



THE TOWN OF WINDSOR

DEPARTMENT OF PLANNING & DEVELOPMENT

STAFF REPORT

TO – WINDSOR PLANNING ADVISORY COMMITTEE

FROM – DEPARTMENT OF PLANNING & DEVELOPMENT

SUBJECT – WDA-19-02 -DEVELOPMENT AGREEMENT APPLICATION - TO ALLOW ONE ADDITIONAL DWELLING UNIT AT 200 ALBERT STREET (PID 45050010)

DATE – February 13, 2019

ORIGIN

Property owner, Todd MacEachern, has applied to the Town of Windsor to enter into a development agreement to allow one additional dwelling unit at 200 Albert Street, Windsor (PID 45050010).

BACKGROUND

The subject property, 200 Albert Street, is located in an area designated Residential and zoned R2 -Two Unit Residential. The property currently has three residential units and a vacant space which was previously used as a yoga studio. The owner would like to convert the space into a residential unit thus creating a four unit residential building.



Figure 1: Subject property outlined in red.

POLICY REVIEW

1. Land Use By-Law (LUB)

The Land Use By-Law identifies developments to be considered only by a development agreement.

6.0 Development Agreements

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

- (b) multiple unit residential development consisting of three or more units in a Residential Designation in accordance with Policy 5.4.6 of the Municipal Planning Strategy;

2. Municipal Planning Strategy (MPS)

The policies of the MPS to be considered by Council when considering a request conversion of existing buildings to three or more units include:

Policy 5.4.6 It shall be the policy of Council to consider entering into a development agreement to allow, in the Residential designation, new multiple unit residential development consisting of three or more units, grouped dwellings, boarding houses and residential care facilities, as well as the conversion of existing buildings to three or more units, subject to the following:

	Staff Comment
(a) the proposed use meets one of the following: (i) in the case of a new building or the conversion of an existing non-residential building, that the development is generally consistent with the High Density Residential (R-4) zone standards; or (ii) in the case of a conversion of an existing residential building, that any addition or enlargement to the building meets the setback requirements of the zone in which it is located, or that any undersized setbacks are not further reduced by the addition or enlargement;	This is an existing residential building with 3 residential units and a vacant space which was previously used as a yoga studio. The applicant is looking to convert the current vacant space to a residential unit. No addition or enlargement to the existing building is expected.
(b) the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;	No issues anticipated.
(c) the development is considered compatible with the residential character of the area with respect to traffic generation and population density;	No issues anticipated.
(d) consideration is given to the provision of fences and/or landscaping as part of the	No issues anticipated.

residential development to minimize effects on adjacent land uses	
(e) adequate on-site parking is provided and parking areas are well designed;	No issues anticipated as residences generally create less traffic impacts than commercial, have no signage requirements, and require less parking. There is available parking in back.
(f) there is adequate on-site recreational open space suitable in extent and design to the nature of the development; for conversion of existing buildings, nearby public parks may be deemed sufficient;	No issues anticipated. Each apartment has exterior space available for personal use, nearby public parks and library are also available.
(g) the development abuts an arterial or collector street as shown on the Transportation Map (Map 2), if the development consists of 12 or more units;	Not applicable.
(h) the architectural design of the development is reasonably consistent with the provisions of the Architectural Design Manual if the proposed development is located in an Architectural Control District	No issues as this applies to an existing building and no changes to the exterior or additions are being proposed.
(i) in the case of the conversion of an existing structure, renovations can be made to ensure the safety of residents in case of fire	The applicant will be required to apply for a building permit for conversion of the space and all building and fire code regulations will apply.
(j) any other matter which may be addressed in a development agreement; and	No issues anticipated.
(k) the provisions of Policy 16.3.1 of the Municipal Planning Strategy	See below.

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

	Staff Comment
(a) <i>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>	No issues anticipated.
<i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i>	No issues anticipated.
<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>	No issues anticipated.

<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>	No issues anticipated.
<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. This proposal is subject to a Public Hearing.
<i>(g) any other matter required by relevant policies of this Strategy.</i>	See other parts of Policy Review.

PROCESS

This report and recommendation will be reviewed by the Planning Advisory Committee (PAC) and a recommendation, if deemed appropriate, referred to Windsor Town Council for consideration. If Council agrees to further consider the proposal, the proposal will be forwarded to a Public Hearing, with associated notification, before a final decision can be made. Development agreements are subject to a 14 day appeal period before the filing and final registration of the agreement.

CONCLUSIONS

The proposed 4 dwelling-unit residential use meets the intent of the Municipal Planning Strategy and is anticipated to generate less impacts than the previous mix of residential and local commercial uses.

It is recommended:

THAT THE PLANNING ADVISORY COMMITTEE RECOMMEND THAT COUNCIL APPROVE THE REQUEST FROM TODD MACEACHERN TO ENTER INTO A DEVELOPMENT AGREEMENT TO ALLOW FOR ONE ADDITIONAL RESIDENTIAL UNIT AT 200 ALBERT STREET, WINDSOR (PID 45050010)

ATTACHMENTS

- 1. Draft Development Agreement
 - a. Legal Description of Lands

Report Prepared by Jeremy Banks, Town Planner

ATTACHMENT 1 – DRAFT DEVELOPMENT AGREEMENT

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

BETWEEN:

Todd MacEachern
(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: 45050010) 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 _____, 2019 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

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: 45050010, 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 add a single residential unit to his property located at 200 Albert Street, Windsor (PID 45050010).

The Municipal Planning Strategy Policy 5.4.6 allows for additional residential units providing conditions as outlined in Policy 16.3.1 are met.

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.
- 5.1.1.3 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.
- 5.1.1.4 Obligations or other requirements in this Development Agreement are those of the Developer, unless otherwise specified.
- 5.1.1.5 No occupancy permit shall be granted for this Development until all provisions of this agreement are met.

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 four-unit residential dwelling.

5.1.3 Municipal Services

- 5.1.3.1 The parties agree that municipal sanitary sewer and water services are available. All costs to connect the new unit to these services are the responsibility of the Developer.
- 5.1.3.2 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.

5.1.4 Refuse Storage and Utility Equipment

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

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

5.1.5 General Maintenance and Operation

5.1.5.1 Buildings, landscaping, and other related features shall be maintained in good condition, pursuant to the Town's Minimum Standards By-law.

5.1.6 Timing

5.1.6.1 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.

5.1.6.2 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 Amendment

5.1.7.1 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.

5.1.7.2 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 5.1.6.2.

5.1.8 Expenses

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

5.1.9 Liability

5.1.9.1 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.

5.1.10 Default

5.1.10.1 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.

5.1.10.2 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 5.1.10.1 above; or,
- (c) Take no action.

5.1.10.3 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.

5.1.10.4 Any expenses incurred by the Town in exercising its rights under sections 5.1.10.1 and 5.1.10.2, 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.

5.1.11 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
100 King Street,
Windsor, Nova Scotia
B0N 2T0
Attention: Development Officer

and if to the Developer:

TODD MACEACHERN
82 Stoneybrook Court
Halifax, Nova Scotia
B3M 3J7

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 _____

) TODD MACEACHERN

)

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 **TODD MACEACHERN** 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 southwestern side of Albert Street, in the Town of Windsor, bounded and described as follows:

BEGINNING on the southwestern side of Albert Street at an iron pin driven in the ground, at a point sixty feet in a northwesterly direction along Albert Street from the boundary between the lands of Harold Barton and Perry Lake;

THENCE southwesterly parallel with the foundation of the house on the lands of the said Harold Barton fifty feet six inches to another iron pin driven in the ground, the said pin being distant three feet from the southwest corner of the foundation of the said Barton house;

THENCE southerly to an old fence post;

THENCE southwesterly forty six feet four inches to a fence on the rear line of the said property hereby conveyed being the line of a lot of land formerly owned by one John Keith;

THENCE northwesterly along the said line of land formerly owned by one John Keith fifty feet;

THENCE northerly along the fence now dividing the lands hereby conveyed from the lands conveyed by said Grantors to Clifford Palmer, to a point fifty six feet distant from Albert Street aforesaid;

THENCE northeasterly in a line equidistant from the foundation of the house on the land hereby conveyed and the house on the said lands of Clifford Palmer fifty six feet to Albert Street;

THENCE southeasterly along Albert Street fifty five feet, more or less, to the place of beginning.

The parcel was validated by Section 291 of the MGA (validation provisions).