



THE TOWN OF WINDSOR
DEPARTMENT OF PLANNING & DEVELOPMENT

STAFF REPORT

TO – WINDSOR PLANNING ADVISORY COMMITTEE

FROM – DEPARTMENT OF PLANNING & DEVELOPMENT

SUBJECT – WDA-19-01 - DEVELOPMENT AGREEMENT APPLICATION – JEFF & TINA SMITH (PID 45056793) TO ALLOW LOCAL COMMERCIAL USE DEVELOPMENT IN A RESIDENTIAL DESIGNATION

DATE – February 13, 2019

ORIGIN

Property owners, Jeff and Tina Smith, have applied to the Town of Windsor to enter into a development agreement to allow them to build a farm market on PID 45056793, a vacant lot on Nesbitt Street.

BACKGROUND

The subject property, a vacant lot on Nesbitt Street (PID 45056793), is located in an area designated Residential and zoned R4 (Multi-Unit Residential). This use may be considered by Development Agreement as per 6.1 (h) of the Town of Windsor Land Use Bylaw and Section 8.1.4 of the Municipal Planning Strategy.

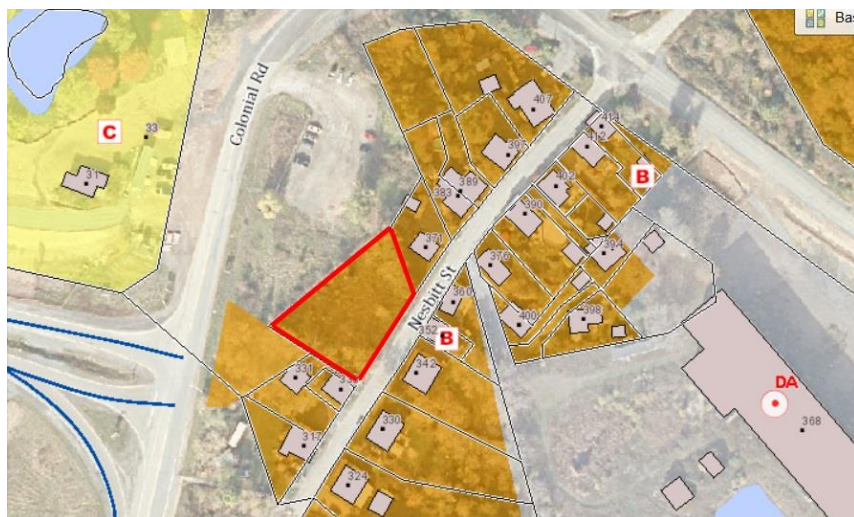


Figure 1: Subject property outlined in red.

POLICY REVIEW

1. Land Use By-Law (LUB)

The Land Use By-Law outlines where commercial developments are permitted and when a development agreement is possible.

6.0 DEVELOPMENT AGREEMENTS

Developments to be considered by Development Agreement

6.1 The following developments may be considered only by development agreement in accordance with the Municipal Government Act and the Municipal Planning Strategy:

(h) local commercial uses in any designation in accordance with Policy 8.1.4 of the Municipal Planning Strategy;

2. Municipal Planning Strategy (MPS)

The policies of the MPS to be considered by Council when considering a request for local commercial use include:

Policy 8.1.4 It shall be the policy of Council to consider new local commercial uses in any designation by development agreement subject to the following provisions:

	Staff Comment
(a) adequate off-street parking is provided;	No issues anticipated. A minimum of 15 parking spaces shall be required, inclusive of at least one barrier free parking space, within 160 ft. of the main entrance.
(b) the adjacent residential area will not be adversely affected with respect to: (i) traffic generation and traffic safety; (ii) signage; (iii) hours of operation; and (iv) size of building(s);	An updated site plan will be required to address any traffic concerns. Signage will be as per LUB. No issues anticipated with hours of operation or building size. This proposal is subject to a Public Hearing.
(c) adequate buffering or screening, setbacks and yards are provided;	5 ft. (1.52 m) planting buffer required between neighboring residential uses.
(d) maintenance of the local commercial use will be satisfactory;	No issues anticipated.
(e) the architectural design of the development is reasonably consistent with the provisions of the Architectural Design Manual if the	No issues anticipated. Property is not located in a controlled architectural design district.

proposed development is located in an Architectural Design Control District;	
(f) any other matter which may be addressed by development agreement; and	No issues anticipated.
(g) the provisions of Policy 16.3.1.	

Policy 16.3.1 In considering amendments to the Town of Windsor Land Use By-law, Council shall consider:

	Staff Comment
<i>(a) whether the proposal is considered premature or inappropriate in terms of:</i>	
<i>(i) the adequacy of sewer and water services;</i>	No issues anticipated.
<i>(ii) the adequacy of school facilities;</i>	No issues anticipated.
<i>(iii) the adequacy of fire protection;</i>	Awaiting updated site plan.
<i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i>	Awaiting updated site plan.
<i>(v) the financial capacity of the Town to absorb any costs relating to the development.</i>	No issues anticipated.
<i>(b) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i>	Awaiting updated site plan.
<i>(c) the adequacy of the dimensions and shape of the lot for the intended use;</i>	No issues anticipated.
<i>(d) the pattern of development which the proposal might create;</i>	No issues anticipated.
<i>(e) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, marshes or bogs and susceptibility of flooding;</i>	A geotechnical study will be required as part of the site is within an environmental constraints area.
<i>(f) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations; and</i>	Meets provincial and federal requirements; an updated site plan shall be required. This proposal is subject to a Public Hearing.

PROCESS

This report will be reviewed by the Planning Advisory Committee (PAC) and a recommendation provided to Town Council, if deemed appropriate, to consider entering into a development agreement.

If Council agrees to further consideration on the proposal, the proposal will be further discussed at a Public Hearing, with associated notification, before a final decision by Council is made. An appeal period of 14 days follows before filing and final registration of the Development Agreement.

CONCLUSIONS

The proposed food market meets the intent of the Municipal Planning Strategy and provides local commercial uses within an existing residential area intended for multi-unit dwellings. This contributes to the creation of complete communities and contributes to decreased risk factors for individual health based on social indicators of community health. Redevelopment of the Mill Island area is anticipated in the future.

RECOMMENDATION

It is recommended:

THAT THE PLANNING ADVISORY COMMITTEE RECOMMEND THAT COUNCIL APPROVE THE REQUEST FROM JEFF AND TINA SMITH TO ENTER INTO A DEVELOPMENT AGREEMENT TO ALLOW DEVELOPMENT OF A LOCAL COMMERCIAL USE IN A RESIDENTIAL DESIGNATION ON PID 45056793 NESBITT STREET, WINDSOR

ATTACHMENTS

1. Draft Development Agreement
 - a. Legal Description of Lands
 - b. Site Plan
 - c. Elevations

Report Prepared by Jeremy Banks, Town Planner

ATTACHMENT 1 – DRAFT DEVELOPMENT AGREEMENT

This **Development Agreement** is made this _____ day of _____, 2019

BETWEEN:

JEFF SMITH and
TINA SMITH
(Hereinafter called the “Developer”)

OF THE FIRST PART

- and -

TOWN OF WINDSOR
A municipal body corporate,
(Hereinafter called the “Town”)

OF THE SECOND PART

WHEREAS the Developer has requested that the Town enter into a Development Agreement relating to the use and development of the Lands (PID 45056793) pursuant to the provisions of the Municipal Government Act and the Windsor Municipal Planning Strategy;

AND WHEREAS a condition of granting approval for the development of the Lands is that the parties enter into this Development Agreement;

AND WHEREAS the Town Council of the Town, at its meeting on _____ approved entering into this Development Agreement to permit the establishment of a Planned Development on the Lands, subject to the registered owner of the Lands entering into this Development Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the covenants made in this Development Agreement and other valuable consideration the Developer and the Town agree to the following terms:

1. Schedules

The following schedules form part of this Development Agreement:

- Schedule "A" – Legal Parcel Description of Lands
- Schedule "B" – Site Plan/Landscape Plan for the Lands
- Schedule "C" – Elevations of New Main Building

2. Definitions

2.1 In this Development Agreement:

"Barrier Free" means as established by the National Building Code

"Barrier Free Parking Stall" means the provisions set forth under Section 3.8.2.2 (4) and Section 3.8.2.2(5) under Schedule C within the Nova Scotia Building Code Regulations made under Section 4 of the Building Code Act.

"Building By-Law" means Chapter 65 of the By-Laws of the Town of Windsor.

"Building Code Act" means an Act to adopt and implement a building code for the Province of Nova Scotia RSNS 1989 Chapter 46, as amended.

"Developer" means the owner(s) of the lands, their heirs, successors, assigns, and all subsequent owners of the lands.

"Development Officer" means the Development Officer appointed by the Town of Windsor under the provisions of the *Municipal Government Act*.

"Engineer" means the Engineer appointed by the Town of Windsor under the provisions of the *Municipal Government Act*.

"Lands" means the real property in the Town of Windsor owned by the Developer, PID 45056793, and as described in Schedule "A".

"Land Use By-Law" means the Land Use By-Law of the Town of Windsor in force from time to time, adopted and amended by the Windsor Town Council under the provisions of the *Municipal Government Act*. At the date of this Development Agreement, it is the Land Use By-Law approved by Council on August 23, 2005.

"Municipal Planning Strategy" means the municipal planning strategy of the Town of Windsor in force from time to time, adopted and amended by the Windsor Town Council under the provisions of the *Municipal Government Act*. At the date

of this Development Agreement, it is the Municipal Planning Strategy approved by Council on August 23, 2005.

“MGA” means the *Municipal Government Act*, S.N.S. 1998, c. 18, as amended.

“Planned Development” means the grouping on the lands of permitted uses in a zone, subject to the Municipal Planning Strategy.

“Planning Documents” means Land Use Bylaw, Municipal Planning Strategy, and Subdivision Bylaw.

- 2.2** Where terms (words or phrases) are not defined in this Development Agreement, definitions in the Town’s planning documents shall apply. Where terms are not defined in the planning documents, definitions in the MGA shall apply. Where terms are not defined in the aforementioned sources, their ordinary meaning shall apply.

3. Relevance of Planning Documents and Other Regulations

- 3.1** This Development Agreement contains definitions and regulations for the Development. It complements the Town’s Planning Documents. Unless specified in this Development Agreement, requirements in the Town’s Planning Documents shall apply. Where there is a conflict between this Development Agreement and the Planning Documents, this Development Agreement shall prevail.
- 3.2** Regulations outside of this Development Agreement or the Town’s Planning Documents may be applicable to the Development. However, the terms of this Development Agreement shall not be materially changed in order to comply with such regulations without an amendment to this Development Agreement.

4. Background

The Developer wishes to construct a single commercial food market and associated parking area.

The Planned Development would consist of a commercial food market on the Lands, as outlined on Schedule “B”. The Municipal Planning Strategy requires that such a development be approved by a Development Agreement. The parties have therefore agreed to enter into this Development Agreement.

5. Terms

5.1 Development Conditions

5.1.1 Permits and Approvals

- 5.1.1.1** This Development Agreement allows the Developer to obtain development permits, other permits, and permissions to allow uses permitted by this Agreement.
- 5.1.1.2** The Developer shall be responsible for obtaining all necessary permits and approvals required by law for the Development, including but not limited to development permits, building permits, and any approvals required from the Province of Nova Scotia.
- 5.1.1.3** Obligations or other requirements in this Development Agreement are those of the Developer, unless otherwise specified.
- 5.1.1.4** No occupancy permit shall be granted for this Development until all provisions of this agreement are met, except for landscaping requirements that cannot be met due to seasonal restrictions.

5.1.2 Land Use

- 5.1.2.1** The following uses are permitted:
 - (a)** All as-of-right uses permitted for the appropriate zoning for this property as outlined in the Land Use By-law, as amended from time to time.
 - (b)** A commercial food market or similar local commercial use.

5.1.3 Landscaping & Site Requirements

- 5.1.3.1** The Development shall conform to the zone standards of the Land Use By-law, as established in the Municipal Planning Strategy except as otherwise established by this agreement.
- 5.1.3.2** All Development shall occur on the Lands.
- 5.1.3.3** Development on the Lands shall be built generally in accordance with the Site Plan and Specifications of Schedule "B." Landscaping requirements as shown in Schedule "B" may be varied to accommodate different plant varieties, the location of planting beds or other minor details yet must include a planting strip between existing residential uses and the proposed use having a minimum width of 5 ft. (1.52 m) measured perpendicular to said lot line.

- 5.1.3.4** The Developer shall establish and maintain all non-hard surface areas on the Lands as landscaped areas.
- 5.1.3.5** Storm water runoff from the Lands shall not be directed onto adjacent properties unless permission is obtained from the adjacent property owner for the direction of such storm water runoff.
- 5.1.3.6** The Development shall develop and maintain a total of fifteen (15) parking spaces, one of which is to be a Barrier Free Parking Stall.
- 5.1.3.7** The Developer shall provide onsite lighting for all driveways and walkways on the Lands of number and design sufficient to provide for the reasonable safety and security of vehicles and pedestrians. All lighting fixtures shall be of a design as to prevent the unreasonable illumination of adjacent properties and full cut off fixtures shall be used for all outdoor lighting (light fixtures must direct light towards the ground).

5.1.4 Municipal Services

- 5.1.4.1** The parties agree that municipal sanitary sewer and water services are available.
 - 5.1.4.1.1** All costs to connect the new main building to these services are the responsibility of the Developer.
- 5.1.4.2** The Town makes no warranties, guarantees or claims as to the adequacy of the Town's water supply to provide the recommended Fire Flow amounts for protection of the building from fire. The Developer shall satisfy itself that the available fire flows are satisfactory to meet its needs.

5.1.5 Refuse Storage and Utility Equipment

- 5.1.5.1** Refuse, compost, recyclables, and other similar matters shall be stored within the building(s), or within accessory structures or containers

pursuant to the requirements of the Land Use Bylaw, Town of Windsor Solid Waste By-Law, and other applicable regulations.

5.1.5.2 Containers referenced in 5.1.5.1 shall be located so that they are visually screened.

5.1.5.3 Utility equipment such as mechanical and electrical equipment shall be visually screened by fencing or landscaping.

5.1.6 General Maintenance and Operation

5.1.6.1 Buildings, landscaping, and other related features shall be maintained in good condition, pursuant to the Town of Windsor Minimum Standards By-law.

5.1.7 Timing

5.1.7.1 This Development Agreement does not come into effect until the requirement of Section 228(3) of the Municipal Government Act are fulfilled and this development agreement is filed in the Registry of Deeds. All other time requirements imposed in this Development Agreement shall be calculated from that date, the effective date.

5.1.7.2 All Development enabled by this Agreement shall be completed within three (3) years. Upon failure to meet this timing requirement, the Town may discharge this Development Agreement without the consent of the Developer.

5.1.7.3 Within 1 year of the issuance of the occupancy permit for the Development, all landscaping required by this Agreement shall be completed.

5.1.8 Amendment

5.1.8.1 With the exception of matters which the Town and the Developer do not consider to be substantive, the amendment of any other matter in this Development Agreement can only be made under the provisions of Section 230 of the MGA, including the holding of a Public Hearing.

5.1.8.2 Following are matters in this Development Agreement which the Town and the Developer do not consider to be substantive:

(a) The requirements for completion imposed by section 5.1.7.3.

5.1.9 Expenses

5.1.9.1 The Developer shall pay all costs and expenses incurred by the Town related to this Development Agreement.

5.1.10 Liability

5.1.10.1 The Developer shall be liable for any damage caused to persons or public or private property by the Developer or any contractor or other individual doing work related to the Development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the Development. The Developer shall obtain and maintain in force throughout the course of construction on the Development, liability insurance coverage to insure the responsibilities which the Developer is assuming in this section.

5.1.11 Default

5.1.11.1 If the Developer fails to comply strictly with any term of this Development Agreement or any legislation applicable to this Development Agreement, the Town may, after 30 days' notice in writing to the Developer, enter the lands and perform any obligation with which the Developer has failed to comply strictly. All expenses arising out of the entry of the Lands and performance of the obligations may be recovered by the Town from the Developer by direct suit and shall form a charge upon the Lands. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest costs shall be treated as an expense.

5.1.11.2 If the Developer breaches any of the terms of this Development Agreement, the Town, at its sole option, may:

- (a) Terminate this Development Agreement;
- (b) Exercise its rights under paragraph 5.1.11.1 above; or,

(c) Take no action.

5.1.11.3 Any election by the Town to take no action on a breach of this Development Agreement by the Developer shall not bar the Town from exercising its rights under this Development Agreement on any other breach.

5.1.11.4 Any expenses incurred by the Town in exercising its rights under sections 5.1.11.1 and 5.1.11.2, or either of them, shall include, but are not limited to, costs and expenses incurred in returning the Lands to their original condition before work began on the Development and all solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. The costs and expenses shall be paid by the Developer to the Town as a debt and may be recovered by direct suit. Such expenses form a first lien on the Lands as provided by Section 507 of the Municipal Government Act. The Developer shall pay interest on the costs and expenses, outstanding from time to time, at the same monthly rate charged by the Town for municipal real property tax arrears. Such interest costs shall be treated as an expense.

5.1.12 Administration

The Development Officer administers this Agreement. The decision of the Development Officer is final and binding on all parties.

6. Warranties by the Developer

6.1 Title and Authority

6.1.1 The Developer warrants as follows:

- (a) The Developer has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance, or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature on this Development Agreement to validly bind the Lands or the Developer has obtained the approval of every other entity which has an interest in the Lands whose authorization is required for the Developer to sign this Development Agreement to validly bind the Lands.
- (b) The Developer has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

7. Full Agreement

7.1 Other Agreements

7.1.1 This Development Agreement constitutes the entire agreement and contract entered into by the Town and the Developer. No other agreement or representation, whether oral or written, shall be binding.

7.1.2 This Development Agreement shall not be a precedent for any other agreement either between the Town and the Developer or between the Town and any other party.

8. Notice

Any notice to be given under this Development Agreement shall be made in writing and either served personally or forwarded by courier or by registered mail, postage prepaid, if to the Town to:

Town of Windsor
PO BOX 158,
100 King Street,
Windsor, Nova Scotia
B0N 2T0
Attention: Development Officer

and, if to the Developer:

JEFF SMITH AND TINA SMITH
PO BOX 2376
18 Nesbitt Street
Windsor, Nova Scotia
B0N 2T0

9. Headings

The headings used in this Development Agreement are for convenience only. If any of the headings are inconsistent with the provisions of the Development Agreement which it introduces, the provisions of the Development Agreement shall apply.

10. Binding Effect

This Development Agreement shall ensure to the benefit of and be binding upon the parties to this Development Agreement, their respective successors, administrators, and assigns.

11. Execution

In witness of this Development Agreement the parties have signed and delivered it to each other on the date set out at the top of the first page.

SIGNED AND DELIVERED

In the presence of:

_____) TOWN OF WINDSOR
))
))
) By _____
) MAYOR

_____)
Witness)
))
) By _____
) TOWN CLERK

SIGNED AND DELIVERED

In the presence of:

_____)
))
))
) By _____
) JEFF SMITH

_____)
Witness)
))
))
) By _____

_____)
) TINA SMITH
_____)
Witness

CANADA
PROVINCE OF NOVA SCOTIA
HANTS COUNTY

I certify that on _____, 2019, _____
a witness to this agreement came before me, made oath, and swore that the **TOWN OF WINDSOR**, caused the same to be executed by its proper officers who affixed its Corporate Seal and subscribed their hands in its name and in its behalf in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF KINGS

I certify that on _____, 2019, _____
a witness to this agreement came before me, made oath, and swore that **JEFF SMITH and TINA SMITH** caused the same to be executed by its proper officers who affixed its Corporate Seal and subscribed their hands in its name and in its behalf in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A" – Property Description

ALL that lot of land and premises situate on the northwest side of Nesbit Street, in the Town of Windsor, in the County of Hants, Province of Nova Scotia and bounded and described as follows:

BEGINNING at an iron pipe on the northwest side of Nesbit Street at the corner of Roland Anthony's land and farm;

THENCE to run north 28 degrees west a distance of 125 feet to an iron pipe;

THENCE to run north 73 degrees 52 minutes east along property formerly owned by the Canadian Gypsum Company Limited a distance of 182.5 feet to an iron pipe;

THENCE along property of one Thomas DeMont south 11 degrees 02 minutes west a distance of 81.5 feet to an iron pipe;

THENCE south 32 degrees 13 minutes east a distance of 6.5 feet to Nesbit Street;

THENCE south 58 degrees 03 minutes west along Nesbit Street a distance of 126 feet to the place of beginning.

RESERVING a right of way 20 feet wide adjacent to Roland Anthony's property running from Nesbit Street to property formerly owned by the Canadian Gypsum Company Limited.

SUBJECT TO restrictive covenants more particularly described in a deed recorded as Document No. 104734927.

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

Compliance:

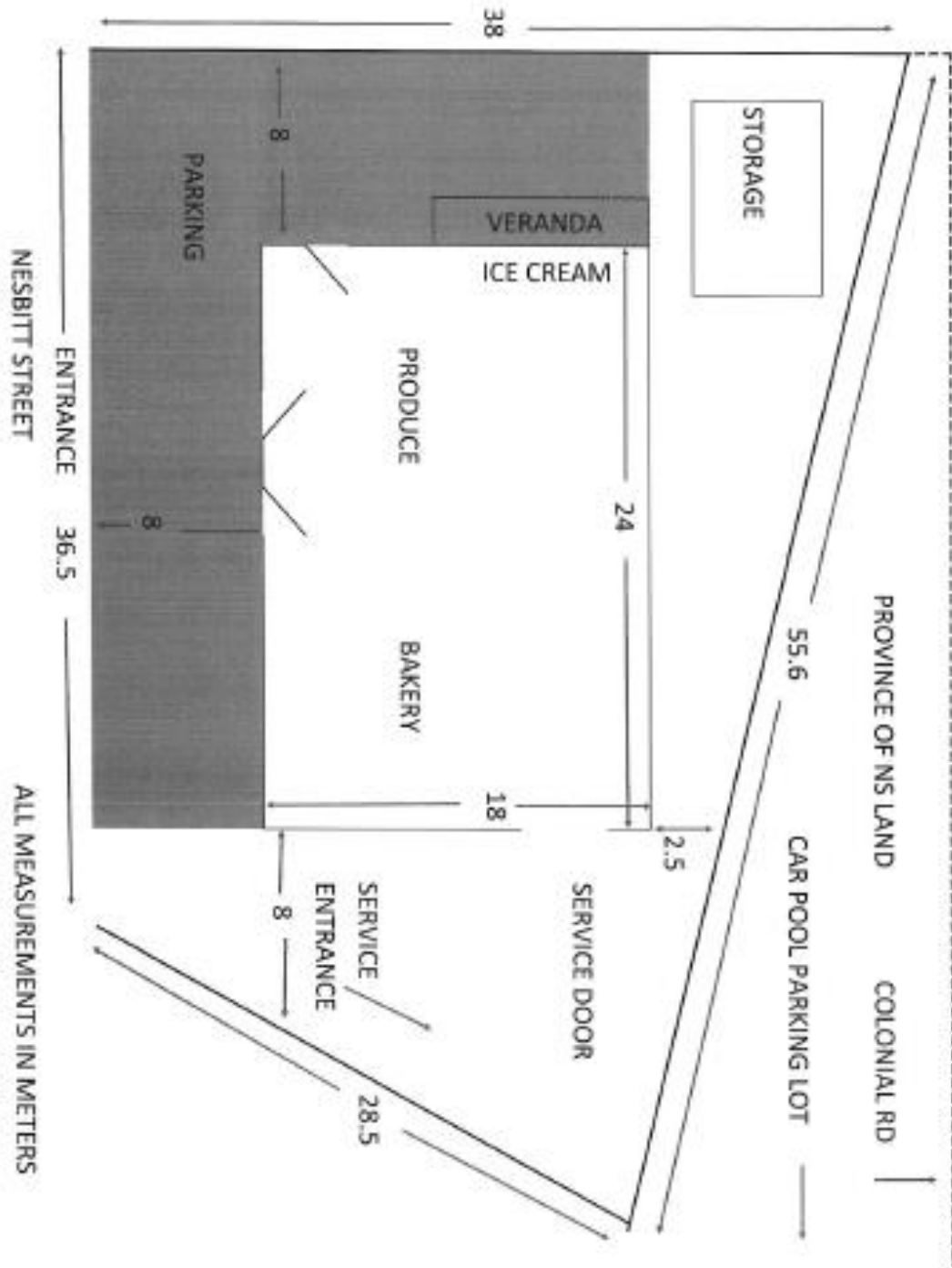
The parcel originates with an instrument (registration details below) and the subdivision is validated by Section 291 of the Municipal Government Act

Registration District: HANTS COUNTY

Registration Year: 1965

Book: 249 Page: 406 Document Number: 60

Schedule "B" – Site/Landscaping Plan



Schedule "C" – Elevations

