

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by



**SUBMITTED BY:** \_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

**DATE:** July 17, 2019

**SUBJECT:** **Case 22367: Municipal Planning Strategy amendment for 272 Auburn Drive, Westphal**

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## **ORIGIN**

Application by Lloyd Robbins on behalf of Yori Ayoub.

## **LEGISLATIVE AUTHORITY**

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

## **RECOMMENDATION**

It is recommended that Regional Council direct the Chief Administrative Officer to:

1. Initiate a process to consider amendments to the Municipal Planning Strategy for Cole Harbour/Westphal to modify policy UR-18 to remove commercial uses and enable residential uses at 272 Auburn Drive, Westphal and allow the consideration of rezoning the subject site to the R-4 Multi-unit Dwelling Zone; and
2. Follow the public participation program for municipal planning strategy amendments as outlined within the Community Engagement section of this report.

## **BACKGROUND**

Lloyd Robbins, on behalf of Yori Ayoub, is applying to amend the Cole Harbour/Westphal Municipal Planning Strategy (MPS) to remove site-specific policy enabling commercial uses for lands at 272 Auburn Drive, Westphal. Removing the site-specific policy language will allow the applicant to rezone to a residential use which is in keeping with the Urban Residential designation of the area. The applicant is also requesting the property be rezoned to the R-4 Zone to allow a 6-unit apartment dwelling by renovating the existing building.

<b>Subject Site</b>	272 Auburn Drive, Westphal
<b>Location</b>	Corner lot across from Auburn Drive High School
<b>Regional Plan Designation</b>	US (Urban Settlement)
<b>Community Plan Designation (Map 1)</b>	UR (Urban Reserve)
<b>Zoning (Map 2)</b>	C-1 Neighbourhood Business Zone
<b>Size of Site</b>	656.1 square metres / 7062 square feet
<b>Street Frontage</b>	Approximately 24.1 metres / 79.1 feet on Quindora Crescent Approximately 27.5 metres / 90.2 feet on Auburn Drive
<b>Current Land Use(s)</b>	Corner store with 2 residential apartments on upper level
<b>Surrounding Use(s)</b>	Residential, primarily R-1, R-2, and townhouses

### **Proposal Details**

The applicant has requested the property at 272 Auburn Drive be converted from a commercial use to residential use. However, under the current provisions of the MPS this proposal cannot be considered. The applicant has requested to amend the previously applied site specific Policy UR-18 of the Cole Harbour/Westphal MPS, removing the ability of 272 Auburn Drive to expand commercial uses by development agreement, and rezone the property from the C-1 Neighbour Business Zone to the R-4 Multiple Dwelling Unit Zone.

The major aspects of the proposal are as follows:

- The applicant wishes to cease commercial use of the property and develop the building through an as-of-right process as a 6-unit residential dwelling;
- Residential use aligns with the MPS Urban Residential designation;
- The variety store and C-1 zoning is an anomaly within the neighbourhood as a commercial exception to the designation and surrounding zones;
- Only 5 areas within the Cole Harbour/Westphal Plan Area were zoned C-1 Neighbourhood Business, with use dependant on the viability of the corner store business model; and
- The site does not meet all requirements of the R-4 Zone, specifically the building setbacks and parking. A site-specific Land Use By-law amendment will be required to enable as-of-right R-4 development.

### **History**

The Auburn Drive area was developed in the early-1990's as master planned community with a mix of housing types including R-1, R-2, and townhomes. The built form is low-rise, suburban residential with an allowance for neighbourhood convenience stores. 272 Auburn Drive zoned as C-1 Neighbourhood Business represents that concept, being a 2-storey variety store within a residential floorplate (1,700 square feet) with 2 apartment units above.

At the time the property was originally developed, variety stores were a part of master planned neighbourhoods. These stores filled a market gap given that commercial uses along commuter corridors had not fully developed, and large food retail businesses were restricted in hours of operation by Sunday shopping laws. The variety store business model was based on convenience, and the planning policy of the time determined that they were compatible in form and design with the surrounding community. Over the last 30 years the food retail sector has changed.

In 1999 four C-1 Neighbourhood Business zones within the Plan Area applied for site-specific Land Use By-law amendments to increase the number of permitted commercial uses. Submitted rationale at the time of application indicated that the variety store business model was problematic, with owners wanting options other than a variety store. In similar circumstances to 272 Auburn, a location on Circassion Drive (subject to the 1999 amendments) and a location on Atholea Drive (not subject to the 1999 amendments) are no longer operating commercially. These properties were located on lower volume streets and surrounded by residential uses, while the three other locations are along Caldwell Drive, which has become a major collector and has sufficient traffic to support commercial activity.

In 2011 the owner of 272 Auburn Drive requested the same opportunities as had been granted to other C-1 zoned sites. This was achieved through an amendment to policy UR-18 in the Cole Harbour/Westphal MPS and not the LUB. This enabled a development agreement process instead of an as-of-right permit.

In 2017, the applicant requested a development agreement through policy UR-18, with uses including a take-out food services or a transition of the space to a low-intensity office or clinic. The development agreement process was undertaken inclusive of a public information meeting in January 2019. The community discussion concluded that an all residential use of the site was preferred at this site. Subsequently, the applicant determined commercial viability was less than the financial returns of converting the entire subject site to all-residential use.

### **MPS and LUB Context**

The site-specific language, which is was added in July 2011 to the Cole Harbour/Westphal MPS under Policy UR-18, must be removed so as to allow for residential use of the site as proposed by the applicant:

UR-18 *"..., and to provide for the expansion of, and/or consideration of additional uses, at an existing neighbourhood convenience store at 272 Auburn Drive, ...."*

Through MPS policy UR-9, the R-4 Zone may be considered for the lands;

UR-9 *Notwithstanding Policy UR-2, within the Urban Residential Designation, it shall be the intention of Council to establish a multiple unit dwelling zone which permits new multiple unit dwellings to a maximum of six units, all existing multiple unit dwellings and community facility uses. Controls on parking and amenity areas shall be established in the zone. Council shall only consider new multiple unit dwellings by amendment to the land use by-law...*

It has been determined by the property owner that it is no longer sustainable to operate as a commercial business and not economically viable to convert to a single unit dwelling. Therefore, the applicant is requesting the property be rezoned from the C-1 Zone to the R-4 Zone of the Land Use By-law. Once rezoned to the R-4, the property will allow an apartment building with up to 6-units, subject to zone requirements. However, analysis of the site has determined that the property will not meet the yard and parking requirements. Therefore, the applicant has requested a further site specific amendment to the Cole Harbour/Westphal LUB relaxing these requirements for the site.

## **DISCUSSION**

A Municipal Planning Strategy (MPS) sets out the goals, objectives, and direction for the long-term growth and development in the Municipality. Amendments to the MPS are a significant undertaking and Council is under no obligation to make changes to the document. However, Council may consider amendments to the MPS to enable development which would be inconsistent with existing policies. Amendments should only be considered within the wider planning context and where there is reason to make an amendment due to contextual changes since the MPS was adopted or last reviewed.

### **Applicant Rationale**

The applicant has provided the following rationale in support of the proposed amendments:

- The variety or corner store business model is no longer viable in the current location if constrained to pantry goods sales alone;
- Expanding commercial use to include a take-out food service counter was explored, but not supported by the community;
- Alternative commercial use including office or clinic space was similarly investigated, but the site's isolation from a commercial area made viability problematic;
- Community resistance to a ready-to-eat food outlet, across from a high school, was unfavourable due to potential for increased nuisance activity;
- It is challenging for a suburban standalone food retail vendor or low intensity office or clinic space to succeed when competition is located along major commercial corridors within reasonable commuting distance (e.g. Portland Street);
- The 2 existing upper level apartments would have continued under all proposed scenarios;
- An all-residential, small apartment solution, including rezoning to R-4, is a preferable option that maintains business revenues while improving neighbourhood compatibility; and
- The landowner is willing to forego future commercial retail use and requests a site-specific Land Use By-law amendment to allow for a 6-unit building on the existing site.

Attachment A contains the applicant's application letter.

### **Review**

Staff have reviewed the submitted rationale in the context of site circumstances and surrounding land uses and advise that there is merit to the request. The request would solve the problem of a property zoned for commercial uses that may no longer be economically viable given its geographic location. Rezoning and redeveloping the property to a 6-unit apartment dwelling aligns the land use with the designation. The community indicated a strong preference for residential over the potential for a convenience store serving take-out food and the potential nuisance activity. The R-4 Zone, with limited site-specific amendments, is appropriate for the property and the community.

A full review of the request would consider the following:

- The process will require approval of this Initiation Report followed by a recommendation of the MPS Amendment Report by Harbour East-Marine Drive Community Council forwarded to 1<sup>st</sup> Reading and a Public Hearing by Regional Council.
- The Land Use By-law amendment to the R-4 (Multiple Unit Dwelling) Zone can be incorporated into the MPS amendment by Regional Council under policy UR-9, justified by the deletion of the site-specific language in policy UR-18.
- Details of the site-specific Land Use By-law amendment required to make the existing building and addition conform to the R-4 Zone will be forthcoming in the MPS Amendment Report to Community and Regional Councils.
- A full compatibility analysis and policy matrix will be in the MPS Amendment Report.

### **Conclusion**

Staff reviewed the proposed MPS amendment and advise that there is merit to the request. The applicant and staff agree amending the MPS and LUB solves a problem unique to this property and its economic viability. Community input favoured a residential solution, and amendments to the MPS/LUB are constrained solely to the subject site. Therefore, staff recommend that Regional Council initiate the MPS /LUB amendment application process.

### **COMMUNITY ENGAGEMENT**

A Public Information Meeting (PIM) was held January 23, 2019 at Auburn High School to discuss a development agreement for 272 Auburn Drive to allow for commercial uses on the site. Approximately 39 community members were in attendance who provided near consensus feedback that the appropriate use for this site was residential development. This feedback was provided notwithstanding the fact that a

residential proposal was not the subject of the application at that time. Generally, the community did not support commercial uses on the site. As a direct result of the previously completed public engagement indicating support in the community for a comprehensively residential development on this site, the amended application before Council for an amendment to the MPS is proposed.

Should Regional Council choose to initiate the MPS amendment process, the HRM Charter requires that Regional Council approve a public participation program. Rather than proceed with the February 1997 Public Participation resolution, given the localized nature of the requested amendment, staff propose that the level of community engagement be achieved through the HRM website, signage on the subject lot, and letters mailed to property owners within the notification area. The proposed amendments would limit the scope of change to only this property.

Staff advise that a further public meeting is unnecessary with follow-up engagement to be performed through a Fact Sheet mailout and one-on-one discussions between planning staff and involved members of the community. The community will have further opportunity to engage with Regional Council at the Public Hearing. Staff will also ensure signage is placed on the site indicating an application has been submitted, a website on Halifax.ca is created, and an additional mailout notification sent to area residents in advance of a Public Hearing should Council direct staff to schedule one at the conclusion of this process.

Amendments to the Cole Harbour/Westphal Municipal Planning Strategy will potentially impact residents of Auburn Drive and Quindora Crescent.

### **FINANCIAL IMPLICATIONS**

The HRM costs associated with processing this planning application can be accommodated within the approved 2019-2020 operating budget for C310 Urban and Rural Planning Applications.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified at this time.

### **ALTERNATIVES**

1. Regional Council may choose to initiate the consideration of potential policy that would differ from those outlined in this report. This may require a supplementary report from staff.
2. Regional Council may choose not to initiate the MPS amendment process. A decision of Council not to initiate a process to consider amending the Cole Harbour/Westphal Municipal Planning Strategy is not appealable to the NS Utility and 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: Application Letter

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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: Cameron Robertson / Planner II / 902.490.7175

Original Signed

Report Approved by:

\_\_\_\_\_  
Steven Higgins, Manager, Current Planning, 902.490.4382

Original Signed

Financial Approval by:

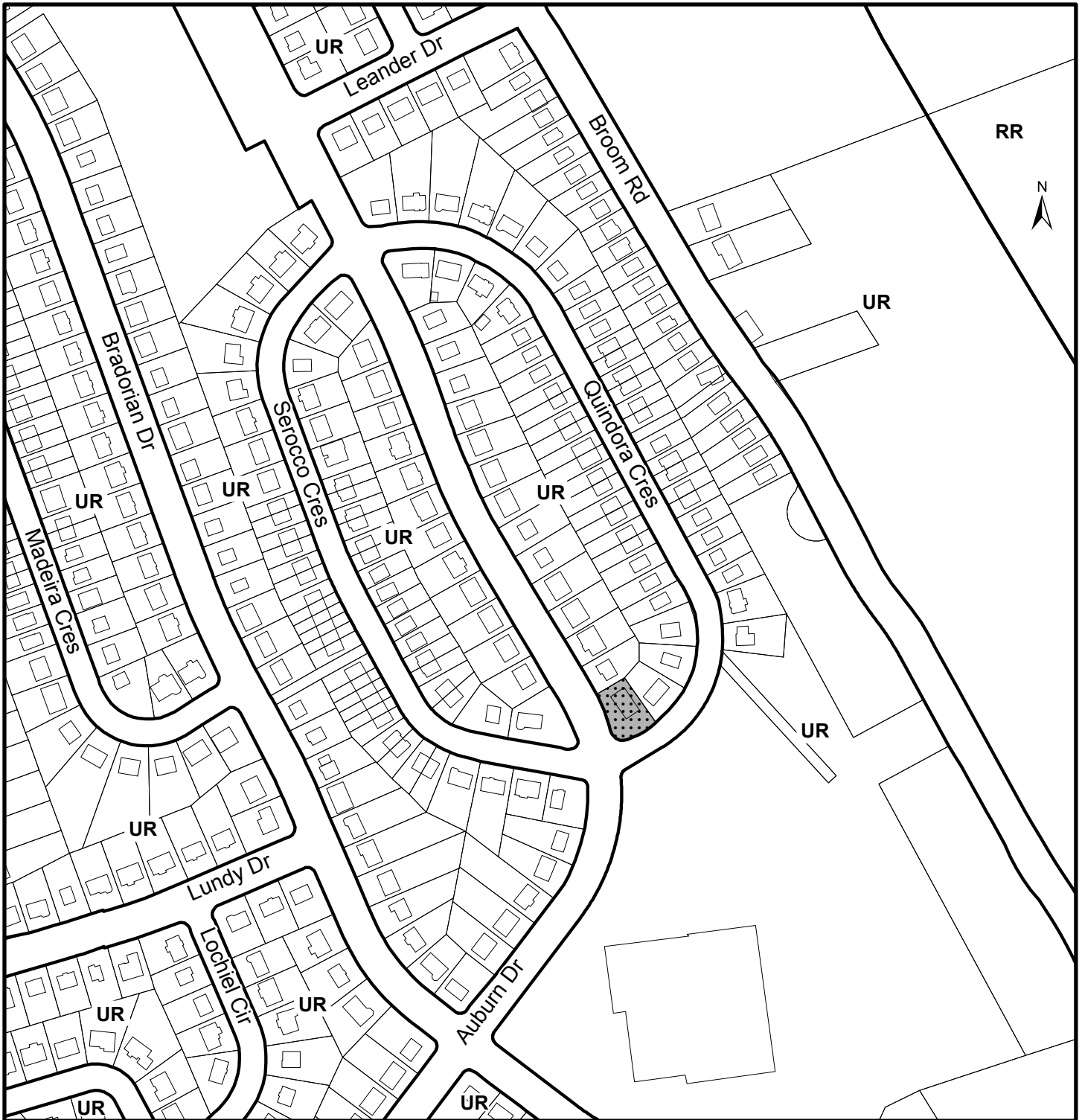
\_\_\_\_\_  
Jane Fraser, Director of Finance, Asset Management and ICT/CFO, 902.490.4630

Original Signed

Report Approved by:

\_\_\_\_\_  
Eric Lucic, Acting Director of Planning and Development, 902.430.3954


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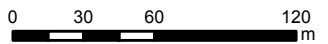
**Map 1 - Generalized Future Land Use**

**HALIFAX**

272 Auburn Drive  
Westphal

 Subject Property

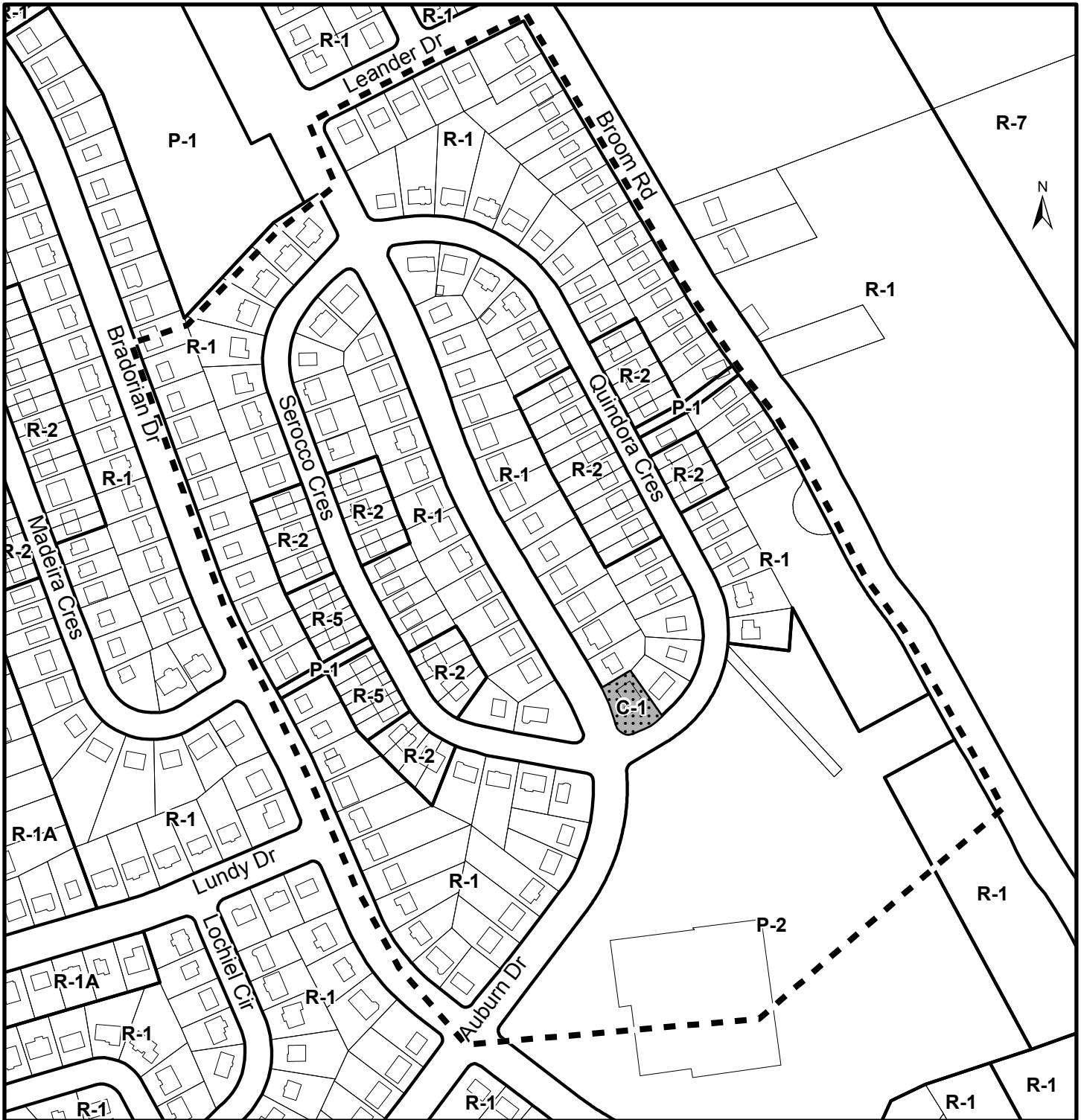
**Designation**  
UR Urban Residential  
RR Rural Residential



Cole Harbour/Westphal  
Plan Area

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.



### Map 2 - Zoning and Notification

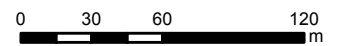
272 Auburn Drive  
Westphal


**HALIFAX**

 Subject Property

**Zone**

- R-1 Single Unit Dwelling
- R-1A Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-5 Rowhouse Dwelling
- R-7 Rural Estate
- P-1 Open Space
- P-2 Community Facility



 Area of Notification

This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

Cole Harbour/Westphal  
Land Use By-Law Area

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



Attachment A

**LLOYD R. ROBBINS**  
**LLOYD ROBBINS LAW INCORPORATED**  
**5 ROCKHAVEN DRIVE**  
**HALIFAX NOVA SCOTIA**  
**B3M 1Z8**

O: 902 443 1445  
C: 902 440 5105

May 20 2019

Re: 272 Auburn Drive, Application for 6 unit apartment Building

Dear Mr Lowe

The following is provide to you as the Applicants rationale for the above noted Amendment Application:

- *The variety or corner store business model is no longer viable in the current location if constrained to pantry goods sales alone.*
- *Expanding commercial use to include a take-out food service counter was explored most thoroughly as this is what many corner stores chasing new revenues have attempted.*
- *Expanded commercial use for office or clinic space was explored as well, but the site's isolation from an agglomerated commercial area made viability problematic.*
- *Community resistance to a ready-to-eat food outlet, across from a high school, was unfavourable due to potential for increased nuisance activity.*
- *It is challenging for a suburban standalone retail store serving take-out food or pantry goods to succeed when competition is located along major commercial corridors within reasonable commuting distance, such as Portland Street.*
- *The business case for this site remaining commercial is risky.*
- *The 2-unit upper level apartments would have continued under all proposed scenarios.*
- *An all-residential, small apartment solution, including rezoning to R-4, is a preferable option that maintains business revenues while increasing neighbourhood compatibility.*
- *The landowner is willing to forego future commercial retail use and requests a site-specific Land Use By-law amendment to allow for a 6-unit building on the existing site.*
- *We request an amendment to remove references to 272 Auburn Drive in Policy UR-18 in the Cole Harbour/Westphal Plan MPS.*
- *We request an amendment to the Cole Harbour/Westphal LUB to allow for a 6-unit apartment dwelling on the subject site.*

Sincerely Yours  
ORIGINAL SIGNED BY

Lloyd Robbins