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**Item No. 14.1.1**  
**Harbour East – Marine Drive Community Council**  
**February 1, 2024**

**TO:** Chair and Members of Harbour East – Marine Drive Community Council

**SUBMITTED BY:** - Original Signed -  
Jacqueline Hamilton, Executive Director of Planning and Development

**DATE:** December 18, 2023

**SUBJECT:** **PLANAPP-2023-00335 (formerly Case #24571): Substantive Amendments to a Development Agreement at 95 Montebello Dr, Dartmouth**

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**ORIGIN**

Application by the property owners.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that Harbour East – Marine Drive Community Council:

1. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment A, to amend the existing development agreement to allow a range of neighbourhood convenience uses at 95 Montebello Dr, Dartmouth 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; and
3. Require the amending agreement be signed by the property owner within 120 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**

The property owner has requested changes to an existing development agreement applied to 95 Montebello Drive in Dartmouth to allow greater flexibility in the permitted uses of the existing building.

<b>Subject Site</b>	95 Montebello Drive, Dartmouth
<b>Location</b>	Northwest corner at the intersection of Breeze Drive, Caledonia Road and Montebello Drive
<b>Regional Plan Designation</b>	Urban Settlement (US)
<b>Community Plan Designation (Map 1)</b>	Residential (R) of the Dartmouth Municipal Planning Strategy
<b>Zoning (Map 2)</b>	R-3 (Multiple Family Residential) of the Dartmouth Land Use Bylaw
<b>Size of Site</b>	879.15 square metres (9,463 sq. ft.)
<b>Street Frontage</b>	57.6 metres (189 ft.) on Breeze Drive and Montebello Drive
<b>Current Land Use(s)</b>	Take-out and convenience store, including a pet essentials store
<b>Surrounding Use(s)</b>	Mainly low-density residential uses, with apartment buildings to the north

## **Proposal Details**

Allowing the existing building to be used for a wider range of neighbourhood convenience uses is a substantive amendment to the existing development agreement. The major aspects of the proposal are as follows:

- The current development agreement permits a 270 sq. m (2,900 sq. ft.) convenience store;
- The proposed amendments would expand the permitted use to include:
  - food and grocery stores;
  - local offices including offices of professional people providing personal services,
  - public offices;
    - personal service shops, defined in the Dartmouth Land Use Bylaw as *“means services for the needs of individuals or pets, such as grooming and haircutting, tailoring and shoe repair, tattooing, tutoring, depots for collecting dry cleaning and laundry, laundromats, warming and cooling centres, food banks, soup kitchens, drop-in centres, funeral homes, and the retail sale of products accessory to any service provided. For further clarity, a personal service use does not include veterinary facility uses, kennel uses, pet daycare uses, and crematorium uses”*;
  - restaurants, excluding both drive-throughs and drinking establishment uses;
  - veterinary clinics without outdoor runs; and
  - uses accessory to any of the foregoing uses.

There are no proposed changes to the building or site design.

## **Enabling Policy and LUB Context**

The existing development agreement and this amendment request are enabled by policy C-2 of the [Dartmouth Municipal Planning Strategy](#). This policy enables Council to consider

neighbourhood commercial uses through the development agreement process. This application was also reviewed relative to implementation policy IM-1(c). Attachment B of this report contains the details of the review of the relevant MPS polices.

The underlying zone is the R-3 (Multiple Family Residential) zone of the [Dartmouth Land Use Bylaw](#). The R-3 zone primarily permits residential uses.

### **Development Agreement History**

On May 30, 1984, the Former City of Dartmouth entered into an agreement to permit the lands to be used as a neighbourhood convenience grocery store (the “Original Agreement”).

On March 1, 2001, the Harbour East Community Council approved a request to discharge the Original Agreement and entered into a new development agreement to permit take out food service on the lands (the “Second Agreement”).

On July 2, 2009, the Harbour East Community Council entered into a third development agreement (the “Third Agreement”), to allow for an addition comprising of 133 sq. m. (1,400 sq. ft.) to the existing commercial building. The third agreement permits neighbourhood convenience store use to a maximum of 270 sq. m. (2900 sq ft.). It was recommended as part of this application in 2009 that Council approve the discharge of the Second Agreement, however, there is no evidence that this was approved or completed. As it is not common practice in the HRM to have two separate agreements applied to a single property, this appears to have been an oversight and the intention was that only the third agreement apply.

As part of this application, a request to discharge the Second Agreement has been submitted to the Chief Administrative Officer, pursuant to section 244 of the *Halifax Regional Municipality Charter*. The proposed amendment considered by the Harbour East – Marine Drive Community Council would amend the Third Agreement only and upon discharge of the Second Agreement, the development of this property would be regulated only by the Third Agreement, as amended.

### **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 provision of information and seeking of comments through the HRM website, signage posted on the subject site, and letters mailed to property owners within the notification area. One comment was received, indicating that a grocery store, restaurant, or local service use was favoured, as this area is considered a food and service ‘desert’ while expressing that there is opposition to personal service shops or office space.

A public hearing must be held by Harbour East – Marine Drive 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 advertisement on the HRM webpage, property owners within the notification area 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 municipal planning strategy. Attachment B provides an evaluation of the proposed amending development agreement in relation to the relevant municipal planning strategy policies.

The applicant has expressed difficulties in sustaining a typical convenience store given broader commercial and consumer trends. The intention of this amendment is to allow for flexibility in how the existing commercial building can be used while remaining consistent with the intent of the policy that enabled the original agreement.

The enabling policy, Policy C-2, enables Council to consider permitting “neighbourhood convenience outlets” through the development agreement process in areas where they would otherwise not be permitted. Although the customary term, ‘neighbourhood convenience’, is often taken to mean a corner store or small food mart, the below description of neighbourhood convenience store is provided within the preamble of the commercial section of the Dartmouth Municipal Planning Strategy. This description directs that the term be used to describe a broader range of minor commercial uses that serve a community.

*Neighbourhood Convenience Store: This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life.*

The list of uses proposed to be permitted through the amendment to the agreement are consistent with the description of neighbourhood convenience stores. It is also noted that the uses proposed are identical to those permitted in the Local Commercial (C-1) zone of the Dartmouth Land Use Bylaw, with the exception of drinking establishments and drive-through restaurant uses, which will be permitted in the C-1 Zone but are not permitted by the agreement. These uses were excluded as they are considered less compatible with the low-density residential context of this site.

### **Proposed Development Agreement**

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

- The list of permitted uses is amended to include the uses listed under the Proposal Details section of this report. This list specifically excludes drinking establishments and drive-through restaurant uses.
- A definition of drinking establishment use, and restaurant use were introduced for clarity during implementation of the agreement.
- References to take-out food service and convenience store use in the original agreement were changed to generally apply to any commercial use.
- Updates are included to reflect the current standard language used regarding stormwater facilities.
- The dates by which commencement and completion of development are amended to update the lifespan of the agreement.

As this proposal pertains to reuse of the existing building, and because no changes to the building or site design are proposed, the following conditions of the original agreement remain in force:

- Section 3.1 and 3.5.1 require that the property conforms with the schedules of the agreement, including a site plan and building elevation drawings.
- Section 3.4.2 permits a maximum of 2900 square feet of development, as illustrated on the site plan.

### **Priorities Plans**

In accordance with Policy G-14A of the Halifax Regional Plan, this planning application was assessed against the objectives, policies and actions of the priorities plans, inclusive of the Integrated Mobility Plan, the Halifax Green Network Plan, HalifACT, and Halifax's Inclusive Economic Strategy 2022-2027. While these priority plans often contain policies which were originally intended to apply at a regional level and inform the development of Municipal Planning Strategy policies, there are still components of each plan which can and should be considered on a site-by-site basis. Where conflict between MPS policy and priority plan policy exists, staff must weigh the specificity, age, and intent of each policy, and consider how they would be applied to a specific geographic context. In this case, no policies were identified that were relevant to this application.

### **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 Dartmouth Municipal Planning Strategy. Therefore, staff recommend that the Harbour East – Marine Drive Community Council approve the proposed amending 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 2023-2024 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 amending development agreement are contained within the Discussion section of this report.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

## **ALTERNATIVES**

1. Harbour East – Marine Drive Community Council may choose to approve the proposed amending 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. Harbour East – Marine Drive Community Council may choose to refuse the proposed amending agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

## **ATTACHMENTS**

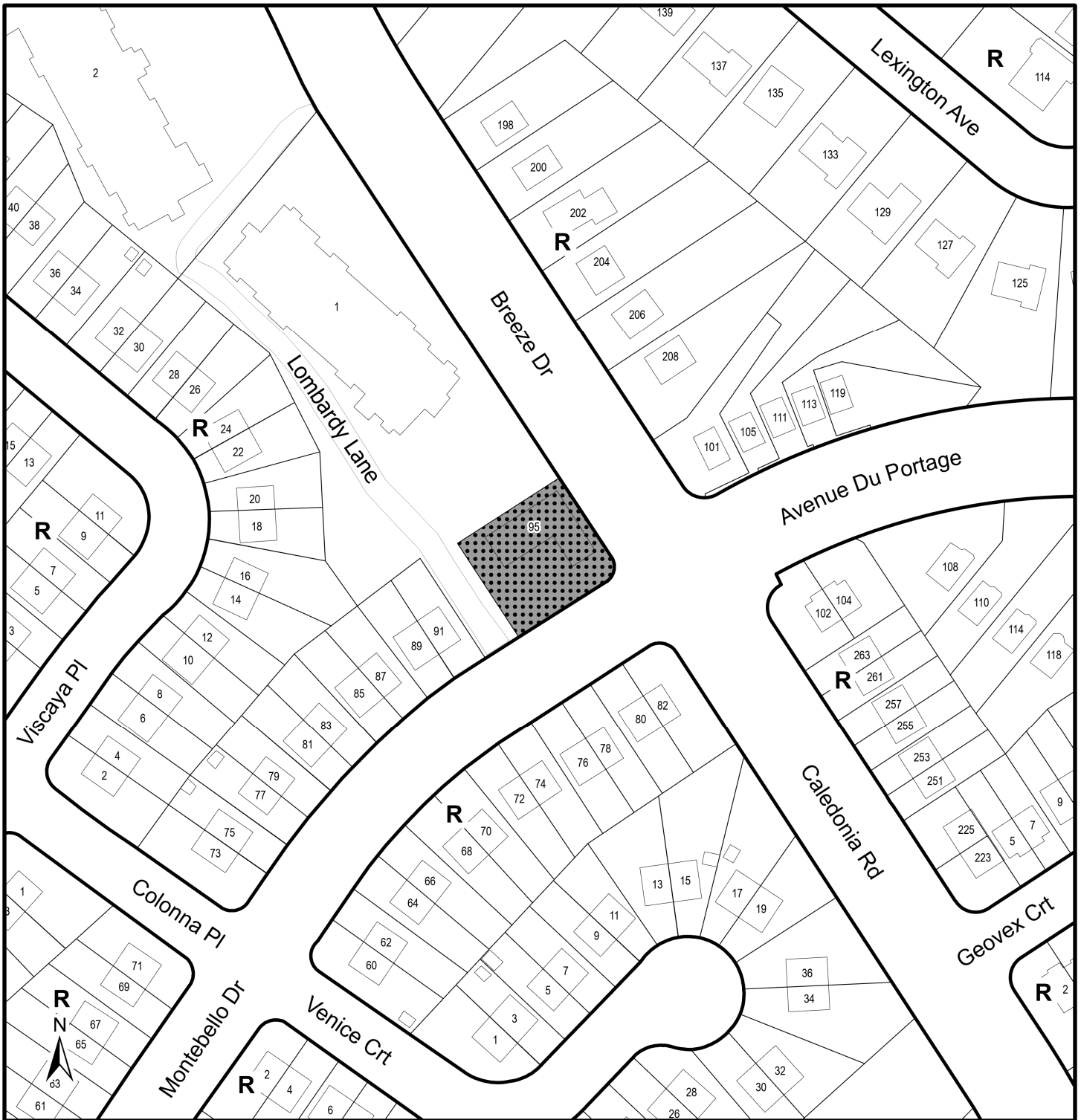
Map 1:	Generalized Future Land Use
Map 2:	Zoning and Notification Area
Attachment A:	Proposed Amending Development Agreement
Attachment B:	Review of Relevant MPS Policies
Attachment C:	Copy of the Existing Agreement

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902-490-4210.

Report Prepared by: Taylor MacIntosh, Planner II, Planning Applications, [macintta@halifax.ca](mailto:macintta@halifax.ca) or 902-219-0836

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**Map 1 - Generalized Future Land Use**

95 Montebello Drive  
Dartmouth

 Subject Property

**Designation**

R Residential

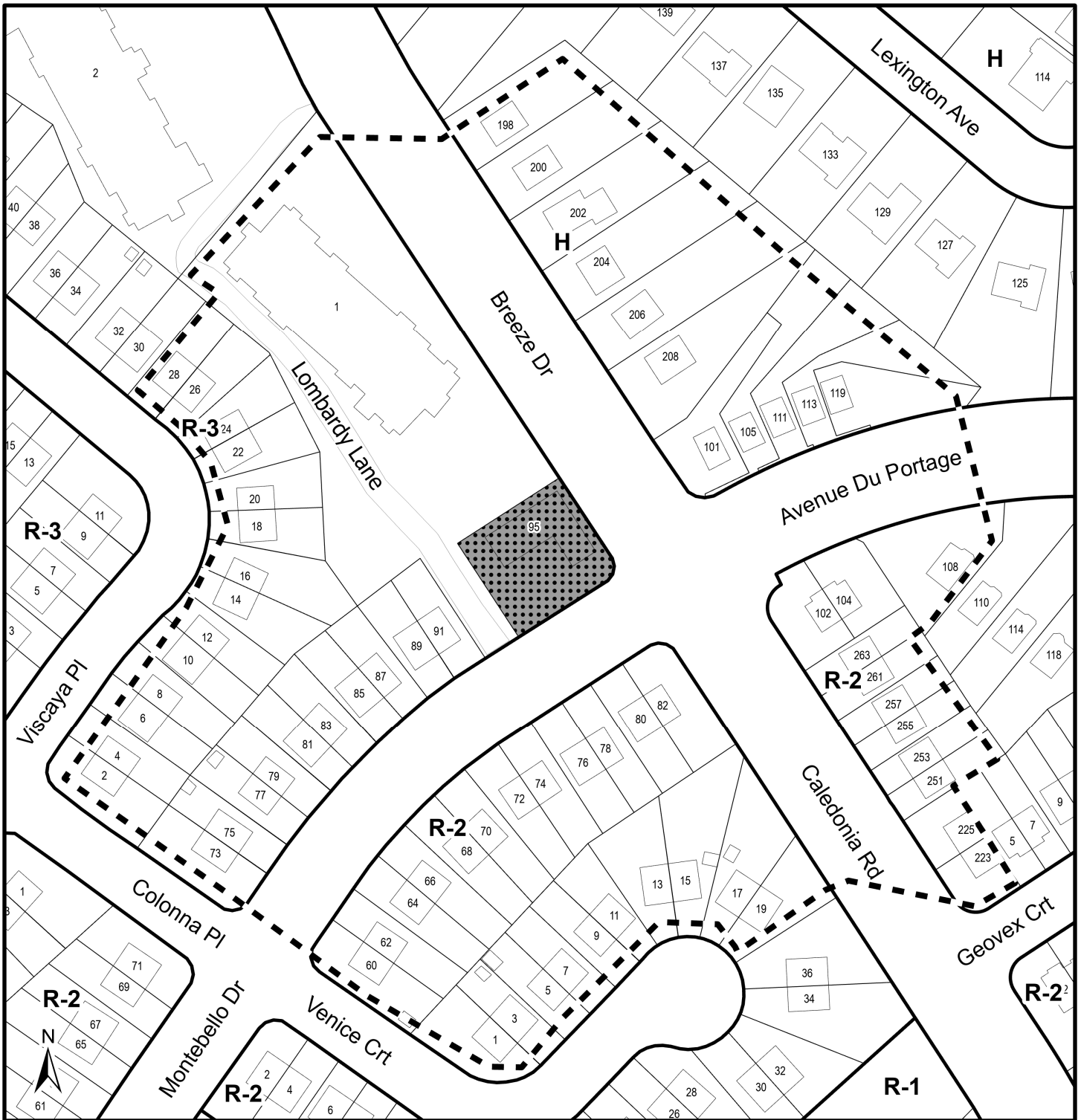
**HALIFAX**



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

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



Dartmouth  
Land Use By-Law Area



**Map 2 - Zoning and Notification Area**

95 Montebello Drive  
Dartmouth

**HALIFAX**

-  Subject Property
-  Area of Notification

**Zone**

- H Holding
- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)



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.

Dartmouth  
Land Use By-Law Area



**Attachment A:  
Proposed Amending Development Agreement**

THIS FIRST AMENDMENT TO THE THIRD 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 95 Montebello Drive, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** on May 30, 1984 the Former City of Dartmouth entered into an agreement to permit the lands to be used as a neighbourhood convenience grocery store and which Development Agreement was registered in the Land Registry Office in Halifax on in book 23415, pages 292 to 298 (herein called the "Original Agreement");

**AND WHEREAS** on March 1, 2001 the Harbour East Community Council approved a request to discharge the Original Agreement;

**AND WHEREAS** on March 1, 2001 the Harbour East Community Council entered into a new agreement to permit the lands to allow a take out food service and which said Development Agreement was registered in the Land Registry Office in Halifax on July 16, 2001 as Document Number 24471 (herein after called the "Second Agreement");

**AND WHEREAS** on July 2, 2009 the Harbour East Community Council approved an application to enter into a Development Agreement to allow for an addition comprising of 1400 square feet to an existing commercial development on the Lands (municipal case 01271) which said Development Agreement was registered at the Land Registry Office in Halifax on August 26, 2009 as Document Number 94130219 (hereinafter called the "Third Agreement");

**AND WHEREAS** the Chief Administrative Officer for the Halifax Regional Municipality has approved a discharge of the Second Agreement and such discharging development agreement (PLANAPP 2023-00335) was registered at the Land Registry Office in Halifax on **(date)** as Document Number **(insert)**;

**AND WHEREAS** the Developer has requested amendments to the Third Agreement to allow for a wider range of permitted neighbourhood-scale commercial uses on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy C-2 of the Dartmouth Municipal Planning Strategy;

**AND WHEREAS** the Harbour East – Marine Drive Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as PLANAPP 2023-00335;

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

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1. Except where specifically varied by this First Amendment to the Third Agreement, all other conditions and provisions of the Third 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 Amendment to the Third Agreement, and the Third Agreement.
3. Part 2 of the Third Agreement shall be amended by inserting the following text as shown in bold following section 2.1:

**2.2 Definitions Specific to this Agreement**

**2.2.1 Drinking Establishment Use means premises whose primary purpose is serving liquor to the public, and which is licensed under the Liquor Control Act, S.N.S., 1989, c. 260, as amended.**

**2.2.2 Restaurant Use means 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.**

4. Section 3.2.1 of the Third Agreement shall be amended by deleting text shown in ~~strikeout~~, and inserting the text in bold as shown as follows:

~~3.2.1 The use of the Lands permitted by this Agreement is a neighbourhood-convenience store development consisting of a maximum of 2900 square feet.~~

**3.2.1 The uses of the Lands permitted by this Agreement include:**

- a) food and grocery stores,
- b) local offices including offices of professional people providing personal services,
- c) public offices,
- d) personal service shops,

- e) **restaurants, excluding both drive-throughs and drinking establishment uses,**
- f) **veterinary clinics without outdoor runs, and**
- g) **uses accessory to any of the foregoing uses.**

5. Section 3.4.1 of the Third Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

3.4.1 ~~The neighbourhood convenience store~~ **Any commercial use** must meet the requirements of the Dartmouth Land Use By-law except where specifically varied by this Agreement.

6. Section 3.10.1 of the Third Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

3.10.1 ~~The take-out food service and convenience store~~ **Any commercial use** shall be permitted to operate between the hours of 6:00 a.m. and 1:00 a.m., seven days a week.

7. Part 5 of the Third Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

#### ~~5.1 Detailed Site Plan~~

~~The Developer agrees to have prepared by a qualified person and submitted to the Municipality for review and approval by the Development Engineer, a detailed Site Plan for the development. No work is permitted on the Lands until the requirements of this clause have been met and implemented unless otherwise stated in this Agreement and approved by the Development Engineer.~~

#### ~~5.2 Erosion Control~~

~~No final approval shall be issued unless the entire lot is either fully stabilized with sod or is temporarily stabilized and maintained with a covering of plastic or other such measures approved by the Development Engineer. Any temporary stabilization of the lot shall be replaced with final landscaping (top soil and sod) within six (6) months of the issuance of the final approval. The owner of the lot shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.~~

#### **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:**

- (a) **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.**

8. Section 8.3 of the Third Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

8.3 Commencement of Development

8.3.1 In the event that development has not commenced within ~~three (3) years from the date of registration of this Agreement at the Registry of Deeds~~ **seven (7) years from the effective date of the First Amendment to the Third Agreement**, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

8.3.2 For the purposes of this section, development shall mean ~~completion of the footings for the proposed building~~ **issuance of an occupancy permit.**

8.3.3 If the Developer(s) fail to complete the development, or after ~~five (5) years from the date of registration of this Agreement at the Registry of Deeds~~ **ten (10) years from the effective date of the First Amendment to the Third Agreement**, whichever time period is less, 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.

9. Section 8.4 of the Third Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in bold as follows:

8.4 Completion of Development

Upon the completion of the development or portions thereof, or within/after ~~five (5) years from the date of registration of this Agreement with the~~

~~Registry of Deeds~~ **ten (10) years from the date effective date of the First Amendment to the Third Agreement**, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, 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 Name of Business]**

\_\_\_\_\_  
Witness

*Per:* \_\_\_\_\_

*Print Name:* \_\_\_\_\_

*Date:* \_\_\_\_\_

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

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

*Per:* \_\_\_\_\_  
MAYOR

*Date:* \_\_\_\_\_

\_\_\_\_\_  
Witness

*Per:* \_\_\_\_\_  
MUNICIPAL CLERK

*Date:* \_\_\_\_\_

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Iain MacLean, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

**Attachment B:  
Review of Relevant MPS Policies**

<b>Dartmouth Municipal Planning Strategy</b>	
<b>COMMERCIAL</b>	
Relevant Preamble Except:	
<p><b>(1) Retail Facilities</b>  <i>(c) Neighbourhood Convenience Store: This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life. To date there are approximately 50 of these sorts of facilities within Dartmouth totalling approximately 25,000 square feet in floor area. There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. There are several concerns related to these uses (location, siting) that criteria should be established for reviewing any proposal of such a use.</i></p>	
Policy	Staff Comments
<p><b>Policy C-2</b>  <i>It shall be the intention of City Council to deal with neighbourhood convenience outlets through the contract zoning provisions of the Planning Act - Section 33 (2) (b).</i></p>	<p>This is the enabling policy of the existing agreement. See the description of this use in the Commercial section (provided above).</p> <p>It is noted that the <i>Planning Act</i> has been superseded by the <i>Halifax Regional Municipality Charter</i>. The proposal is now enabled through the development agreement provisions of the <i>HRM Charter</i>.</p>
<b>IMPLEMENTATION</b>	
<p><b>Policy IP-1(c)</b>  <i>In considering zoning amendments and contract zoning, Council shall have regard to the following:</i></p>	
<p>1) <i>that the proposal is in conformance with the policies and intent of the Municipal Development Plan</i></p>	<p>It is the opinion of staff that the proposal is in reasonably consistent with the policies and intent of the Municipal Planning Strategy.</p>
<p>2) <i>that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal</i></p>	<p>The proposed amending agreement would enable the following uses:</p> <ul style="list-style-type: none"> <li>- food and grocery stores,</li> <li>- local offices including offices of professional people providing personal services,</li> <li>- public offices,</li> <li>- personal service shops,</li> <li>- restaurants, excluding both drive-throughs and drinking establishment uses,</li> </ul>



	<ul style="list-style-type: none"> <li>- veterinary clinics without outdoor runs,</li> <li>- uses accessory to any of the foregoing uses.</li> </ul> <p>These uses are considered to be consistent with the description of Neighbourhood Convenience Stores provided in the preamble of the Dartmouth Municipal Planning Strategy (provided earlier in this table). The uses provide amenity to the neighbourhood while also providing a reasonable range of reuse opportunity for the existing building.</p> <p>The proposed uses are the same as those that appear in the C-1 (Local Business) Zone of the Dartmouth Land Use Bylaw with the exceptions of the exclusion of drive-through restaurants and drinking establishments, given the low-density residential context.</p> <p>There are no proposed changes to the bulk or scale of the building.</p>
<p>3) <i>provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries</i></p>	<p>The proposal is regarding a change of use internal to the existing building. The uses proposed to be enabled by this amending agreement are considered to be as compatible as the uses currently permitted by the existing agreement.</p>
<p>4) <i>that the proposal is not premature or inappropriate by reason of:</i></p> <ul style="list-style-type: none"> <li>(i) <i>the financial capability of the City is to absorb any costs relating to the development</i></li> <li>(ii) <i>the adequacy of sewer and water services and public utilities</i></li> <li>(iii) <i>the adequacy and proximity of schools, recreation and other public facilities</i></li> <li>(iv) <i>the adequacy of transportation networks in adjacent to or leading to the development</i></li> <li>(v) <i>existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas</i></li> </ul>	<ul style="list-style-type: none"> <li>(i) No concerns.</li> <li>(ii) No concerns were raised by the applicable agencies including Halifax Water.</li> <li>(iii) This is not a considerable concern of this application given the scale and use.</li> <li>(iv) A Traffic Impact Statement was reviewed and accepted by HRM Development Engineering. No concerns were raised.</li> <li>(v) No concerns were identified.</li> <li>(vi) Not applicable.</li> <li>(vii) No significant natural, historical features, buildings or sites were identified within proximity of this site.</li> </ul>

<ul style="list-style-type: none"> <li>(vi) <i>preventing public access to the shorelines or the waterfront</i></li> <li>(vii) <i>the presence of natural, historical features, buildings or sites</i></li> <li>(viii) <i>create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized</i></li> <li>(ix) <i>the detrimental economic or social effect that it may have on other areas of the City</i></li> </ul>	<ul style="list-style-type: none"> <li>(viii) This is a developed lot within a developed area.</li> <li>(ix) No concerns.</li> </ul>
<p>5) <i>that the proposal is not an obnoxious use</i></p>	<p>The uses proposed to be enabled by this amendment are discussed as part of the description of Neighbourhood Convenience Stores and are not considered obnoxious. The proposed uses are the same as those that appear in the C-1 (Local Business) Zone of the Dartmouth Land Use Bylaw with the exceptions of the exclusion of drive-through restaurants and drinking establishments, given the low-density residential context.</p>
<p>6) <i>that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:</i></p> <ul style="list-style-type: none"> <li>(i) <i>type of use, density, and phasing</i></li> <li>(ii) <i>emissions including air, water, noise</i></li> <li>(iii) <i>traffic generation, access to and egress from the site, and parking</i></li> <li>(iv) <i>open storage and landscaping</i></li> <li>(v) <i>provisions for pedestrian movement and safety</i></li> <li>(vi) <i>management of open space, parks, walkways</i></li> <li>(vii) <i>drainage both natural and sub-surface and soil-stability</i></li> <li>(viii) <i>performance bonds.</i></li> </ul>	<p>No changes are proposed to these elements of the Agreement as the proposed is for a change of use internal to the existing buildings and uses proposed to be enabled by this amendment are not considered any more incompatible than the use currently permitted by the Agreement.</p> <p>Regarding traffic generation and access to the site, a Traffic Impact Statement was reviewed and accepted by HRM Development Engineering. No concerns were raised and therefore no additional requirements are proposed as part of the amendment.</p>
<p>7) <i>suitability of the proposed site in terms of steepness of slope, soil conditions, rock out-croppings, location of watercourses,</i></p>	<p>This is an existing developed lot, and the proposal is regarding a change of use internal to the existing building. No concerns</p>

<p><i>marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors</i></p>	<p>regarding site suitability have been identified.</p>
<p>8) <i>that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the “voluntary” public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council</i></p>	<p>The Planning Act has been superseded by the Halifax Regional Municipal Charter. A “voluntary” public hearing was not pursued based on the scale of this request as well because this subsection refers to outdated process.</p>
<p>9) <i>that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:</i>  <i>(i) Council with a clear indication of the nature of proposed development, and</i>  <i>(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community</i></p>	<p>Not applicable.</p>
<p>10) <i>Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, 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.</i></p>	<p>Not applicable – not within a holding zone.</p>

Attachment C: Copy of Existing Agreement

THIS AGREEMENT made this 18 day of August, 2009,

BETWEEN:

**3048382 NOVA SCOTIA LIMITED**  
a body corporate, in the Halifax Regional Municipality,  
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY,**  
a municipal body corporate,  
(hereinafter called the "Municipality")

OF THE SECOND PART

APPROVED  
AS TO FORM  
Municipal Solicitor

WHEREAS the Developer is the registered owner of certain lands located on Montebello Drive, PID 40340051, Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for an addition comprising 1400 square feet to an existing commercial development on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policies C-2 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council approved this request at a meeting held on July 2, 2009, referenced as Municipal Case Number 01271;

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

**PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

**1.1 Applicability of Agreement**

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 Regional Subdivision By-law**

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Dartmouth Land Use By-law, as may be amended from time to time.

### **1.3 Applicability of Other By-laws, Statutes and Regulations**

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 Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

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 HRM 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.

### **1.4 Conflict**

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.

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**

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 regulations, by-laws or codes applicable to any lands.

### **1.6 Provisions Severable**

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.

**PART 2: DEFINITIONS**

- 2.1 All words unless otherwise specifically defined herein shall be as defined in the Dartmouth Land Use By-law.

**PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS**

**3.1 Schedules and Development of the Lands**

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the Schedules attached to this Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01271.

The schedules are:

- Schedule A: Legal Description of the Lands
- Schedule B: Site Plan
- Schedule C: Building Elevations

**3.2 General Description of Land Use**

- 3.2.1 The use of the Lands permitted by this Agreement is a neighbourhood convenience store development consisting of a maximum of 2900 square feet.

**3.3 Requirements Prior to Approval**

- 3.3.1 Prior to the issuance of a Construction Permit, the Developer shall submit a Master Site/Grading Plan, unless otherwise stated by the Municipality.
- 3.3.2 Prior to occupying the addition, the Developer shall provide approval from the Development Engineer indicating compliance with Part 4 of this Agreement to the Development Officer, unless otherwise stated by the Municipality.
- 3.3.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the addition for any of the uses permitted by this Agreement unless final approval has been issued by the Municipality. No final approvals shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

**3.4 Detailed Provisions for Land Use**

- 3.4.1 The neighbourhood convenience store must meet the requirements of the Dartmouth Land Use By-law except where specifically varied by this Agreement.

3.4.2 Notwithstanding the frontage and area requirements set out in the Dartmouth Land Use By-law, a maximum 2900 square feet development as illustrated on Schedule B shall be permitted pursuant to this Agreement.

3.4.3 Lot setbacks shall generally conform to those illustrated on Schedule B, in the opinion of the Development Officer.

### **3.5 Siting and Architectural Requirements**

3.5.1 The Developer agrees that the addition and existing building constructed on the Lands shall comply with the site plan attached to this Agreement as Schedule B and the building elevations attached to this Agreement as Schedule C.

3.5.2 Exterior building materials of the front elevation shall include stone, brick or an acceptable equivalent in the opinion of the Development Officer, as illustrated on Schedule C.

3.5.3 The facade of the front elevation shall contain recesses and/or projections, as illustrated on Schedule C, to avoid the appearance of long flat walls.

3.5.4 The facades of the right, left and rear elevations shall be veneered with stone, brick or stucco, painted clapboard or treated in another manner deemed acceptable to the Development Officer.

3.5.5 The window openings for the Breeze Drive and the Lombardy Lane elevation views as illustrated on the building elevations attached as Schedule C may be varied in height and width to permit window openings up to 60% of the total wall area. A maximum of 2 additional windows may be permitted on the Breeze Drive elevation. A continuous horizontal band of glazing is not acceptable.

3.5.6 Trim of no less than 4 inches in width shall be provided around all windows.

3.5.7 The fascia board shall not exceed 4 inches in height without a profiled molding.

3.5.8 The Development Officer may approve modifications to the architectural requirements of this section and the building elevations attached as Schedule C, provided the changes are consistent with the intent of this Agreement and minor in nature, in the opinion of the Development Officer.

### **3.6 Parking, Circulation and Access**

3.6.1 The layout of the access points and the number and layout of parking spaces on the Lands shall be as generally illustrated on Schedule B.

3.6.2 All parking areas and the access shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent in the opinion of the Development Officer.

3.6.3 The Developer agrees that lighting shall be directed to parking areas, building entrances and

walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

- 3.6.4 The Development Officer may approve changes to the parking and circulation layout illustrated on Schedule B provided that such changes are minor in nature and consistent with the intent of this Agreement, in the opinion of the Development Officer.

### **3.7 Landscaping**

- 3.7.1 Prior to the issuance of a Construction Permit, the Developer agrees to submit a Landscaping Plan which complies with the provisions of this section and generally conforms with the overall intentions of the preliminary landscape details shown on Schedule B.

- 3.7.2 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.

- 3.7.3 The Developer agrees that landscaping or appropriate vegetative cover shall be provided in all disturbed areas not occupied by buildings, walkways, driveways and parking areas except for areas where natural vegetative cover is maintained.

- 3.7.4 Further to Subsection 3.7.3, existing landscaped areas shall remain grassed and planted or include landscape features such as mulch, stone, perennials, annuals, shrubs or other vegetation and features deemed acceptable by the Development Officer.

- 3.7.5 Any new trees shall have a minimum caliper of 60 mm measured at a height of 300 mm above the ground.

### **3.8 Signage**

- 3.8.1 All signage shall be permitted in accordance with the Dartmouth Land Use By-law except where specifically varied by this Agreement.

- 3.8.2 The existing ground sign as indicated on the site plan attached as Schedule B to this Agreement may be relocated provided that all required setbacks from the street line of the Dartmouth Land Use By-law are met.

- 3.8.3 The Developer shall be permitted to affix a changeable letter sign with a total sign face area not to exceed 30 square feet to the existing ground sign that does not impede pedestrian or vehicular movement on site in the opinion of the Development Officer.

- 3.8.4 The Developer shall not be permitted any temporary signage on the Lands.

### **3.9 Outdoor Storage and Display**



3.9.1 No outdoor storage shall be permitted on the Lands. Refuse containers located outside the building shall be fully screened from adjacent properties and from streets and sidewalks by means of opaque fencing/masonry walls with suitable landscaping. Organic green bins must be located a minimum distance of 10 feet from the building.

3.9.2 Propane tanks shall be located on the Lands in such a way to ensure minimal visual impact from Montebello Drive and the residential properties abutting the property line. These facilities shall be secured in accordance with the applicable approval agencies and screened by suitable landscaping.

### **3.10 Hours of Operation**

3.10.1 The take-out food service and convenience store use shall be permitted to operate between the hours of 6:00 a.m. and 1:00 a.m., seven days a week.

3.10.2 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 8:00 am and 5:00 pm, Monday to Friday.

### **3.11 Maintenance**

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the buildings, fencing, walkways, 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 removal/salting of walkways and driveways. Maintenance of the development shall be the responsibility of the property owner and the Developer shall ensure that future property owners are aware of their obligations to maintain and keep in good repair all portions of the development.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

All design and construction shall conform with the HRM Municipal Service Systems Design Guidelines unless otherwise provided for in this Agreement and approved in writing by the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to accesses and driveways, provided the modifications serve to maintain or enhance the intent of this Agreement.

## **4.2 Off-Site Disturbance**

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

## **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

### **5.1 Detailed Site Plan**

The Developer agrees to have prepared by a qualified person and submitted to the Municipality for review and approval by the Development Engineer, a detailed Site Plan for the development. No work is permitted on the Lands until the requirements of this clause have been met and implemented unless otherwise stated in this Agreement and approved by the Development Engineer.

### **5.2 Erosion Control**

No final approval shall be issued unless the entire lot is either fully stabilized with sod or is temporarily stabilized and maintained with a covering of plastic or other such measures approved by the Development Engineer. Any temporary stabilization of the lot shall be replaced with final landscaping (top soil and sod) within six (6) months of the issuance of the final approval. The owner of the lot shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.

## **PART 6: AMENDMENTS**

### **6.1 Substantive Amendments**

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Halifax Regional Municipality Charter.

### **6.2 Non-Substantive Amendments**

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

- (a) The granting of an extension to the date of commencement of development as identified in Section 8.3 of this Agreement;
- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 8.3.3 or 8.4 of this Agreement;

- (c) A commercial access point from Breeze Drive to the rear of the Lands for delivery only;
- (d) Changes to hours of operation; and
- (e) Establishment of a second ground sign.

## **PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **7.1 Enforcement**

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 one (1) day of receiving such a request.

### **7.2 Failure to Comply**

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer ten (10) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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 defense 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 development 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; and
- (d) In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

**PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

**8.1 Registration**

A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

**8.2 Subsequent Owners**

8.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.

8.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

**8.3 Commencement of Development**

8.3.1 In the event that development has not commenced within three (3) years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

8.3.2 For the purposes of this section, development shall mean completion of the footings for the proposed building.

8.3.3 If the Developer(s) fails to complete the development, or after five (5) years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, 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.

8.4 Completion of Development

Upon the completion of the development or portions thereof, or within/after five (5) years from the date of registration of this Agreement with the Registry of Deeds, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, as amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this 18<sup>th</sup> day of August, A.D., 2009.

SIGNED, SEALED AND DELIVERED  
in the presence of

[Redacted Signature]

KAREN M. STOYLES  
A Commissioner of the  
Supreme Court of Nova Scotia

3048382 Nova Scotia Limited

[Redacted Signature]

Per:

GEORGE HABIB

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

Witness U

[Redacted Signature]

Witness

HALIFAX REGIONAL MUNICIPALITY

[Redacted Signature]

Per:

Peter J. Kelly

MAYOR

[Redacted Signature]

Per:

ACTING MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 11 day of August A.D., 2009, before me, the subscriber personally came and appeared [REDACTED] a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that 3048382 NOVA SCOTIA LIMITED, one of the parties thereto, signed, sealed and delivered the same in his presence.

[REDACTED]  
A Commissioner of the Supreme  
Court of Nova Scotia

**KAREN M. STOYLES**  
A Commissioner of the  
Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 18<sup>th</sup> day of August, A.D., 2009, before me, the subscriber personally came and appeared before me [REDACTED] the subscribing witness to the within and the foregoing Indenture, who, having been by me duly sworn, made oath and said that the Halifax Regional Municipality, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of Peter Kelly, its Mayor, and Cathy Mellet, its Acting Municipal Clerk, its duly authorized officers in his presence.

[REDACTED]  
A Commissioner of the Supreme  
Court of Nova Scotia

**ANITA CHRISTINE NEWSON**  
A Commissioner of the Supreme  
Court of Nova Scotia

SCHEDULE "A"

120

Legal Description of Lot 435

Lot 435 being all that certain piece and parcel of land situate and being in the Montabello Subdivision as shown on a plan by Norval S. Higgins, N.S.L.S. dated January 23, 1985, revised February 19, 1985 and filed as Alderney Consultants Ltd. plan No. 3500-42. Said lot 435 being more particularly described as follows:

Beginning at a point at an eastern corner of lot 436 such point being located north  $25^{\circ}24'11''$  West a distance of 397.043 m from Nova Scotia Coordinate Monument No. 5286. Such point also being located on the southwestern boundary of Caledonia Road,

Thence South  $33^{\circ}17'24''$  East a distance of 24.000 m along a portion of the southwestern boundary of Caledonia Road to a point at the northeastern corner of Montebello Drive,

Thence through a right-hand curve having a radius of 4.500 m a distance of 7.069 m in a southerly direction along a portion of the western boundary of Montebello Drive to a point,

Thence South  $56^{\circ}42'36''$  West a distance of 26.500 m along a portion of the northwestern boundary of Montebello Drive to a point at an eastern corner of lot 436,

Thence North  $33^{\circ}17'24''$  West a distance of 28.500 m along the northeastern boundary of lot 436 to a point,

Thence North  $56^{\circ}42'36''$  East a distance of 31.000 m along a southeastern boundary of lot 436 to the place of beginning and containing an area of 879.15 square metres.

All bearings are based on 3<sup>d</sup> N.T.M. Grid North Central Meridian  $64^{\circ}30'$  West.



Tom Swanson, N.S.L.S.

Subject to an easement granted to the City of Dartmouth over the lands described as Parcel SE-12A, as shown on a plan of Alderney Consultants Limited #3675-1 and dated August 22, 1985, the grant of which easement has not been registered at the Registry of Deeds.

Together with a right-of-way over Lot 436 more particularly described as follows:

cont.....p.2.

....p.2.

**BEGINNING** at a point designated by a found survey marker (F.S. M.) located on the southeastern corner of Lot 350B, being lands of Golden Key Developments Limited, which survey marker is located on the northern boundary of Montebello Drive;

**THENCE** north Thirty-three Degrees Seventeen Minutes Twenty-FOUR Seconds (N 33°17'24" W) along the eastern boundary of Lot 350B and the western boundary of "SE-12", as shown on said plan, a distance of Fifty-five Feet (55') to a point;

**THENCE** North Fifty-six Degrees Forty-Two Minutes Thirty-Six Seconds East (N 56°42'36" E) a distance of Thirty-Three point Thirty-nine feet (33.39') across "SE-12" to the western boundary of Lot 435;

**THENCE** south Thirty-Three Degrees Seventeen Minutes Twenty-FOUR Seconds east (S 33°17'24" E) along the western boundary of Lot 435 a distance of Fifteen feet (15') to a point;

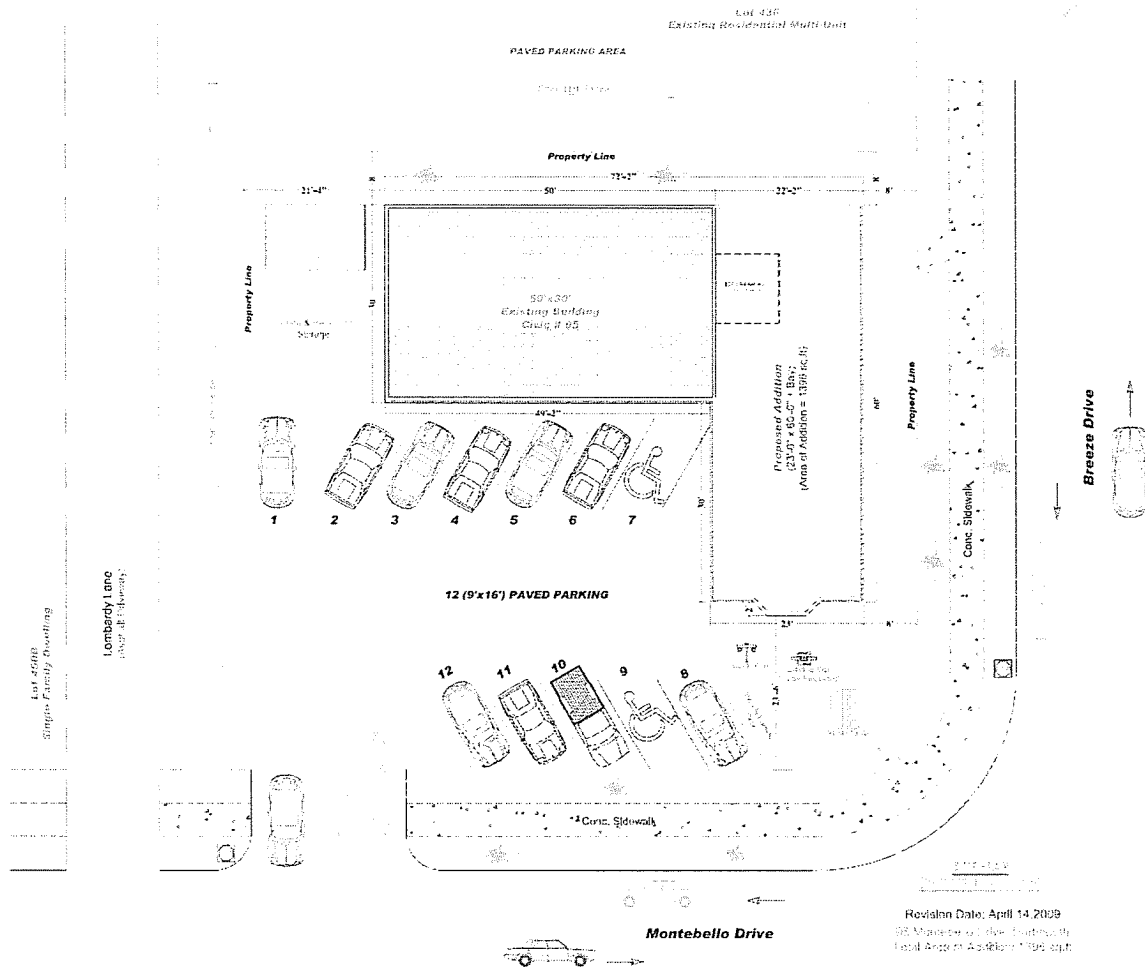
**THENCE** south Fifty-six degrees Forty-Two minutes Thirty-Six seconds west (S 56°42'36" W) a distance of Thirteen Point Seven Zero feet (13.70') to the eastern boundary of the easement designated "SE-12";

**THENCE** south Thirty-three degrees Seventeen Minutes Twenty-FOUR seconds east (S 33°17'24" E) a distance of Forty feet (40') to the northern boundary of Montebello Drive;

**THENCE** south Fifty-six degrees Forty-two minutes Thirty-six SECONDS west (S 56°42'36" W) a distance of Nineteen point Six Nine feet (19.69') to the survey marker marking the place of beginning.

PROVIDED THAT the                    herein give no warranty nor make any representations with respect to the aforementioned right of way.



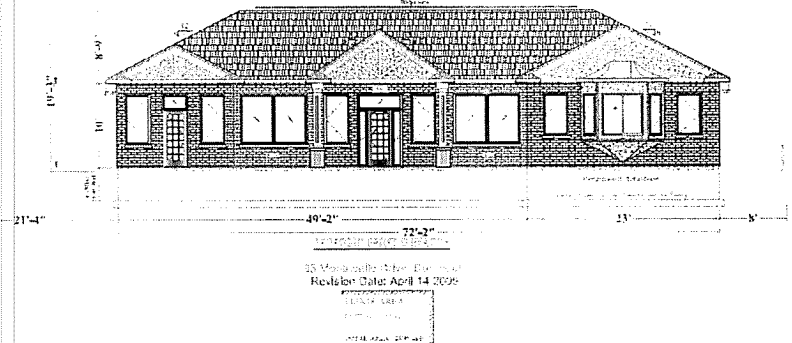


Schedule B -Site Plan

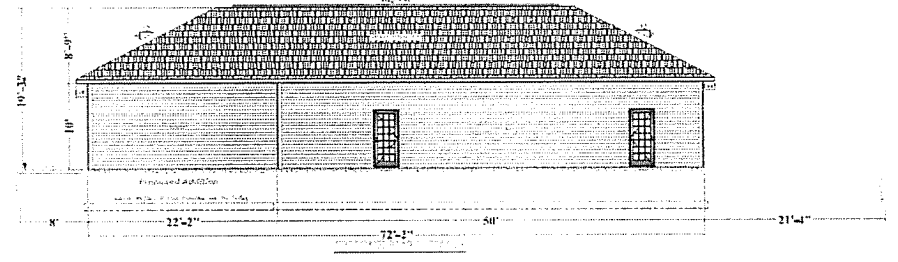
HRM does not guarantee the accuracy of any base map information on this map.



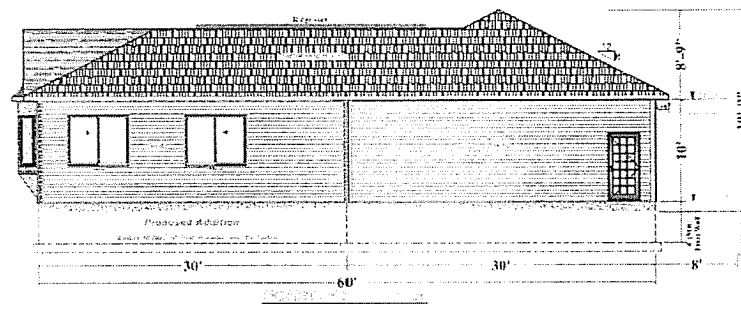
Building Permit #: \_\_\_\_\_  
Date Issued: \_\_\_\_\_



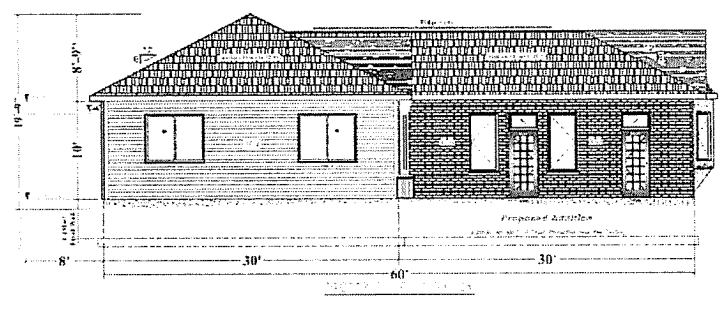
Front Elevation



Rear Elevation



Right Elevation



Left Elevation

### Schedule C - Elevations

HRM does not guarantee the accuracy of any base map information on this map.

