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Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1
Halifax and West Community Council
September 12, 2017

TO: Chair and Members of the Halifax and West Community Council

SUBMITTED BY: Original signed
Kelly Denty, Acting Director, Planning and Development

DATE: August 1, 2017

SUBJECT: Case 19989: Amending Development Agreement for 30 Farnham Gate Road, Halifax

SUPPLEMENTARY REPORT

ORIGIN

- Application by FS Industries
- On March 29, 2016, Halifax and West Community Council approved a Stage I amending agreement to increase the maximum commercial gross floor area.
- On September 13, 2016, Halifax and West Community Council approved, by resolution, a Stage II amending agreement to permit the development of a two storey commercial building at the subject site.

LEGISLATIVE AUTHORITY

See Attachment A

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Approve the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment B, to permit the development of a two storey commercial building at 30 Farnham Gate Road, Halifax; and
2. Require that the proposed development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

FS industries has applied for permission to develop a commercial building within an existing commercial development at the corner of Dunbrack Street and Farnham Gate Road, Halifax. The site is located within Phase I of the Rockingham Ridge development, and is subject to a Stage I and Stage II development agreement. These development agreements cover a large portion of the Clayton Park area, and have been amended several times since the original approval in 1984.

Relative to this application, Council approved an amendment to the Stage I agreement on March 29, 2016 to increase the maximum commercial gross floor area permitted on this site. Subsequently, on September 13, 2016, Council approved the sixth amendment to the Stage II agreement to permit a new freestanding commercial building at the site.

Following Council's approval, HRM staff found several technical errors in the most recent amendment to the Stage II agreement that would prevent implementing the new provisions. Some references to previous amendments were incorrect, and the proposed amendments did not reference which sections of the existing agreement were to be amended. Therefore, the amending development was not signed or registered. Council's motion to approve the agreement at the September 13, 2016 meeting did not include the words "which shall be substantially of the same form as set out in Attachment A". As a result, staff could not make the necessary changes without returning to Council for approval.

For more information, please see the staff report at the following link.

<http://www.halifax.ca/Commcoun/west/documents/hwcc160913item13.1.2.pdf>

Staff has reviewed the proposal relative to all relevant policies and advise that it is consistent with the intent of the MPS. The 2016 staff report outlines all policy implications to the proposed development agreement amendments. Given that the current proposal is only to address technical errors and no changes to the design of the building are proposed and no changes to the policy evaluation have been identified.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, and letters mailed to property owners within the notification area. A public information meeting was held on September 2, 2015, and a public hearing held on March 29, 2016, each regarding the Stage I amendment and the details of the proposed building.

Since the Stage II amendment requires a decision by resolution of Community Council, another public information meeting and public hearing was not required. However, in keeping with standard practices, information concerning the application was available on the HRM website.

FINANCIAL IMPLICATIONS

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this development agreement. The administration of the development agreement can be carried out within the approved 2017/18 C310 Planning Applications budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This

application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amending development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed amending development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

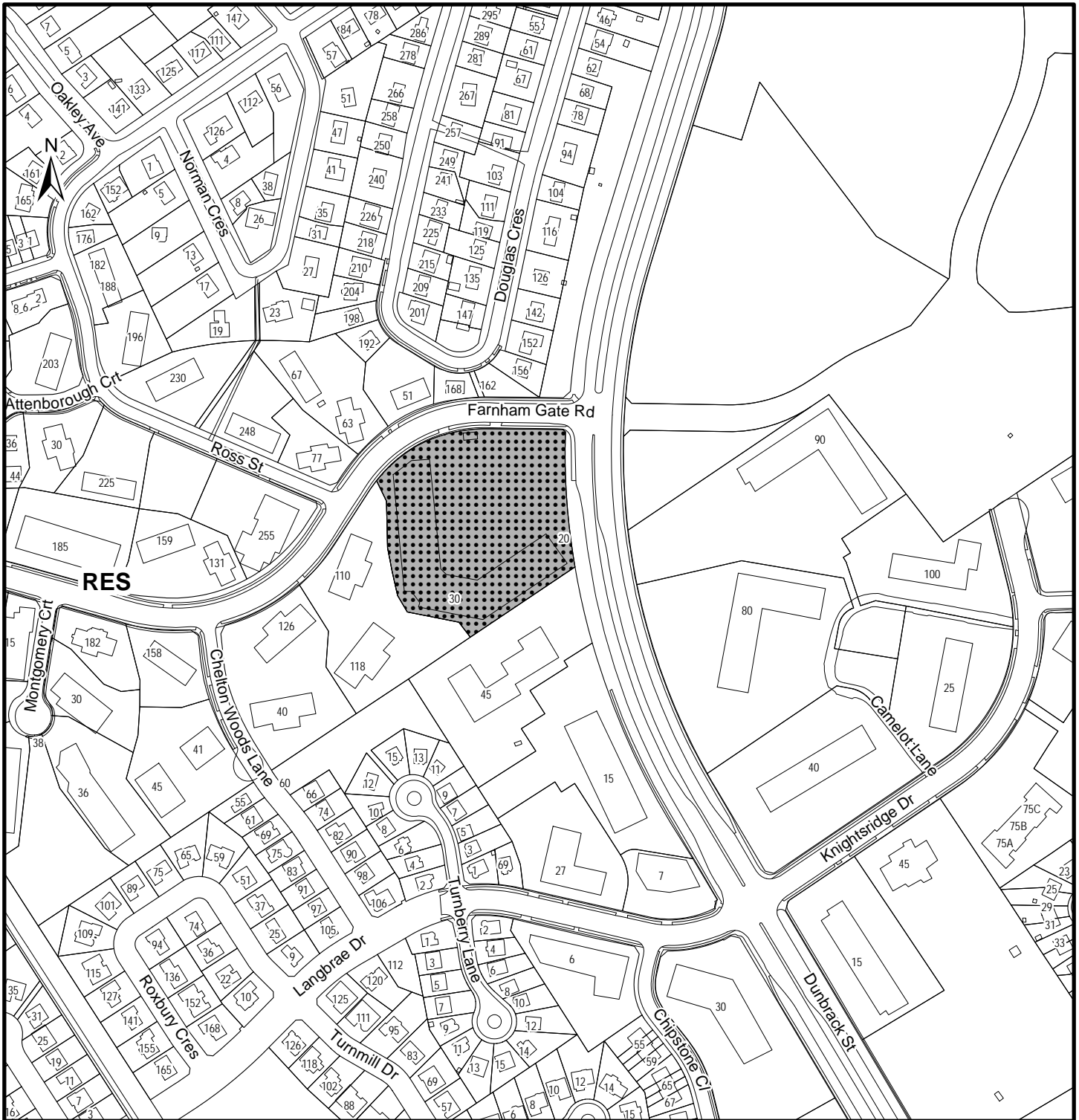
Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Legislative Authority
Attachment B	Proposed Amending Development Agreement

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: Stephanie Salloum, Planner II, Current Planning, 902.490.4223

Report Approved by: Original signed


Carl Purvis, Acting Manager, Current Planning, 902.490.4800



Map 1 - Generalized Future Land Use

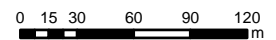
30 Farnham Gate Road

HALIFAX

 Area of Development Agreement Amendment

Designation

RES Residential Environment



Halifax
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.

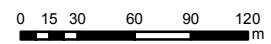


Map 2 - Zoning
 30 Farnham Gate Road, Halifax

HALIFAX

 Area of Development Agreement Ammendment

Zone
 R-1 Single Family Dwelling
 R-2 Two Family Dwelling I
 K Schedule K



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

HRM does not guarantee the accuracy of any representation on this plan.

Halifax Mainland
 Land Use By-Law Area

Attachment A – Legislative Authority

Development Agreements By Community Council

The *Community Council Administrative Order*, subsection 3 (1) “Subject to subsection (3) of this section, sections 29, 30 and 31 of the *Halifax Regional Municipality Charter* apply to each Community Council.”

Halifax Regional Municipality Charter:

Development agreements by community councils

- 31** (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.
- (2) Where a municipal planning strategy of the Municipality provides for development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.
- (3) A development agreement, or amendment to a development agreement, entered into by a community council must be signed by the Mayor and the Clerk on behalf of the Municipality.
- (4) Where a development agreement entered into by a community council purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council. 2008, c. 39, s. 31.

HRM Charter, Part VIII, Planning and Development, including:

Development agreements

- 240** (1) The Council may consider development by development agreement where a municipal planning strategy identifies
- (a) the developments that are subject to a development agreement;
 - (b) the area or areas where the developments may be located; and
 - (c) the matters that the Council must consider prior to the approval of a development agreement.
- (2) The land-use by-law must identify the developments to be considered by development agreement. 2008, c. 39, s. 240.

Content of development agreements

- 242** (1) A development agreement may contain terms with respect to
- (a) matters that a land-use by-law may contain;
 - (b) hours of operation;
 - (c) maintenance of the development;
 - (d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
 - (e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
 - (f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
 - (g) the subdivision of land;
 - (h) security or performance bonding.
- (2) A development agreement may include plans or maps.
- (3) A development agreement may

- (a) identify matters that are not substantive or, alternatively, identify matters that are substantive;
- (b) identify whether the variance provisions are to apply to the development agreement;
- (c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
- (d) provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by the Council;
- (e) provide that, where the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by the Council without the concurrence of the property owner. 2008, c. 39, s. 242.

Requirements for effective development agreement

- 243** (1) A development agreement must not be entered into until
- (a) the appeal period has elapsed and no appeal has been commenced; or
 - (b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.
- (2) The Council may stipulate that a development agreement must be signed by the property owner within a specified period of time.
- (3) A development agreement does not come into effect until
- (a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board;
 - (b) the development agreement is signed by the property owner, within the specified period of time, if any, and the Municipality; and
 - (c) the development agreement is filed by the Municipality in the registry.
- (4) The Clerk shall file every development agreement, amendment to a development agreement and discharge of a development agreement in the registry. 2008, c. 39, s. 243.

AND WHEREAS the former Halifax City Council of the Municipality approved an application to enter into an amending development agreement to the Stage II Development Agreement for Phase I to allow the construction of a freestanding donut shop, (municipal reference number 6309), which said agreement was executed on August 29, 1991 and registered on the Lands at the Halifax County Land Registration Office as Document Number 40433 in Book 5138 at Page 841 (hereinafter called the "Fourth Amending Stage II Agreement for Phase I"), which is expired and therefore does not apply to the Lands;

AND WHEREAS the former Halifax City Council of the Municipality approved an application to enter into an amending development agreement to the Stage II Development Agreement for Phase I to allow the construction of a freestanding gas bar, (municipal reference number 6679, which said agreement was registered on August 13, 1993 on the Lands at the Halifax County Land Registration Office as Document Number 38609 in Book 5466 at Page 904 (hereinafter called the "Fifth Amending Stage II Agreement for Phase I"), which applies to the Lands;

AND WHEREAS the Halifax and West Community Council for the Municipality approved an application to enter into an amending development agreement to the Original Stage I Agreement to allow for additional commercial gross floor area (municipal reference number 19989), which said agreement was executed on July 7, 2016 and registered on the Lands at the Halifax County Land Registration Office as Document Number 109272105 (hereinafter called the "First Amending Stage I Agreement"), which applies to the Lands;

AND WHEREAS the Original Stage II Agreement for Phase I as amended by the First Amending Stage II Agreement for Phase I, the Second Amending Stage II Agreement for Phase I, the Third Amending Stage II Agreement for Phase I, the Fourth Amending Stage II Agreement for Phase I, and the Fifth Amending Stage II Agreement for Phase I together comprise the Existing Stage II Agreement for Phase I (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested further amendments to the Existing Agreement to allow the development of an additional commercial building on the Lands (hereinafter called the "Sixth Amending Stage II Agreement for Phase I");

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on [**INSERT-Date**], referenced as Municipal Case Number 19989;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

1. The schedules of the Existing Agreement shall be amended by adding Schedules B and C attached hereto.
2. The following Section shall be added immediately after Section 2 of the Existing Agreement:
 - 2.1 Further to Section 2, the Developer shall develop Building C in a manner, which, in the opinion of the Development Officer, conforms with Schedules B and C.
3. Section 5 of the Existing Agreement shall be further amended by inserting the following text as shown in bold and deleting text as shown in ~~strikeout~~ as follows:

"The total area of commercial buildings on the lands will not exceed a commercial gross floor area of **6,225 square metres (67,005.3 square feet)** ~~50,000 sq.ft.~~"
4. The following Section shall be added immediately after Section 12 of the Existing Agreement:
 - 13 The following provisions shall apply to the development of Building C on Lot K-11 as shown on Schedules B and C:

- (a) The building placement and exterior design and materials shall be as generally shown on Schedules B and C.
- (b) The building shall be no higher than 13.7 metres (45 feet).
- (c) The total gross floor commercial area shall be no larger than 1566 square metre (16,856.3 square feet).
- (d) Uses shall be limited to those uses permitted in the C-2A (Minor Commercial) Zone of the Halifax Mainland Land Use By-law, as amended from time to time.
- (e) All vents, down spouts, flashing, electrical conduits, meters, service connections, and other functional elements shall be treated as integral parts of the design.
- (f) The building shall be designed such that the mechanical systems (HVAC, exhaust fans, vents etc.) shall be located on the rooftop and are not visible from all abutting streets and abutting properties.
- (g) Fixed or retractable awnings and canopies are permitted at the ground floor level, provided that the awnings and canopies are designed as an integral part of the building façade.
- (h) All roof mounted mechanical equipment shall be visually integrated into the roof design or screened so that they are not visible from all adjacent streets or properties.
- (i) All exposed concrete surfaces shall be architecturally textured. Any exposed foundation in excess of two (2) feet in height shall be architecturally detailed.
- (j) Prior to the issuance of a Development Permit, the Developer shall submit a Landscape Plan, prepared by a Landscape Architect which shall provide details of all landscaped areas as shown on Schedule B. Tree species will be chosen in consultation with the Urban Forester of the Municipality.
- (k) Pedestrian connectivity from Farnham Gate Road along the entire west side of Building C, as shown on Schedule B, shall be provided.
- (l) Exterior signage shall comply with the requirements of the Land Use Bylaw.
- (m) Notwithstanding any other requirements of the Original Stage II Agreement for Phase I, as amended, a minimum of 160 vehicle parking spaces shall be provided for the whole site.
- (n) All waste bins, propane tanks, natural gas service hookups, and electrical transformers shall be located in such a way to ensure minimal visual impact from all adjacent streets. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing or masonry walls with suitable landscaping.
- (o) Lighting shall be directed to driveways, parking areas, loading areas, building entrances. Walkways shall be arranged so as to divert the light away from streets, adjacent lots and buildings and shall be of a full cut-off design.
- (p) The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building,

fencing, walkways, recreational amenities, driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

- (q) All construction shall conform to the most current edition of the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications and shall receive written approval from the Development Engineer prior to undertaking any work.
- (r) Any disturbance to existing off-site infrastructure resulting from the development, including streets, sidewalks, curbs and gutters, street trees, landscaped areas (including vegetative berms) and utilities, shall be the responsibility of the Developer and shall be reinstated, removed, replaced, or relocated by the Developer as directed by the Development Engineer. Furthermore, the Developer shall be responsible for all costs and work associated with the relocation of on-site/ off-site underground services, overhead wires and traffic signals to accommodate the needs of the development.
- (s) If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.
- (t) Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Mainland Land Use By law, as may be amended from time to time.

5. Except as otherwise provided in the Existing Agreement and this Sixth Amending Stage II Agreement for Phase I, the development and use of the Lands shall comply with the requirements of the Halifax Mainland Land Use By law, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED in the presence of:

Witness

Witness

=====

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

<INSERT REGISTERED OWNER NAME>

Per: _____

Per: _____

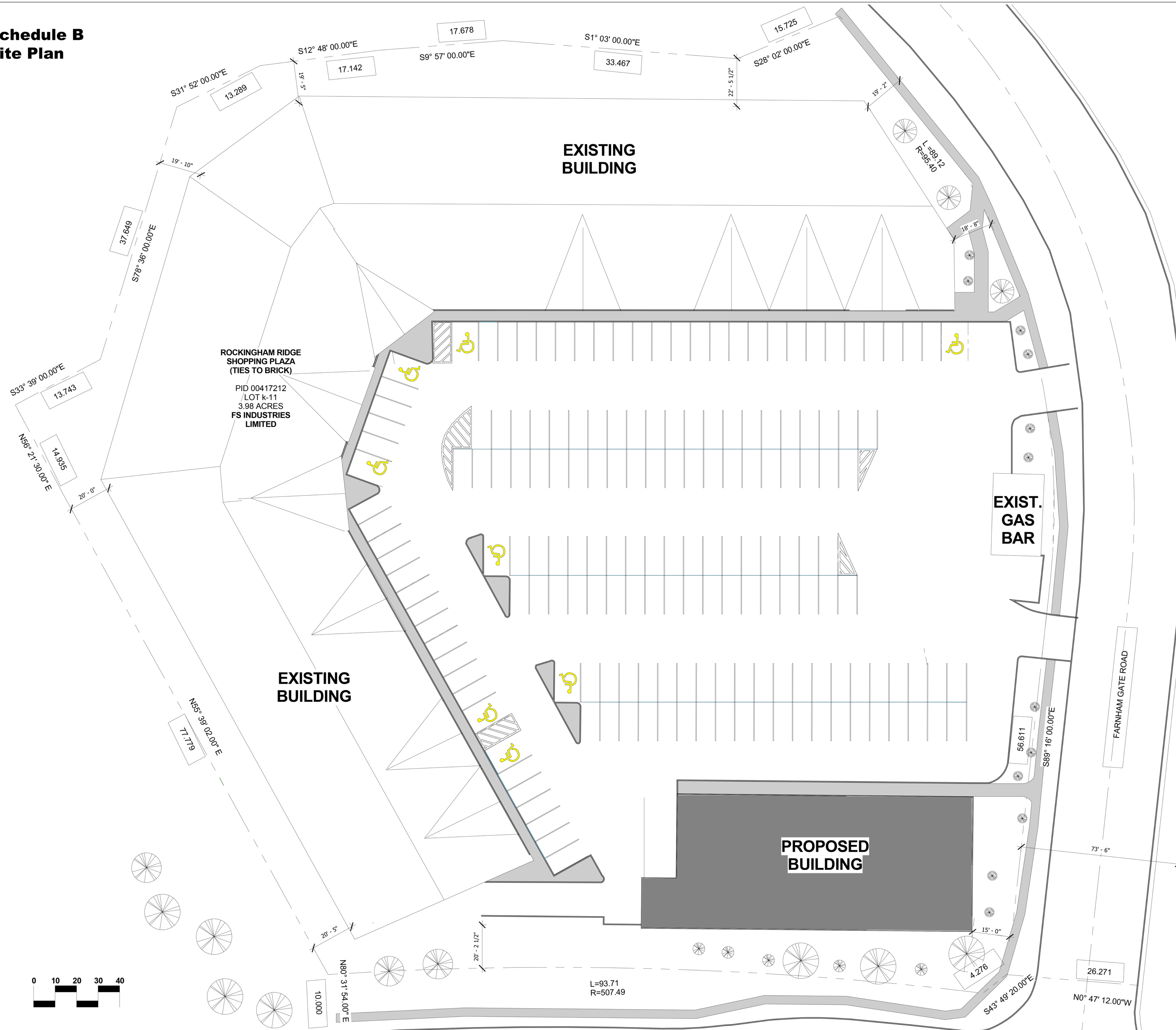
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HALIFAX REGIONAL MUNICIPALITY

Per: _____
Mayor

Per: _____
Municipal Clerk

**Schedule B
Site Plan**



ROCKINGHAM RIDGE
SHOPPING PLAZA
(TIES TO BRICK)
PID 00417212
LOT k-11
3.98 ACRES
FS INDUSTRIES
LIMITED

EXIST.
GAS
BAR

PROPOSED
BUILDING

No.	Description	Date
3	HRM COMMENTS	2016.02.08
2	MATERIAL	2015.06.26.
1	HRM PLANNING COMMENTS	Date 1

**Rockingham
Ridge Plaza**
Nova Scotia
Site

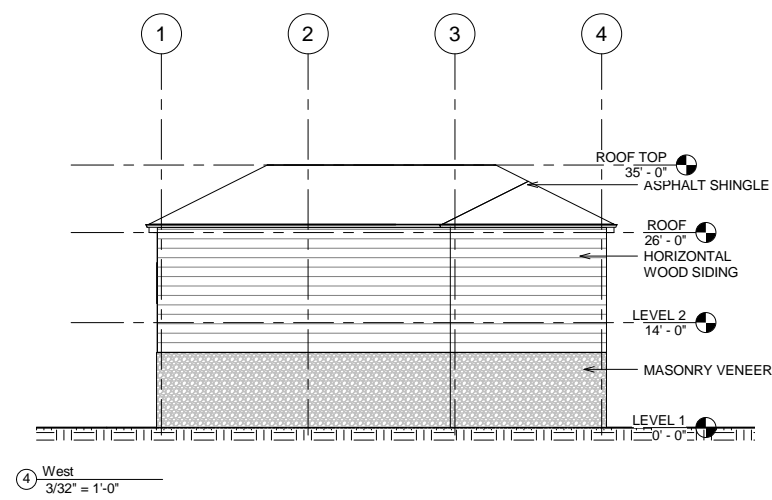
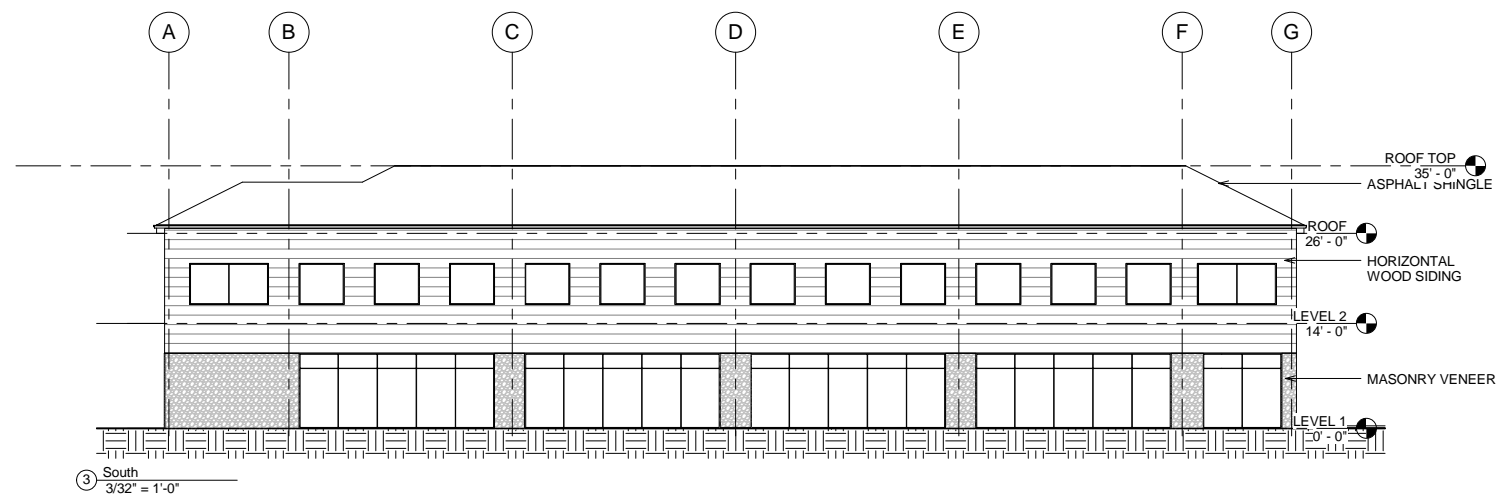
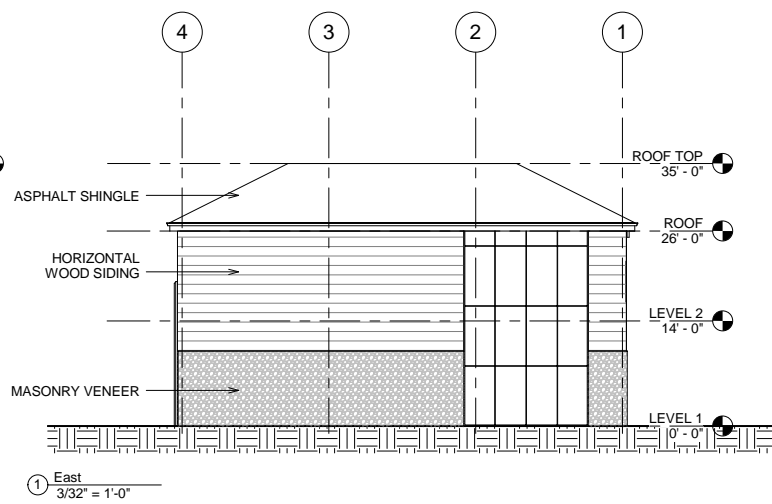
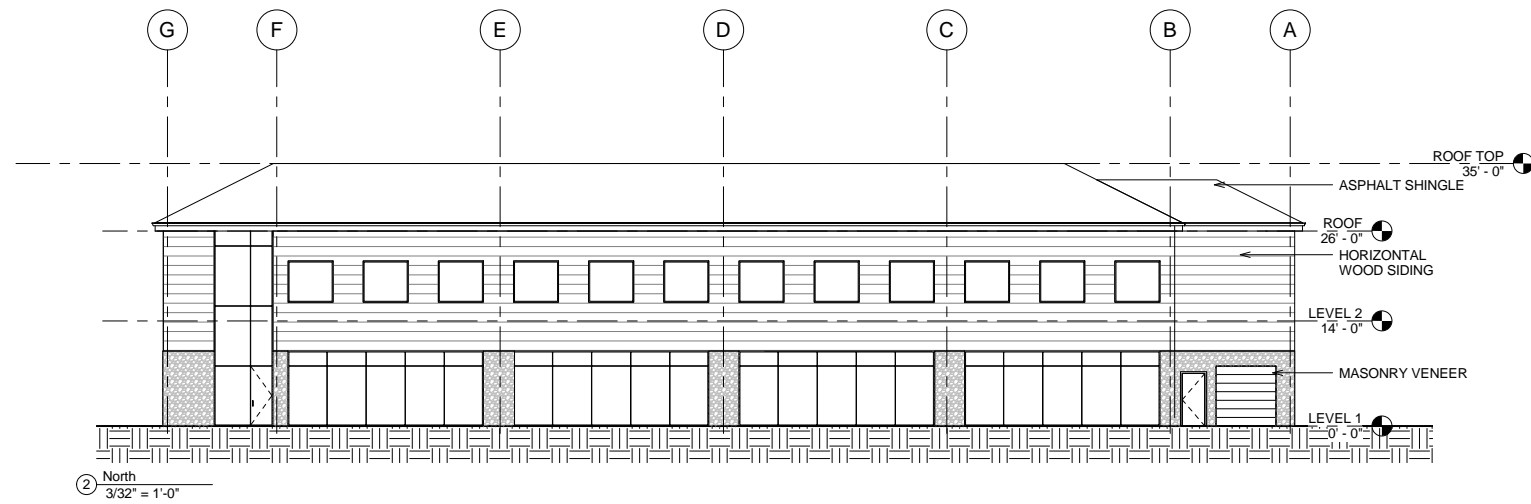
Project Number	14060
Date	2014.10.31
Drawn By	SNF
Checked By	MAH

A103

Scale

NSCM #28385
N 4948490.447
E 5566256.295

**Schedule C
Elevations**



No.	Description	Date
2	HRM COMMENTS	2015.10.14
1	MATERIAL	2015.06.26

**Rockingham
Ridge Plaza
Nova Scotia
Elevations**

Project Number 14060
Date 2014.10.31
Drawn By SS/SNF
Checked By MAH

A301

Scale 3/32" = 1'-0"