-16 For lands abutting federally, provincially or municipally registered heritage properties, HRM shall, when reviewing applications for development agreements, rezonings and amendments pursuant to secondary planning strategies, or when reviewing the provision of utilities for said lands, consider a range of design solutions and architectural expressions that are compatible with the abutting federally, provincially or municipally registered heritage properties by considering the following:	
(a) the careful use of materials, colour, proportion, and the rhythm established by surface and structural elements should reinforce those same aspects of the existing buildings;	The property in question has been restored using period-appropriate paint colours and has restored an existing 19 th century structure in a way that is consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada.
(b) ensuring that new development is visually compatible with yet distinguishable from the abutting registered heritage property. To accomplish this, an appropriate balance must be struck between mere imitation of the abutting building and pointed contrast, thus complementing the abutting registered heritage property in a manner that respects its heritage value;	N/A The existing building is being retained and restored in its original form.
(c) ensuring that new developments respect the building scale, massing, proportions, profile and building character of abutting federally, provincially or municipally registered heritage structures by ensuring that they: (i) incorporate fine-scaled architectural detailing and human-scaled building elements. (ii) reinforce, the structural rhythm (i.e., expression of floor lines, structural bays, etc.) of abutting federally, provincially or municipally registered heritage properties; and (iii) any additional building height proposed above the pedestrian realm mitigate its impact upon the pedestrian realm and abutting registered heritage properties by incorporating design solutions, such as stepbacks from the street wall and abutting	N/A The existing building is being retained and restored in its original form.

<p>registered heritage properties, modulation of building massing, and other methods of massing articulation using horizontal or vertical recesses or projections, datum lines, and changes in material, texture or colour to help reduce its apparent scale;</p>	
<p>(d) the siting of new developments such that their footprints respect the existing development pattern by:</p> <ul style="list-style-type: none"> (i) physically orienting new structures to the street in a similar fashion to existing federally, provincially or municipally registered heritage structures to preserve a consistent street wall; and (ii) respecting the existing front and side yard setbacks of the street or heritage conservation district including permitting exceptions to the front yard requirements of the applicable land use by-laws where existing front yard requirements would detract from the heritage values of the streetscape; 	<p>New structures include a shed and patio which will be located in the rear yard and not visible from the street.</p>
<p>(e) not unreasonably creating shadowing effects on public spaces and heritage resources;</p>	<p>There are no proposed changes to the structure that would create increased shadow effects.</p>
<p>(f) complementing historic fabric and open space qualities of the existing streetscape;</p>	<p>The existing structure and site conditions are being maintained, including open spaces.</p>
<p>(g) minimizing the loss of landscaped open space;</p>	<p>Landscaped open space in front of the building will be preserved and improved. Open space in the rear will be converted from parking and utility uses to quiet dining use.</p>
<p>(h) ensuring that parking facilities (surface lots, residential garages, stand-alone parking and parking components as part of larger developments) are compatible with abutting federally, provincially or municipally registered heritage structures;</p>	<p>Surface parking will be reduced from six spaces to four spaces in the rear yard.</p>
<p>(i) placing utility equipment and devices such as metering equipment, transformer boxes, power lines, and conduit equipment boxes in locations which do not detract from the visual building character or architectural integrity of the heritage resource;</p>	<p>Utility equipment including HVAC and oil tanks are required to be screened from view by vegetation and fencing.</p>
<p>(j) having the proposal meet the heritage considerations of the appropriate Secondary Planning Strategy, as well as any applicable urban design guidelines;</p>	<p>This proposal meets all applicable heritage policies and guidelines.</p>

and	
(k) any applicable matter as set out in Policy G-14 of this Plan.	N/A

**CHAPTER 7
GOVERNANCE AND IMPLEMENTATION**

9.6A PRIORITIES PLANS

Since the adoption of this Plan in 2014, Regional Council has approved several priority plans including the Integrated Mobility Plan, Halifax Green Network Plan, HalifACT, and Halifax's Inclusive Economic Strategy 2022-2027. The second review of this Plan began in 2020 and is expected to be readopted by Regional Council in 2023. The review will revise the policies of this Plan to ensure they are consistent with the priorities plans as approved. In the interim, this Plan supports the priorities plans which are actively used by staff to guide ongoing work.

G-14A In considering development agreements or amendments to development agreements, or any proposed amendments to the Regional Plan, secondary planning strategies, or land use by-laws, in addition to the policies of this Plan, HRM shall consider the objectives, policies and actions of the priorities plans approved by Regional Council since 2014, including:

(a) The Integrated Mobility Plan;

The proposed development is reasonably consistent with this priorities plan.

(b) Halifax Green Network Plan;

N/A

(c) HalifACT;

The proposed development is reasonably consistent with this priorities plan.

(d) Halifax's Inclusive Economic Strategy 2022-2027; and

The proposed development is reasonably consistent with this priorities plan.

(e) any other priority plan approved by Regional Council while this policy is in effect.

N/A

**SECTION 4.3 HERITAGE PROPERTIES
REGIONAL CENTRE SECONDARY MUNICIPAL PLANNING STRATEGY**

POLICY CHR-7

On any lot containing a registered heritage building located outside of the DH Zone and any approved Heritage Conservation District, Council may consider a development agreement for any development or change in use not otherwise permitted by the Land Use By-law to support the integrity, conservation and adaptive re-use of registered heritage buildings. This includes development proposals that exceed the maximums floor area ratios or the maximum building heights on Map 3 and Map 4 of this Plan. In considering such development agreement proposals, Council shall consider that:

a) the development proposal maintains the heritage value of any registered heritage property of which it is part, including a registered heritage streetscape, and does not propose to demolish any registered heritage buildings that exist on the lot;

The existing building is being retained and restored in its original form. Since the original development agreement was adopted in 2018, the entire plumbing and electrical systems have been replaced. All vinyl siding was removed, rotten wood removed, and the exterior of the building was scraped, primed and painted. The roof and eaves troughs were replaced. The foundation walls and chimneys were repointed. The entire landscape was regraded and the dry-stacked stone retaining wall were reinstated. There were much more costs associated with rehabilitating the building for a commercial use.

b) the impact on adjacent uses, particularly residential uses, is minimized in terms of intensity of use, scale, height, traffic generation, noise, hours of operation, and such other land use impacts as may be required as part of a development;

The seating and dining area of the restaurant use shall be confined to the main level of the building. The hours of operation of the restaurant, outside of the building, are limited between the hours of 11:00am and 10:00pm from Sunday to Thursday and between the hours of 11:00am and 10:30am on Friday and Saturday.

Off street parking and bicycle parking will be required in the rear yard, and fencing or treed buffers will obscure the restaurant use from neighbouring properties.

c) any new construction, additions, or renovations facing a street substantially maintain the predominant streetwall height, setbacks, scale, and the rhythm of the surrounding properties, especially of registered heritage properties;

N/A
The patio is at the rear of the building.

d) the development complies with Pedestrian Wind Impact and Shadow Impact Assessment Protocol and Performance Standards of the Land Use By-law;	N/A
e) the level of proposed investment in conservation measures on the property and through the required incentive or bonus zoning requirements is generally proportional with the additional development rights provided through the agreement, especially in cases of new construction;	The property owner has made substantial investments in the rehabilitation of the heritage building, and these investments are proportional with the extended restaurant use.
f) any un-registered, historic buildings on the lot that contributes to neighbourhood character are preserved to retain the visual integrity of the lot;	N/A
g) the development complies with policies relating to protected public views and view terminus sites;	N/A
h) incentive or bonus zoning is provided consistent with the requirements of the Land Use By-law;	No incentive of bonus zoning is required for this development under the Land Use By-law.
i) the development agreement requires a waiver under Section 18 of the <i>Heritage Property Act</i> to be registered on the property before a development permit is issued for any portion of the development; and	This waiver is registered on the property.
j) the general development agreement criteria set out in Policy IM-7 in Part 9 of this Plan.	See IM-7 Policy, below.

**SECTION 9.5 DISCRETIONARY APPROVALS
REGIONAL CENTRE SECONDARY MUNICIPAL PLANNING STRATEGY**

POLICY IM-7

In considering proposals to amend the Land Use By-law, amend the zoning boundaries, or enter into development agreements, Council shall consider that:

a) the proposal is consistent with the Vision, Core Concepts, Urban Design Goals, and all applicable objectives and policies set out in the Regional Plan and this Plan;

An objective of the Established Residential Designation is to support the retention and rehabilitation of the existing housing stock while creating opportunities for new housing units. Another objective of this Designation is to support complete communities and opportunities for home occupations and local commercial uses.
The proposal preserves a registered heritage property while providing an appropriate new use.

b) the proposal is appropriate and not premature by reason of:

i) the financial capacity of the Municipality to absorb any costs relating to the development,

The Municipality can continue to absorb costs relating to the development.

ii) the adequacy of municipal wastewater facilities, stormwater systems or water distribution systems,

Municipal systems will continue to adequately support the proposed development.

iii) the proximity of the proposed development to schools, parks, and community facilities, and the capability of these services to absorb any additional demands,

The proposed development will not place any intensive demands on these existing services.

iv) the adequacy of transportation infrastructure for pedestrians, cyclists, public transit and vehicles for travel to and within the development, and

The existing transportation infrastructure is adequate for the proposed development.

v) the impact on registered heritage buildings, heritage streetscapes, and heritage conservation districts;

The existing building is being retained and restored in its original form.

c) the subject lands are suitable for development in terms of the steepness of grades, soil and geological conditions, locations of watercourses, wetlands, and susceptibility to flooding;

The subject land will continue to be suitable for the proposed development.

<p>d) that development regulations in the proposed rezoning or development agreement will adequately mitigate potential conflict between the proposed development and nearby land uses, by reason of:</p>	
<p>i) type of use(s),</p>	<p>The hours of operation of the restaurant, outside of the building, are limited between the hours of 11:00am and 9:30pm from Sunday to Thursday and between the hours of 11:00am and 10:00pm on Friday and Saturday.</p> <p>Policy (Policy E-5) in the Regional Centre SMPS which allows for the consideration of local commercial uses—not exceeding 200 square metres—in the Established Residential Designation. The total seating and dining area for the commercial uses inside and outside of the building, on the subject property, will only be approximately 160 square metres.</p>
<p>ii) built form of the proposed building(s),</p>	<p>Construction will be limited to a patio and a storage shed at the rear of the building. These structures are permitted under the Land Use Bylaw.</p>
<p>iii) impacts on adjacent uses, including compatibility with adjacent residential neighbourhoods, parks, community facilities, and railway operations,</p>	<p>The hours of operation of the restaurant, outside of the building, are limited between the hours of 11:00am and 9:30pm from Sunday to Thursday and between the hours of 11:00am and 10:00pm on Friday and Saturday. The seating and dining area of the drinking establishment use shall be confined to the main level of the building.</p> <p>Amplified music is prohibited within the main level of the building and outside of the building. Live music shall be limited to the main level of the building and shall not be amplified.</p>
<p>iv) traffic generation, safe access to and egress from the site, and parking,</p>	<p>Access is limited to a driveway from Gottingen Street leading to four parking spaces and a bicycle rack at the rear of the building. There will be very little change in traffic generation.</p>
<p>v) open storage and signage, and</p>	<p>Storage will be located within the main building or within an accessory building in the rear yard. No change to signage as part of this proposal.</p>
<p>vi) impacts of lighting, noise, fumes and other emissions.</p>	<p>There are requirements for outdoor lighting in the existing DA and there will be no commercial cooking outdoors.</p>

