

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.1.10
Halifax Regional Council
September 11, 2018

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: Jacques Dubé, Chief Administrative Officer

DATE: August 15, 2018

SUBJECT: **Case 20374: Incentive or Bonus Zoning Agreement**
5673-5681 Brenton Place and 1448-1468 Brenton Street, Halifax

ORIGIN

- July 7, 2016 Design Review Committee approval of the qualitative elements of the substantive site plan approval application for the mixed-use development at 5673-5681 Brenton Place and 1448-1468 Brenton Street, Halifax; and
- Construction Permit Application No. 165823.

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter:*
 - Section 245A(1): Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
 - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.
- Section 12, Downtown Halifax Land Use Bylaw (LUB) (Attachment A)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt, and authorize the Mayor and Clerk to enter into and execute the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report for the mixed-used development at 5673-5681 Brenton Place and 1448-1468 Brenton Street, Halifax.

BACKGROUND

An application for substantive site plan approval for a mixed-use development located at the corner of Brenton Place and Brenton Street consisting of six properties was approved by the HRM Design Review Committee on July 7, 2016. The following highlights the major elements of the proposal:

- Overall height of 16 storeys plus a 1-unit penthouse on the top floor;
- A total of 159 residential units;
- Approximately 1,212 square metres (13,050 square feet) of commercial floor space at street level with pedestrian access points along each street and separate residential lobby area;
- Two underground parking levels containing 92 vehicular parking spaces in addition to bicycle parking, with driveway access from Brenton Place;
- Landscaped areas abutting sidewalks at grade, to the rear of the building, on residential terraces, and on rooftop levels (penthouse level and communal amenity space on level 12); and
- Exterior cladding materials which include glass window wall and curtain wall systems, high-pressure laminate (HPL) panels (glossy and matte finishes), aluminum frames, glass/ metal canopy and glass balconies with metal railings. The side and rear elevations will also incorporate brick/ stone veneer or ceramic tile.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. A list of eligible public benefits is found in subsection 12(7) of the LUB (Attachment A). Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as “density bonusing” but is enabled under the *Halifax Regional Municipality Charter* as “incentive or bonus zoning.”

The proposed project exceeds the pre-bonus height of 39 metres, therefore a post-bonus height agreement is required to quantify and document the value and nature of the public benefit. The LUB establishes a public benefit value that, with adjustment for inflation, is equivalent to \$4.47 for every 0.1 square metres of gross floor area that exceeds the pre-bonus height limit. In this project, the gross floor area exceeding the pre-bonus height is approximately 1,490 square metres. This equates to a public benefit with a minimum value of \$66,603.

The applicant has proposed to provide public art as the required public benefit and has suggested a program to engage NSCAD University in a design competition to create public art that embodies the architectural heritage of Schmidville through two possible approaches:

1. A series of illustrations embossed or etched in the sidewalk on private property within the building setback designed from materials that can withstand the wear of pedestrian circulation and snow removal. Attachment C is provided for general reference as an example of a typical art installation of this type.
2. A public art feature associated more directly with the building within the property boundary.
3. A combination of 1 and 2.

It should be acknowledged that the developer has indicated their design team has met and is collaborating with the Friends of Schmidville Society to explore the possibility of incorporating the architectural heritage of Schmidville as part of any artwork installation.

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee (DRC) is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC's advice is provided in the form of a recommendation on the public benefit category for the development at the time the Committee makes its decision on the substantive site plan application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

The *Halifax Regional Municipality Charter* requires Council approval of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council's approval of the agreement.

DISCUSSION

DRC Approval

The LUB requires developments that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. The developer proposes that the public benefit contribution relative to this application be in form of public art. The DRC recommended that the Development Officer accept the public benefit as proposed and specifically, their motion in this regard is as follows:

"MOVED BY Mr. Crace, seconded by Mr. LeBlanc

THAT the Design Review Committee:

...

4. *Recommend that the Development Officer accept public art as the post-bonus height public benefit for the development. MOTION PUT AND PASSED"*

Public Benefit Value

The LUB lists the acceptable public benefit categories and establishes a public benefit value that is the equivalent of \$4.47 for every 0.1 square metres of gross floor area created by extending above the pre-bonus height. The maximum pre-bonus height for this proposal is 39 metres while the post-bonus height is 49 metres. The additional gross floor area is approximately 1,490 square metres which equates to a public benefit value of approximately \$66,603.

The developer proposes to provide public art with a value exceeding the minimum public benefit requirement of \$66,603. While the exact cost and nature of the art has not yet been determined, the LUB requires that detailed cost estimates be submitted to and approved by the Development Officer. Staff will ensure that the public art installation meets or exceeds this minimum value.

Public Benefit Design

The concept of a design competition is an approach supported by staff that should proactively engage the student art community and yield artwork of high quality. However, conducting that competition would be premature prior to Council's acceptance of public art as the approved form of public benefit for this development. This approach requires Council consider acceptance of the proposed value and approve public art as the preferred category of public benefit without specific reference to the exact form of the artwork.

Staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report for the mixed-use development located at 5673-5681 Brenton Place and 1448-1468 Brenton Street, Halifax.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Subdivision & Land Use.

RISK CONSIDERATION

There are no risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

Regional Council may choose not to enter into the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report. This would delay construction of the project as scheduled, necessitate further submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

Attachment A Section 12 of the LUB- Public Benefit Categories
Attachment B Incentive or Bonus Zoning Agreement
Attachment C Sample of typical sidewalk art

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Audas, Principal Planner & Development Officer, 902.490.4402

Report Approved by: Original Signed
Steven Higgins, Manager, Current Planning, 902.490.4382

Report Approved by: Original Signed
Peter Duncan, Acting Director, Planning and Development, 902.489.4634

Attachment A
Section 12(7) of the LUB- Public Benefit Categories

- 12(7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the reservation or enhancement of the heritage resource;
 - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
 - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
 - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
 - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
 - (f) the provision of public art;
 - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
 - (h) investment in public transit or active transportation infrastructure;
 - (i) the provision of exemplary sustainable building practices.
 - (j) the undergrounding of overhead electrical and communication distribution systems.

**Attachment “B”
Incentive or Bonus Zoning Agreement**

THIS AGREEMENT made this ____ day of _____, A.D., 2018.

BETWEEN:

W M FARES FAMILY INCORPORATED, a body corporate,

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a body corporate,

(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Developer is the owner of the Property and has proposed a Development related that exceeds the maximum pre-bonus height identified on Map 4 of the *Downtown Halifax Land Use By-law*;

AND WHEREAS Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey above the Pre-Bonus Height;

AND WHEREAS it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

AND WHEREAS the Developer has selected to provide public art to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS on July 7, 2016 the Design Review Committee approved the Development;

AND WHEREAS the Developer will provide public art as the Public Benefit for the Development;

AND WHEREAS on July 7, 2016 the Design Review Committee recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the provision of public art as the Public Benefit for the Development;

WITNESS THAT in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the

Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

Definitions

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means an sixteen (16) storey plus penthouse mixed use residential building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 5673-5681 Brenton Place and 1448-1468 Brenton Street, Halifax, Nova Scotia, known as Block 2, the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide public art as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule B.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule B and as approved by the Development Officer in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

Term of Agreement

4. This Agreement is in effect until discharged by the Council.

Reporting of Public Benefit

5. Prior to the issuance of the Occupancy Permit the Developer agrees to provide a report, to a Development Officer confirming that the Public Benefit has been completed.

Construction of Public Benefit

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with all the Drawings;
- (iv) as sustainable building practises; and
- (v) in compliance with all Applicable Laws;

(b) to complete construction of the Public Benefit which shall be completed at the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

Restoration of Public Benefit During The Term of the Agreement

7. If, at any time during the term of this Agreement, :

(a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or

(b) the Development Officer determines that any repairs or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

Release and Indemnity

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

10. 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 laws, by-laws, regulations and codes applicable to the Property.

Applicability of Laws

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. 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 Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

Schedules

13. The following Schedules shall form part of this Agreement:

Schedule "A" - Legal Description of the Property;

Schedule "B" - Public Benefit Description

Amendments

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

Conflict

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. 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.

Provisions Severable

17. 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.

Registration and Subsequent Owners

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

19. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

Discharge of Agreement

21. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

Breach of Agreement and Failure to Comply

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer;

(b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, 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 defence based upon the allegation that damages would be an adequate remedy;

(b) the Municipality may enter onto the Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and

(c) in addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

Time

25. Time shall be the essence in this Agreement.

THE REST OF THIS PAGE IS BLANK.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in

**W M FARES FAMILY
INCORPORATED**

the presence of

Per: _____

Name:

Office held:

Witness

Per: _____

Name:

Office held:

SEALED, DELIVERED AND

**HALIFAX REGIONAL
MUNICIPALITY**

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

Witness

Per: _____

Mayor

Witness

Per: _____

Clerk

SCHEDULE A

BLOCK 2

BRENTON PLACE & BRENTON STREET

HALIFAX, HALIFAX COUNTY, NOVA SCOTIA

ALL that Block of land on the northern side of Brenton Place in Halifax, Halifax County, Nova Scotia shown as Block 2 on Servant, Dunbrack, McKenzie & MacDonald Ltd. Plan No. 13-2548-0 titled Plan of Survey of Block 2, Consolidation of Lands Acquired by Wadih Fares Family Incorporated signed by Adam Patterson, NSLS dated July 11, 2017 and being more particularly described as follows:

BEGINNING at the intersection of the western boundary of Brenton Street and the northern boundary of Brenton Place;

THENCE South 68 degrees 19 minutes 05 seconds West along the northern boundary of Brenton Place, 29.567 metres to an eastern boundary of Block 1;

THENCE North 20 degrees 59 minutes 29 seconds West along an eastern boundary of Block 1, 31.782 metres to a southern boundary of Block 1;

THENCE North 68 degrees 41 minutes 03 seconds East along a southern boundary of Block 1, 1.213 metres to an eastern boundary of Block 1;

THENCE North 20 degrees 59 minutes 29 seconds West along an eastern boundary of Block 1, 7.867 metres to a northern boundary of Block 1;

THENCE South 68 degrees 34 minutes 10 seconds West along a northern boundary of Block 1, 2.831 metres to an eastern boundary of Block 1;

THENCE North 20 degrees 59 minutes 29 seconds West along an eastern boundary of Block 1, 7.925 metres to a southern boundary of Block 1;

THENCE North 68 degrees 34 minutes 10 seconds East along a southern boundary of Block 1, 1.617 metres to an eastern boundary of Block 1;

THENCE North 20 degrees 59 minutes 29 seconds West along an eastern boundary of Block 1 and Lot OP-1, 22.244 metres to a southern boundary of Lot OP-1;

THENCE North 68 degrees 34 minutes 10 seconds East along a southern boundary of Lot OP-1, 30.898 metres to the western boundary of Brenton Street;

THENCE South 19 degrees 53 minutes 48 seconds East along the western boundary of Brenton Street, 69.709 metres to the place of beginning.

CONTAINING 2,111.9 square metres.

BEARINGS are Nova Scotia Coordinate Survey System Grid Bearings and are referred to Central Meridian, 64 degrees 30 minutes West.

THE above described Block 2 being lands acquired by Wadih Fares Family Incorporated through indentures recorded in Halifax County Land Registration Office as Documents No. 107621105, 105492566, 105492541, 103246923 and 105492558.

SUBJECT TO AND TOGETHER WITH a reciprocal encroachment and service easement as recorded in Halifax County Land Registration Office as Document No. 100138636.

**SCHEDULE B
PUBLIC BENEFIT DESCRIPTION**

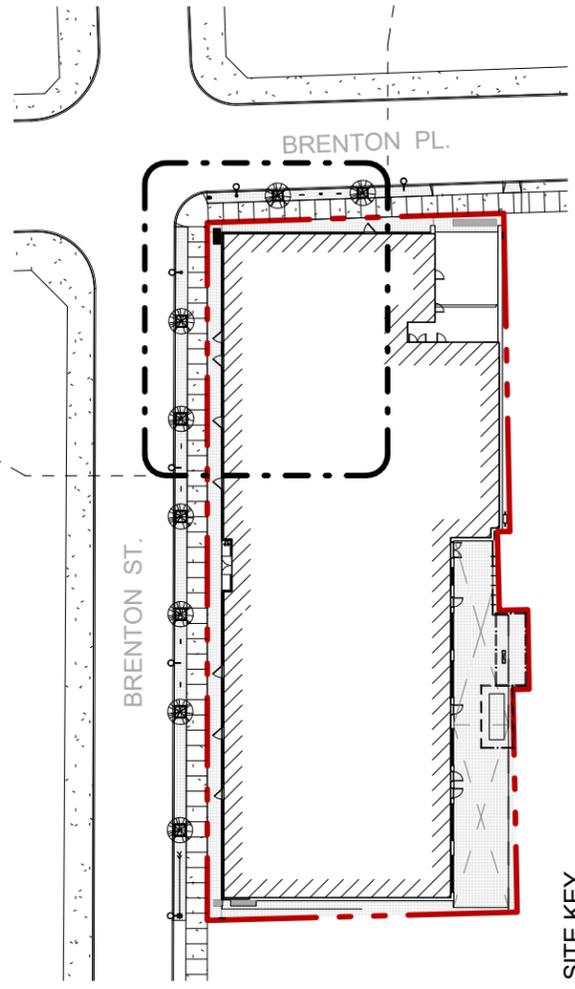
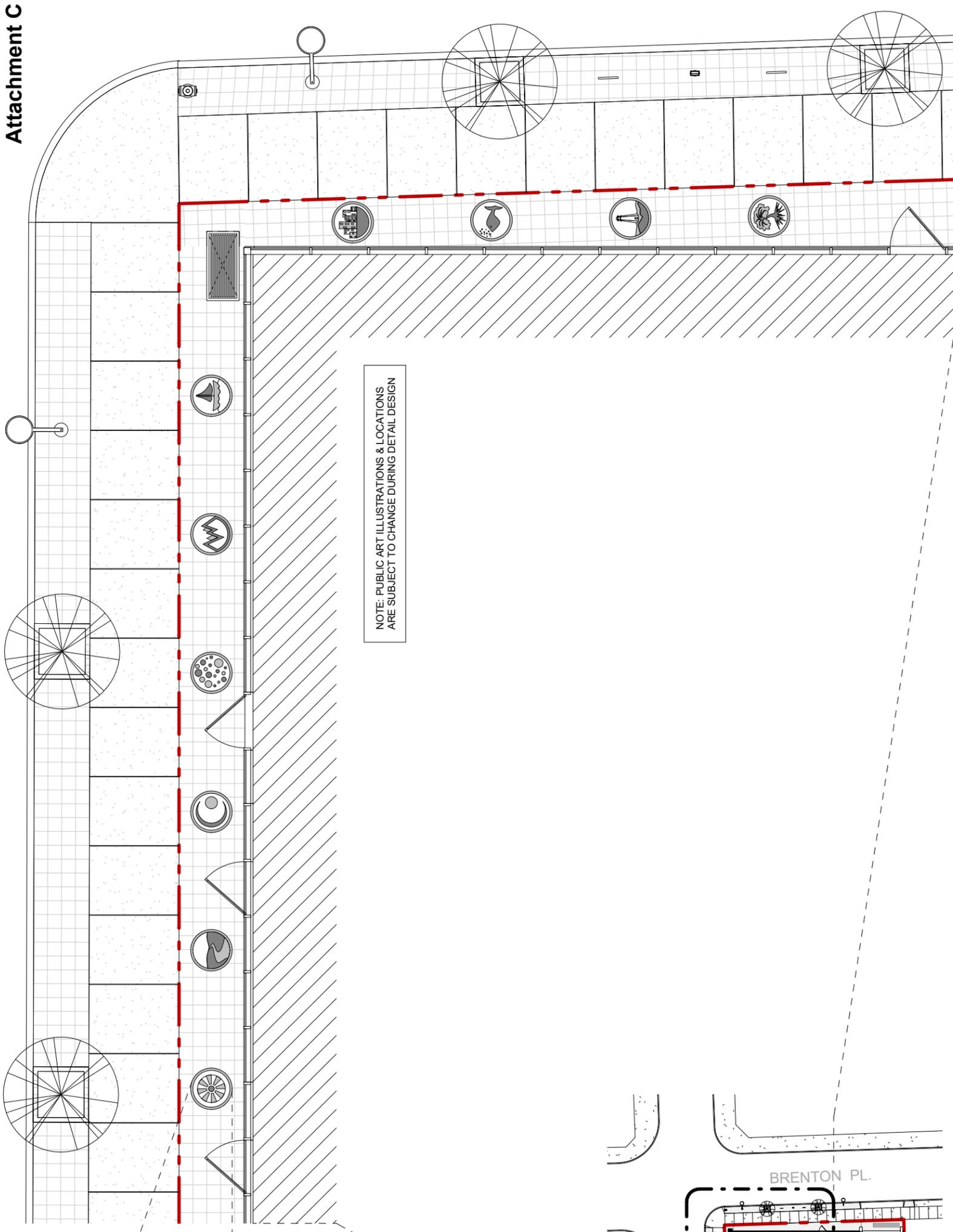
Brenton Suites
Site Plan Approval Case 20374
Post-Bonus Height Public Benefit

1. The Developer shall provide public art as the Public Benefit for the Property.
2. The gross floor area gained as a result of the post bonus height shall not exceed 1490 square meters.
3. Based on \$4.47/0.1sq.m of gross floor area, the value of the public benefit shall be at least \$66,603.00.
4. The design of the public art shall, in the opinion of the Development Officer, embody the architectural heritage of Schmidville.
5. The final design of the public art shall be subject to the approval of the Development Officer.
6. The public art shall be:
 - (a) a series of illustrations that are embossed or etched within the building setback and designed from materials that can withstand the wear of pedestrian circulation and snow removal; or
 - (b) a public art feature associated with the building within the property boundary; or
 - (c) combination of 6(a) and 6(b).

Attachment C



MOSAIC PRECEDENT



SITE KEY

WM FARES
ARCHITECTS

3480 Joseph Howe Dr. | Suite 500 | Halifax, NS B3L 4H7 | 902.457.4576

BRENTON SUITES
WM Fares Group

Brenton Pl. and Brenton st.

STAMP

No.	Description	Date

SIDEWALK PUBLIC ART

Project number 2013-04
Date 2017.08.03
Drawn by CM
Checked by RS

ASK 101

Scale As indicated