



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 13.1.5
Halifax and West Community Council
January 8, 2019

TO: Chair and Members of Halifax and West Community Council

-Original Signed-

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

-Original Signed-

Jacques Dubé, Chief Administrative Officer

DATE: November 13, 2018

SUBJECT: **Case 21941: Non-substantive amendments to an existing development agreement at 2287 Prospect Road, Hatchet Lake**

ORIGIN

Application by Innovation Architects Ltd. on behalf of Pioneer Management

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to extend the commencement and completion date of construction for the proposed development at 2287 Prospect Road (PID 40545626), Hatchet Lake; and
2. Require the 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

Innovation Architects, on behalf of Pioneer Management Ltd., has applied for a non-substantive amendment to an existing development agreement to allow a time extension to the commencement and completion date for construction for a proposed commercial building at 2287 Prospect Road (PID 40545626).

Subject Site	PID 40545626, 2287 Prospect Road, Hatchet Lake
Location	West side of Prospect Road, south of Brookside Junior High
Regional Plan Designation	RC (Rural Commuter)
Community Plan Designation (Map 1)	RB (Residential B) under the Planning District 4 (Prospect) Municipal Planning Strategy (MPS)
Zoning (Map 2)	C-2 (General Business) Zone under the Planning District 4 (Prospect) Land Use Bylaw (LUB)
Size of Site	7,648.5 square metres (82,328 square feet)
Street Frontage	71.6 metres (235 feet)
Current Land Use(s)	178 square metre (1,920 square foot) commercial building - Physiotherapy
Surrounding Use(s)	Drug store and medical office to the north Vacant commercial property to the south In close proximity to the Brookside Junior High School and the Prospect Road Community Centre

Proposal Details

On June 24, 2015, Halifax and West Community Council approved a development agreement allowing the existing commercial building to exceed a maximum footprint of 10% of the lot area at 2287 Prospect Road, Hatchet Lake (Case Number 19311). Specifically, the existing development agreement allows a single storey addition to the existing commercial building (the physiotherapy clinic). The addition is approximately 756 square metres (8,139 sq.ft) in area and is for the physiotherapy clinic and future commercial occupancies. (Attachment B)

The applicant wishes to amend the existing development agreement to allow a time extension to the commencement of construction date for the project by three (3) years and an extension of the development completion date by five (5) years. Both extensions are from the date of registration of the proposed amending agreement. The reasons for the time extension as provided by the applicant are as follows:

- surface water issues had to be resolved with the neighbouring property owner and these have now been resolved;
- financing delays; and
- considerable amount of fill brought to site to level which is now partially completed.

An extension to the commencement and completion deadlines will allow time to complete the extensive fill required to level the site, the detailed engineering drawings required for the building permit and the construction of the addition.

Enabling Policy Context

Policies RB-10, RB-11 and IM-11 of the Planning District 4 (Prospect) MPS allows for the expansion of permitted uses which are in excess of ten (10) percent of the lot area within any C-2 (General Business) Zone. Policy RB-10 of the MPS allows for the consideration of buildings that cover more than 10% of the lot area through the development agreement process. Criteria within policy RB-10, places an emphasis on the design of the building and compatibility with neighbouring uses. This is the policy framework under which the agreement was considered and approved in 2015. These policies remain unchanged today and continue to apply to the request for an amendment to the existing agreement.

In addition, Section 6.2 (e) and (d) of the existing development agreement identifies changes to the time frames for commencement and completion of the development as non-substantive amendments.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through providing information through the HRM website and signage posted on the subject site. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendments is made by resolution of Council.

DISCUSSION

The proposed change relates only to the extension of time for the date of commencement of construction and the date of completion. The nature of the development as defined in the current agreement will be unchanged. These two extensions can be permitted as a non-substantive amendment pursuant as permitted in section 6.2 (d) and (e) of the existing development agreement. It is requested by the applicant and recommended by staff that the date of commencement of construction be extended by three (3) years and the date for completion of the development be extended by five (5) years as outlined in the proposed amending development agreement (Attachment A).

As noted above, a number of factors delayed the commencement of the construction. Two of these factors are resolved and the other is well underway. The time extension would allow the applicant to continue the fill that is required for the construction of the addition and to complete the detailed drawings required for the building permit.

Staff have reviewed the proposal in terms of all relevant policy criteria and advise those policies are unchanged from the time of original approval and the proposal remains reasonably consistent with the intent of the MPS. Therefore, staff recommend that the Halifax and West Community Council approve the proposed amending development agreement. (Attachment A)

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this proposed development agreement. The administration of the proposed amending 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. 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 a public hearing. A decision of Council to approve this amending 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 amending 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:	Proposed Amending Development Agreement
Attachment B:	Site Plan and Landscaping Plan

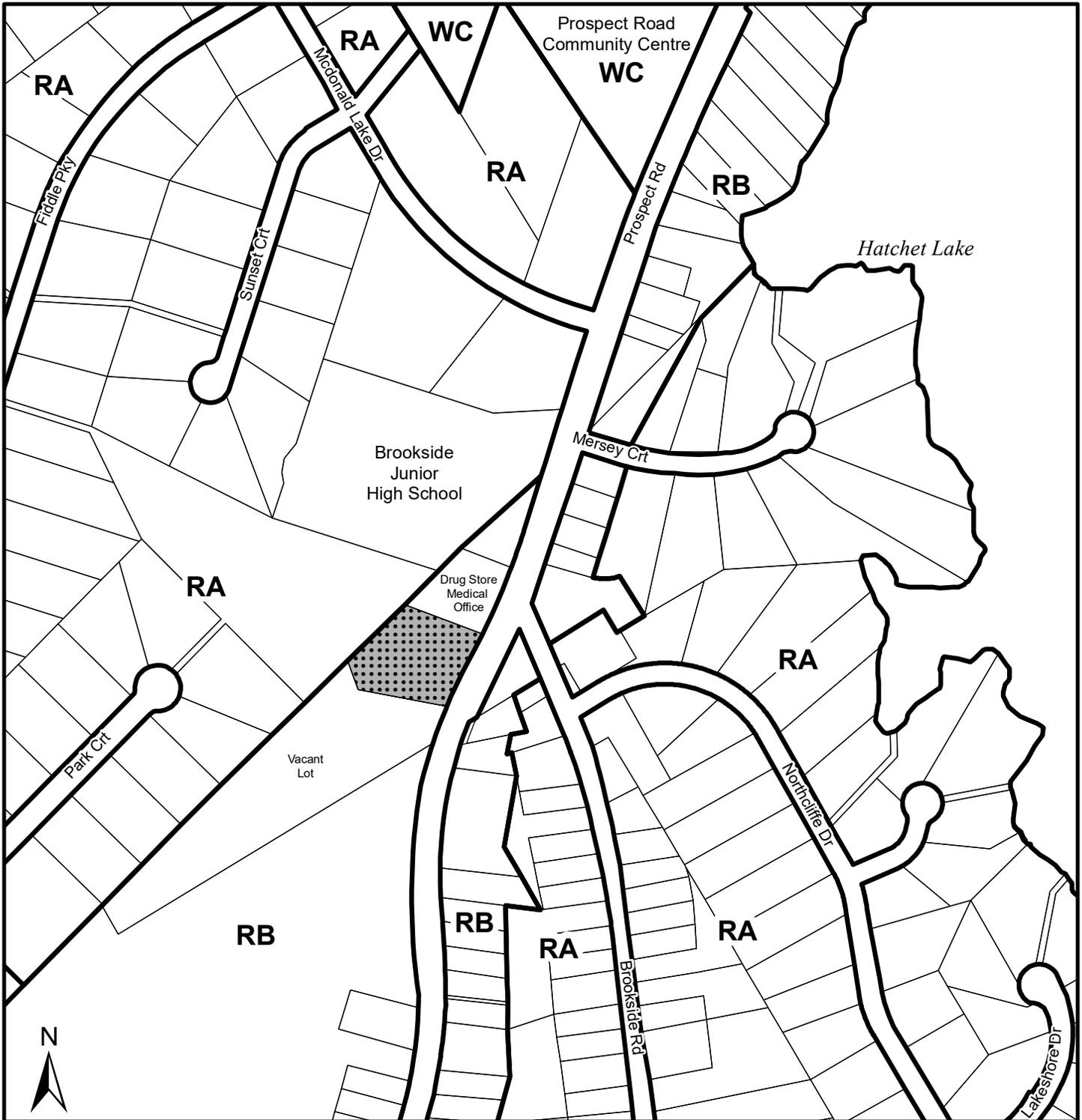
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Maria Jacobs, Planner II, Current Planning, 902.490.4911

-Original Signed-

Report Approved by:

Steven Higgins, Manager Current Planning, 902.490.4382



Map 1 - Generalized Future Land Use

2287 Prospect Road
Hatcher Lake

HALIFAX

 Area of existing development agreement

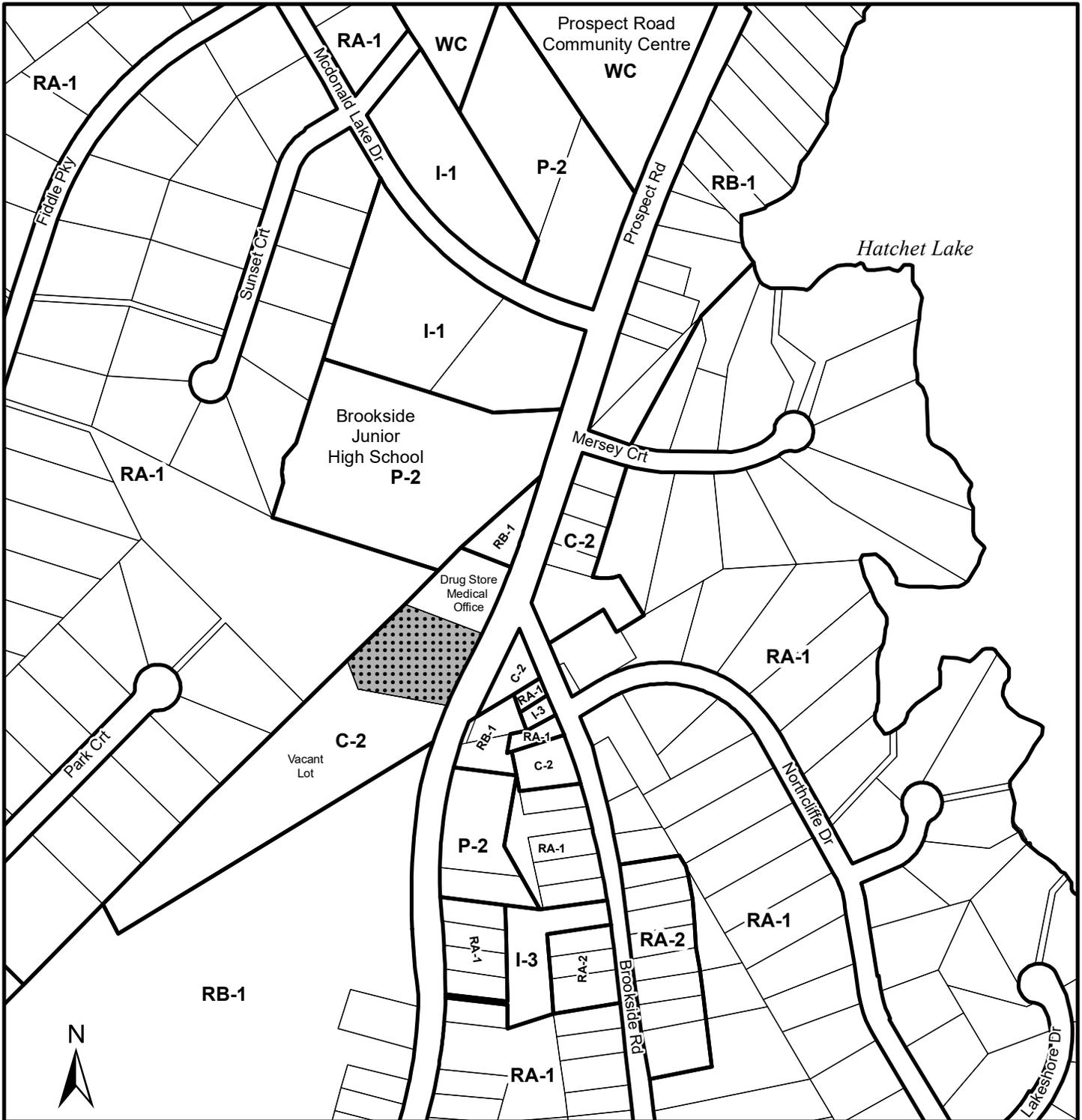
Designation
 RA Residential A
 RB Residential B
 WC Western Common



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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

Planning District 4
(Prospect) Plan Area



Map 2 - Zoning

2287 Prospect Road
Hatchet Lake

 Area of existing development agreement

Planning District 4
(Prospect) Land Use By-Law Area

Zone	
RA-1	Residential A-1
RA-2	Residential A-2
RB-1	Residential B-1
C-2	General Business
P-2	Community Facility
I-1	Light Industry
I-3	Local Service
WC	Western Common

HALIFAX



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.

Attachment A
Proposed Amending Development Agreement

THIS FIRST AMENDING DEVELOPMENT AGREEMENT made this day of **[Insert Month]**, 20___,

BETWEEN:

[Insert Name]

A body corporate, in the Halifax Regional Municipality in the Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 2287 Prospect Road, Hatchet Lake PIDs 40545626 and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Halifax and West Community Council of the Halifax Regional Municipality approved an application to enter into a development agreement to allow an addition to an existing commercial building and commercial uses on the Lands on June 24, 2015 (Municipal Case Number 19311), and which said development agreement was registered at the Land Registration Office on November 30, 2015 as Document Number 108179582 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested to amend the Original Agreement to allow for a three (3) year extension to the Commencement of Development date and a five (5) year extension to the Completion of Development date for development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 6 of the Original Agreement;

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 21941;

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

1. Except where specifically varied by this First Amending Development Agreement, all other terms, conditions and provisions of the Original Agreement shall remain in effect.
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 First Amending Development Agreement, and the Original Agreement.
3. Subsection 7.3.1 of the Original Agreement shall be amended by inserting the text in bold as shown as follows:
 - 7.3.1 In the event that development on the Lands has not commenced within three years from the date of registration of this **First Amending Development** Agreement at the Registry of Deeds or Land Registry 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. Subsection 7.4 of the Original Agreement shall be amended by inserting the text in bold as shown as follows:

7.4 Upon the completion of the development or portions thereof, or after five years from the date of registration of the **First Amending Development** Agreement at the Registry of Deeds or Land Registry Office, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Planning District 4, as may be amended from time to time.

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:

[Insert Name]

Per: _____

Witness

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:

Per: _____

MAYOR

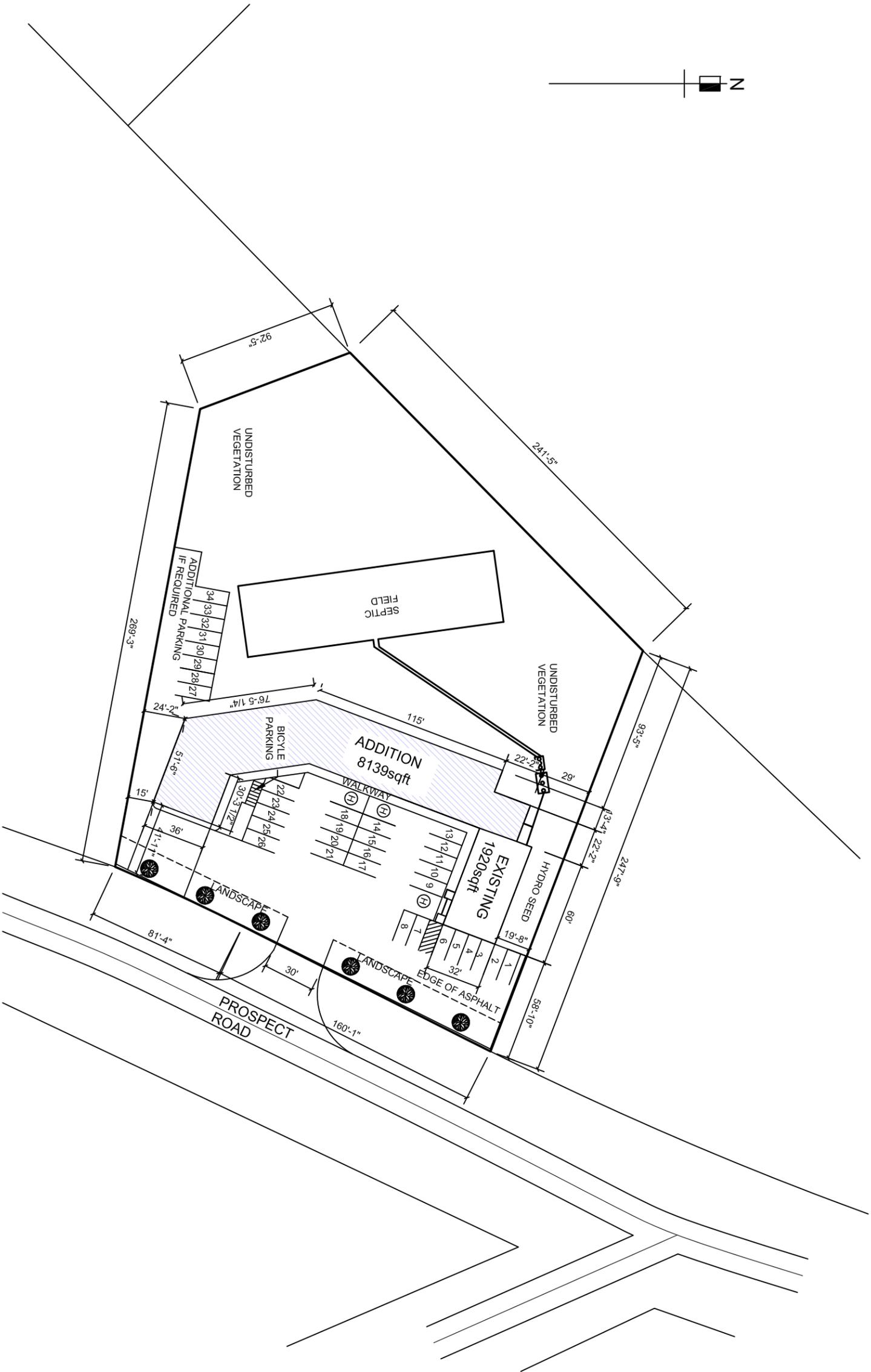
Witness

Per: _____

MUNICIPAL CLERK

Witness

Attachment B- Site Plan and Landscape Plan



PROJECT: CLASSIC THERAPY

DRAWN: [REDACTED]

CHECKED:

TITLE: SITE PLAN

DATE: MAR. 26, 2013

APPROVED:

DWG. NO. A-100

SCALE: 1/4" = 1'

PROJECT NO.

REVISIONS

NO.	DATE	DESCRIPTION
04 <td>DEC. 12, 2014</td> <td>FOR REVIEW</td>	DEC. 12, 2014	FOR REVIEW
03 <td>JULY. 16, 2014</td> <td>FOR REVIEW</td>	JULY. 16, 2014	FOR REVIEW
02 <td>AUG. 30, 2013</td> <td>FOR REVIEW</td>	AUG. 30, 2013	FOR REVIEW
01 <td>AUG. 14, 2013</td> <td>FOR REVIEW</td>	AUG. 14, 2013	FOR REVIEW

INNOVATION ARCHITECTS

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