



Municipality of the District of West Hants

STAFF REPORT

TO: West Hants Planning Advisory Committee

FROM: Jeanne Bourque, Planner

DATE: April 25, 2012

SUBJECT: **Dr. Gillian Allen - Development Agreement to allow Local Commercial Use (Dental Office) on Lot ML-3, Falmouth Dyke Road, Falmouth (PID 45385135)**

ORIGIN

Application from Dr. Gillian Allen, on behalf of 3252069 Nova Scotia Limited, for a Development Agreement to permit the establishment of a local commercial use, specifically a dental office, on lot ML-3, Falmouth Dyke Road, Falmouth (PID 45385135).

RECOMMENDATION

It is recommended:

THAT COUNCIL APPROVE THE APPLICATION OF 3252069 NOVA SCOTIA LIMITED TO ENTER INTO A DEVELOPMENT AGREEMENT TO ALLOW FOR THE DEVELOPMENT OF A DENTAL OFFICE ON LOT ML-3, FALMOUTH DYKE ROAD, FALMOUTH (PID 45385135).

To ensure the development agreement is signed within a reasonable time, Staff also recommends:

THAT COUNCIL REQUIRE THAT THE DEVELOPMENT AGREEMENT WITH 3252069 NOVA SCOTIA LIMITED BE SIGNED WITHIN 120 DAYS FROM THE DATE OF FINAL APPROVAL BY COUNCIL OR THE DATE THAT ANY APPEALS HAVE BEEN DISPOSED OF; OTHERWISE, THIS APPROVAL WILL BE VOID AND OBLIGATIONS ARISING HEREUNDER SHALL BE AT AN END.

BACKGROUND

Lot ML-3 is owned by the estate of Myrtle Lyon and is subject to an Agreement of Purchase and Sale to Dr. Gillian Allen. The purchase agreement is conditional upon the approval of this application for a development agreement to allow her to develop the property for use as a dental office. Dr. Allen plans to construct a new building, approximately 1,000 to 1,200 ft² in size, as an office for a single dentist and supporting staff. The property is located within the Growth Centre of Falmouth and is zoned Single Unit Residential (R-1) under the *West Hants Land Use By-law* (LUB).

Policy 5.6.4 of the *West Hants Municipal Planning Strategy* (MPS) allows Council to consider permitting new local commercial uses in Growth Centres outside the Commercial designation by development agreement. A dental office fits within the types of uses that are considered local commercial.



Figure 1: Subject Property as seen from Falmouth Dyke Road, with Windsor Elms Village in background

PROPERTY LOCATION AND SURROUNDING LAND USES

The subject lot was recently subdivided from the property known as 198 Falmouth Dyke Road, and is an infill between the residential uses at 214 and 198 Falmouth Dyke Road (see **EXHIBIT 1**). The Windsor Elms Village, an institutional use (nursing home) allowed under a development agreement, is in back of the subject property (see **Figure 1**). The property is slightly under 20,000 ft² in size, and is situated on the west side of Falmouth Dyke Road, about halfway between Falmouth Back Road and Town Road. Like all the properties in the surrounding area, it is zoned R-1 under the

LUB and designated Residential on the Generalized Future Land Use Map of the MPS. Neighbouring land uses are residential and institutional, with a large pasture directly across the road from the property. There are several lots zoned Institutional and General Commercial within 1,200 feet of the subject property at the corner of Falmouth Dyke Road and Falmouth Back Road.

MUNICIPAL PLANNING STRATEGY AND LAND USE BY-LAW CONSIDERATIONS

In considering an application for a development agreement, Council must determine whether the proposed development agreement reasonably carries out the intent of the Municipal Planning Strategy and does not conflict with the Land Use By-law.

The West Hants MPS encourages the majority of commercial development in the Growth Centres to take place in the commercial core areas. In Falmouth, the Commercial designation is located along Highway 1 between the Avon River Bridge and the Highway 101 access road. The subject property is just under 1 km away from this commercial core and is designated Residential. Section 5.6 of the MPS provides for commercial development outside the commercial core, noting that in these areas “*new commercial development should be carefully controlled and compatible with residential areas.*” Local commercial development is felt to be suitable for these areas and is to be considered by development agreement.

The LUB defines local commercial as follows:

... a small scale commercial operation that serves a relatively small market area and is of a local nature and, without limiting the generality of the foregoing, may include convenience stores and arts, crafts, antiques or personal service shops. For the purpose of this By-law, local commercial uses may include other uses which have traditionally been considered local commercial even though they may serve an extended market and

which are compatible with residential areas such as licensed day care centres, country inns, small restaurants or cafés, **offices** and video stores.

The proposed use, a dental office, fits within this definition, and therefore Policy 5.6.4 of the MPS can be used to consider this application.

Policy 5.6.4, Local Commercial Uses Outside the Commercial Designation

Policy 5.6.4 *It shall be the policy of Council to consider new local commercial uses in Growth Centres outside the Commercial designation by development agreement subject to the following provisions:*

(a) *the adjacent residential area will not be adversely affected with respect to:*

(i) *traffic generation and traffic safety;*

The proposed dental office is intended to accommodate one dentist plus support staff, and would not be expected to generate a significant amount of traffic. In order to ensure that traffic volume remains low, the size of the commercial use will be restricted in the development agreement. NS Dept. of Transportation and Infrastructure Renewal has assessed the lot and identified a driveway location that meets commercial stopping sight distance requirements.

(ii) *signage;*

The terms of the development agreement will ensure that the number, size and location of any signage for the dental office are controlled so that signage is unobtrusive and compatible with a residential area.

(iii) *hours of operation;*

The hours of operation for the dental office will be restricted in the development agreement to avoid adversely affecting neighbours. The draft agreement proposes limiting the hours of operation to weekdays between 8 a.m. and 6 p.m, with extended opening hours two evenings per week.

(iv) *size of building(s);*



Figure 2: Residential use, 214 Falmouth back Road, south of the subject property

There is no building currently on the property, so Dr. Allen will be constructing a new building to contain the dental office for herself plus support staff. The R-1 zone allows a maximum building height of 35 feet (10.67 m), and this will be maintained in the agreement. The Local Commercial zone sets a maximum commercial floor area of 1,000 ft², however, the applicant has proposed an office approximately 1,200 ft² in size. As stated in section 16.3 of the MPS, the development agreement process provides “an opportunity for Council to exercise a greater degree of control over many aspects

of a development proposal such as use, design, architectural detail, hours of

operation....(and) also provide a greater degree of flexibility to the developer”. There are several older two storey houses near the proposed lot (see **Figure 2**), as well as the much larger Windsor Elms Village cluster of buildings within several hundred feet. Planning staff therefore propose that a maximum commercial floor space of 1,500 ft² would not be out of character with the surrounding uses. Staff are also proposing limiting the height of the new building, as well as setting a maximum building footprint.

The draft agreement proposes using the provisions of the Local Commercial (LC) zone to govern the setbacks required. These requirements are the same as in the existing R-1 zone¹, except that the side yard requirement for a local commercial use abutting a residential zone is increased to 20 ft. These controls will also help to ensure that the size of the building will remain compatible with the surrounding residential area.

(iv) pedestrian circulation and safety;

As noted above in (i), there will be some increase in vehicular traffic along Falmouth Dyke Road, but the volume is expected to be low due to the scale of the commercial development, so it should not adversely affect pedestrian circulation and safety along the street. As in the majority of West Hants, there are no sidewalks along Falmouth Dyke Road, however, shoulders are wide enough to accommodate pedestrians.

(b) adequate on-site parking is provided;

The parking requirements of Section 5.30 of the LUB specify that one parking space shall be provided for every 300 ft² (27.87 m²) of commercial floor area, and there is adequate room on the property to create sufficient parking spaces. The development agreement will require that the bulk of the parking is located behind the building, yet allow for limited parking for people with disabilities nearer to the accessible entrance if it is located on the front or side.

(c) adequate buffering or screening, setbacks and yards are provided;

The setbacks for the building will be required to meet all requirements for the Local Commercial zone. With side yards of 20 feet, there will be sufficient distance separating the commercial building from the neighbouring residential lots. In addition, staff recommend that the development agreement require a planting strip to screen the view of the main parking area from abutting residential uses.

(d) maintenance of the proposed use will be satisfactory;

The development agreement will include terms requiring the building, landscaping and other features to be well maintained.

(e) any other matter which may be addressed by a development agreement;

Staff are not aware of any other matters which should be addressed.

(f) Policy 16.3.1.

¹Single Unit Residential (R-1) zone minimum requirements are: 25 ft. front and rear yards; side yards of 6 ft. on one side and 10 ft. on the other; and maximum building height of 35 ft.

Policy 16.3.1, General Policy for Development Agreements

Policy 16.3.1 *In considering development agreements and amendments to the West Hants Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:*

- (a) *whether the proposal is considered premature or inappropriate in terms of:*
 - (i) *the adequacy of sewer and water services;*
 - (ii) *the adequacy of school facilities;*
 - (iii) *the adequacy of fire protection;*
 - (iv) *the adequacy of road networks adjacent to, or leading to the development; and*
 - (v) *the financial capacity of the Municipality to absorb any costs relating to the development.*

The proposal is not considered premature or inappropriate in terms of any of the items identified in clause (a). These items are addressed as follows: (i) Director of Public Works, Rick Sherrard, advised that the property is connected to the municipal potable water supply and sanitary sewer system, both of which have adequate capacity to support the development; (ii) the adequacy of school facilities is not relevant to this application; (iii) Windsor Fire Department's Fire Chief, Scott Burgess, indicated no concerns with respect to fire protection as the property is in a hydrant-protected area; (iv) all of the roads leading to the development are owned and maintained by NS Dept. of Transportation and Infrastructure Renewal. Falmouth Dyke Road has been classified as an arterial street under Policy 14.2.1 of the West Hants MPS and is therefore considered adequate; and (v) there are no anticipated costs to the Municipality as a result of this development.

- (b) *whether the development is serviced, or capable of being serviced, by a potable water supply and either central sewer or an approved on-site sewage disposal system;*

The property is serviced with municipal water and sewer.

- (c) *the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;*

Auto and pedestrian traffic have been addressed previously in this report. Rail traffic is not relevant.

- (d) *the adequacy of the dimensions and shape of the lot for the intended use;*

The lot shape, size and dimensions are considered adequate for the proposed use. The property is 19,890 ft² in size, approximately 90 ft. wide and more than 221 ft. deep. The lot size is almost three times the 7,000 ft² minimum lot area required in the Local Commercial (LC) zone.

- (e) *the pattern of development which the proposal might create;*

Local commercial uses are considered compatible with residential uses provided they are an appropriate scale. This development will be controlled through a development agreement which will limit the amount of commercial floor area permitted in the building and apply some degree of architectural control over it. Staff do not foresee any change to the pattern of development in the area as a result of this proposal.

- (f) *the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses or wetlands, and susceptibility of flooding;*

Staff is not aware of any environmental conditions that would affect the suitability of the area for the proposed use.

- (g) *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*

Planning Staff is not aware of any requirement that this proposal cannot meet.

- (h) *any other matter required by relevant policies of this Strategy.*

Policy 5.6.3 *To ensure local commercial uses remain small-scale and compatible with residential areas, it shall be the policy of Council to regulate commercial floor space of these uses in the Land Use By-law.*

The size restrictions to be placed on commercial use area are dealt with elsewhere in this report.

BUDGET IMPLICATIONS

There are no anticipated impacts on the West Hants budget as a result of the proposed development agreement.

CONCLUSION

This report has reviewed the application against the relevant policies and requirements of the West Hants Municipal Planning Strategy and Land Use By-law and feels the proposed development agreement reasonably carries out the intent of the MPS and does not conflict with the LUB. Staff therefore recommends that the application be approved.

ALTERNATIVES

1. PAC could accept the staff recommendation and recommend that Council approve the draft development agreement as presented, or with any changes considered appropriate.
2. PAC could recommend that Council refuse the development agreement.

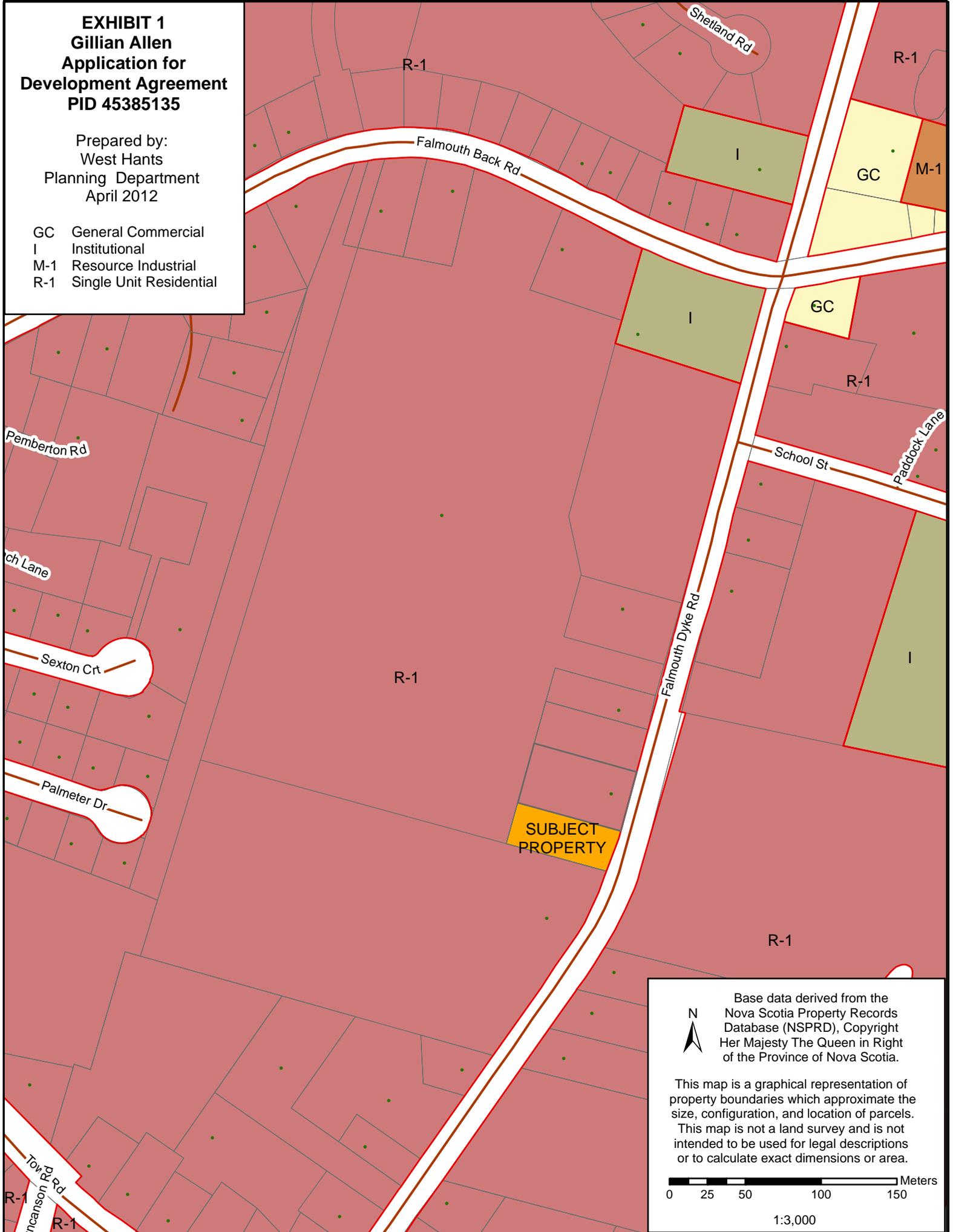
Respectfully submitted,


Jeanne Bourque
Planner

EXHIBIT 1
Gillian Allen
Application for
Development Agreement
PID 45385135

Prepared by:
West Hants
Planning Department
April 2012

GC General Commercial
I Institutional
M-1 Resource Industrial
R-1 Single Unit Residential



Base data derived from the
Nova Scotia Property Records
Database (NSPRD), Copyright
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of the Province of Nova Scotia.

This map is a graphical representation of
property boundaries which approximate the
size, configuration, and location of parcels.
This map is not a land survey and is not
intended to be used for legal descriptions
or to calculate exact dimensions or area.



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