



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

Item No. 13.1.2
North West Community Council
December 10, 2018

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: October 24, 2018

SUBJECT: **Case 21915: Non-Substantive Amendment to an existing Development Agreement for 644 Bedford Highway, Halifax**

ORIGIN

Application by WM Fares Architects.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve, by resolution, the proposed second amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to extend the development commencement date and the development completion date for the proposed development at 644 Bedford Highway, Halifax; and
2. Require the second amending development agreement be signed by the property owners 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

On January 20, 2014, North West Community Council approved a development agreement (Case Number 17760¹) to construct a 7-storey, 52-unit residential building. The original development agreement required that construction commence within 3 years and be completed within 5 years of the agreement's registration at the Land Registration Office. The original development agreement was registered on March 17, 2014.

Section 6.1 of the original development agreement allows changes to the dates of commencement and completion as a non-substantive amendment.

On November 16, 2016, North West Community Council approved a non-substantive amendment to extend both the date of commencement and the date of completion by two years (case #20781). Therefore, the date of commencement is currently five years from the registration of the original development agreement, or March 17, 2019, and the date of completion is seven years from registration of the original agreement, or March 17, 2021.

To date, no development has taken place and the subject site remains vacant.

Proposal Details

WM Fares Architects, on behalf of the property owners, is applying to extend the commencement date by three years and the completion date by five years from the date that the proposed amending agreement is registered at the Land Registration Office.

All other content in the original development agreement, including the use, design, density, setbacks and height will remain unchanged.

Subject Site	644 Bedford Highway (PID 00289678)
Location	On the west side of the Bedford Highway, north of the intersection of the Bedford Highway and Larry Uteck Boulevard
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	HC (Highway Commercial) in the Bedford Highway Secondary Planning Strategy of the Halifax MPS
Zoning (Map 2)	C-2B (Highway Commercial) Zone, Schedule R, of the Land Use Bylaw for Halifax Mainland
Size of Site	5,830.7 square metres (62,761 square feet)
Street Frontage	30.5 metres (100 feet)
Current Land Use(s)	Vacant
Surrounding Use(s)	A mix of residential and commercial uses, including a hotel, retail, offices and multi-unit dwellings along Bedford Highway and Larry Uteck Boulevard.

Enabling Policy and LUB Context

Section 38AA(1) of the Halifax Mainland Land Use By-law permits a variety of commercial and residential uses. However, the subject site is included on Schedule R of the Halifax Mainland Land Use By-Law and Policy 1.8 of the Bedford Highway Secondary Plan allows residential development over 35 feet in height by development agreement (Map 3). It says:

"In order to promote investment in mixed use redevelopment within two specific nodes along the Bedford Highway, that being at the north end of the Halifax plan area and

¹ Report available online at
<http://legacycontent.halifax.ca/Commoun/central/documents/Case17760DA644BedfordHighway.pdf>

adjacent intersection of the Bedford Highway and Larry Uteck Boulevard, and to prevent conflict between new and existing uses the Municipality may, through the land use by-law, identify areas that provide an opportunity for and will benefit from a mix of residential and commercial uses. In those areas identified in the land use by-law as Schedule "R", all mixed residential/commercial developments or residential developments that exceed 35 feet in height shall be considered by development agreement in accordance with Sections 242 to 245 and 249 of the Halifax Regional Municipality Charter and as illustrated on Map ZM-2."

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 and signage posted on the subject site. As the requested amendment is non-substantive, there is no requirement for a public hearing before the North West Community Council can consider approving the requested amendment.

At the of preparation of this report, public comment from one person has been received. The comment was that the height and bulk of the approved development would block their view of the Bedford Basin and potentially decrease the value of their residence.

The proposal will potentially impact residents and business owners in the area surrounding the subject site.

DISCUSSION

Staff have reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Halifax Municipal Planning Strategy and the Bedford Highway Secondary Plan.

Proposed Amending Agreement

Attachment A contains the proposed second amending development agreement. This agreement allows no change to the development as originally approved other than an additional extension of the dates of commencement and completion by three and five years respectively.

The proposed time extensions can be considered as a non-substantive amendment as provided for in sections 6.1 (b) and 6.1 (c) of the original development agreement.

The enabling MPS policy 1.8 of the Bedford Highway Secondary Plan has not changed since the application was originally approved and staff advise that the proposal remains consistent with that specific policy and the overall MPS.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise it is reasonably consistent with the intent of the MPS. There is no change to the development originally approved by North West Community Council on January 20, 2014. The proposed time extensions would allow the developer additional time to develop the subject site as Council has previously considered and approved. Staff recommend that the North West Community Council approve the proposed second amending agreement.

FINANCIAL IMPLICATIONS

There are no budget 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 proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2018-2019 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. North West Community Council may choose to approve the proposed second amending 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 second amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. North West Community Council may choose to refuse the proposed second amending agreement, and in doing so, must provide reasons why the proposed second amending 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 and Notification Area
Map 3: Schedule R

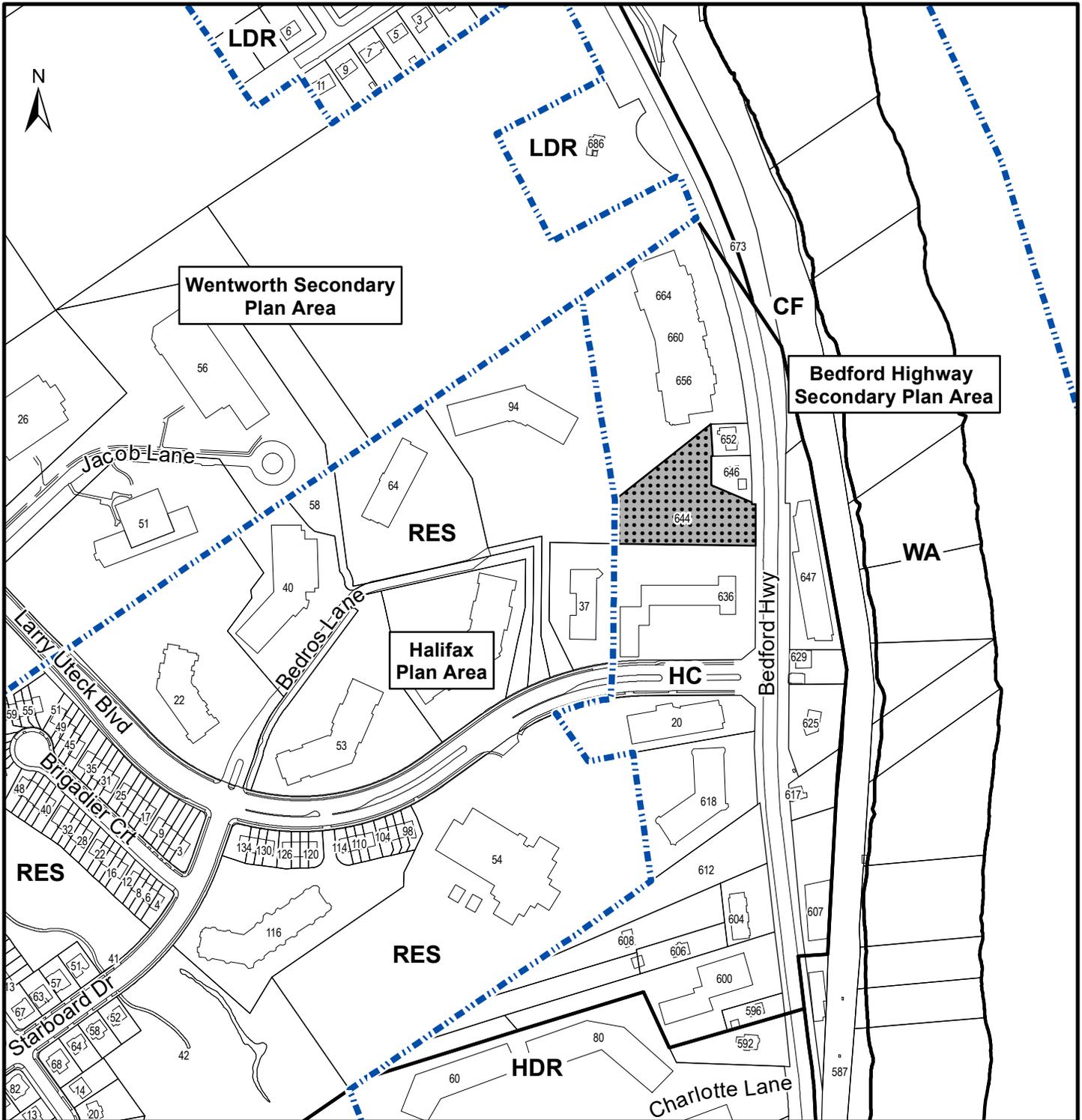
Attachment A: Proposed Second Amending Development Agreement

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: Jamy-Ellen Klenavic, Planner II, Current Planning, 902.490.2665

Original Signed

Report Approved by: _____
Steve Higgins, Manager Current Planning, 902.490.4382



Map 1 - Generalized Future Land Use

HALIFAX

644 Bedford Highway,
Halifax

 Non-Substantive to an
existing Development Agreement

 Detailed Plan Areas

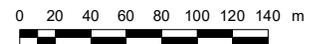
Halifax Plan Area
Bedford Highway Secondary Plan Area

Designation - Halifax

RES Residential Environments
WA Water Access

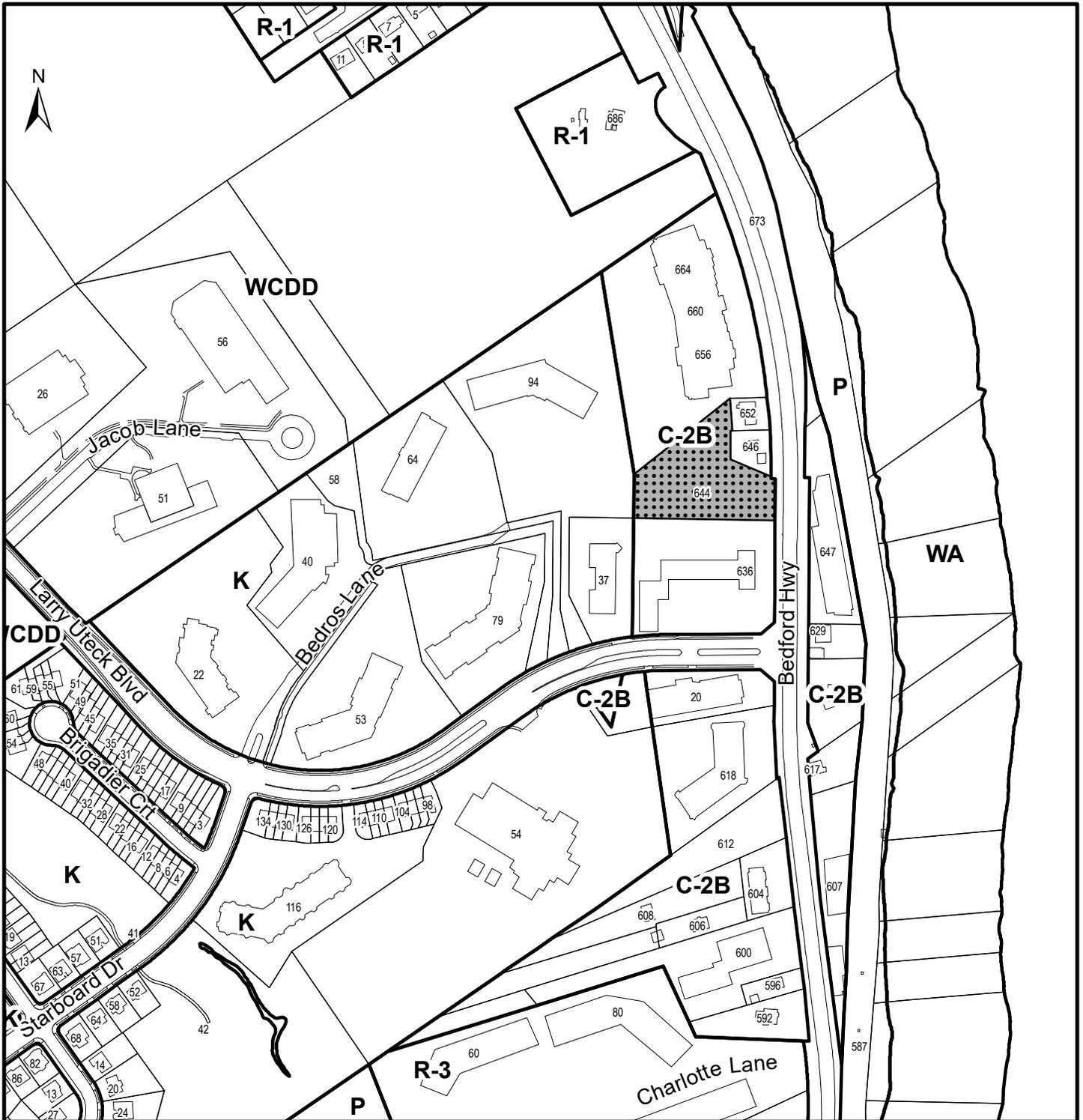
Designation - Bedford Highway

LDR Low Density Residential
HDR High Density Residential
HC Highway Commercial
CF Community Facilities



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

644 Bedford Highway,
Halifax

HALIFAX



Non-Substantive to an
existing Development Agreement

Zone

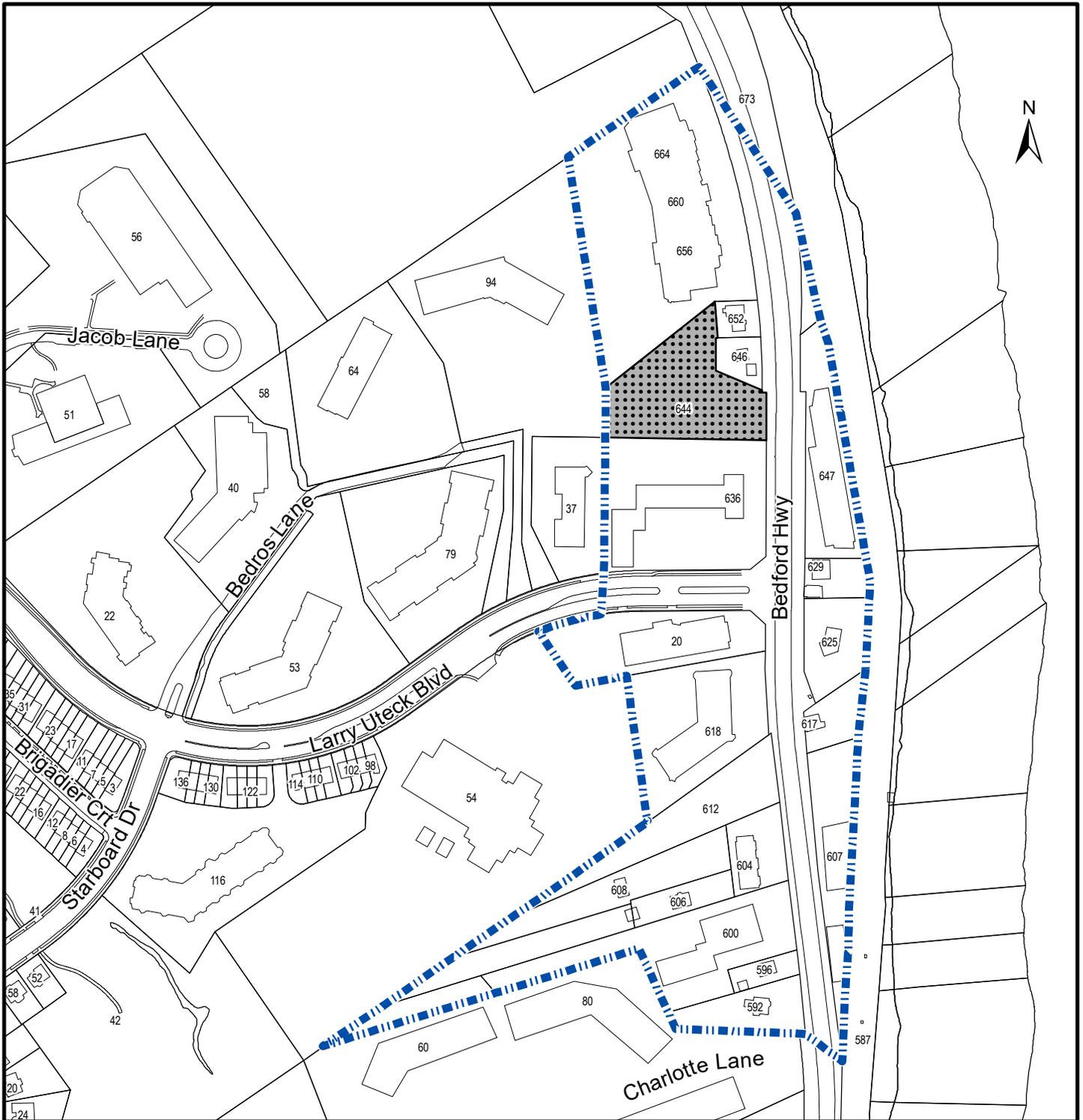
- R-1 Single Family Dwelling
- R-3 Low-Rise Apartment
- C-2B Highway Commercial
- P Park and Institutional
- WCDD Wentworth Comprehensive Dev. District
- WA Water Access
- K Schedule K



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

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Halifax Mainland
Land Use By-Law Area



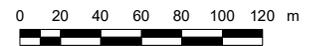
Map 3 - Schedule R

644 Bedford Highway,
Halifax

HALIFAX

 Subject Site

 Schedule R



Halifax Mainland
Land Use By-Law Area

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

The accuracy of any representation on
this plan is not guaranteed.

2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Second Amending Development Agreement, and the Existing Agreement.
3. Section 7.3.1 of the Existing Agreement shall be amended by deleting the text shown in strikeout and inserting the text shown in bold as follows:
 - 7.3.1 In the event that development on the Lands has not commenced within ~~five (5)~~ **three (3)** years from the date of registration of ~~this~~ **the Second Amending Development Agreement** at the Registry of Deeds or Land Registration Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
4. Section 7.5 of the Existing Agreement shall be amended by deleting the text shown in strikeout and inserting the text shown in bold as follows:
 - 7.5 If the Developer fails to complete the development after ~~seven (7)~~ **five (5)** years from the date of registration of ~~this~~ **the Second Amending Development 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) negotiation a new Agreement; or
 - (c) discharge this Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Per: _____
1054555 NOVA SCOTIA LIMITED

Witness

Per: _____
HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND 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: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Kevin Arjoon, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia