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Halifax, Nova Scotia
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Item No.13.1.1
Halifax and West Community Council
October 12, 2021

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Kelly Denty, Executive Director Planning and Development

DATE: August 18, 2021

SUBJECT: **Case 23661: Non-substantive amendments to an existing Development Agreement at 286 and 290 Herring Cove Road, Halifax**

ORIGIN

Application by W. M. Fares Architects requesting a non-substantive amendment to an existing development agreement to extend the commencement time.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give Notice of Motion to consider the proposed amending development agreement, as set out in Attachment A of this report, to allow a non-substantive amendment to an existing development agreement extending the commencement date for the building construction;
2. 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; and
3. Require the amending development agreement be signed by the property owners within 240 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

W. M. Fares Architects is applying for a non-substantive amendment to an existing development agreement to allow for a time extension to the development commencement date for an approved development at 286 and 290 Herring Cove Road (Attachment B).

Subject Site	286 and 290 Herring Cove Road, Halifax
Location	East side of Herring Cove Road between Clovis Avenue and Bradbury Lane
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	(LDR) Low Density Residential and Schedule 'S' under the Mainland South Secondary Planning Strategy (MSSPS) of the Halifax Municipal Planning Strategy (MPS)
Zoning (Map 2)	(R-2) Two Family Dwelling Zone under the Halifax Mainland Land Use By-law (LUB)
Size of Site	8457.93 sq. m (2.09 acres)
Street Frontage	Approximately 59.97 m (196.75 ft.)
Current Land Use(s)	Vacant
Surrounding Use(s)	a mixture of land uses exists in the area including: <ul style="list-style-type: none">• a commercial building;• a 14 unit residential building• church, cemetery and an associated small private school;• single and two unit dwellings; and• an HRM pocket park.

Proposal Details

On June 10, 2014 Regional Council approved amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) creating policy for Council to consider apartment houses along the Herring Cove Road between Circle Drive and Williams Lake Road by development agreement. Subsequently, on August 6, 2014, Halifax and West Community Council approved a development agreement allowing for an apartment house at 286 and 290 Herring Cove Road, Halifax.

In an application considered by Halifax and West Community Council at a meeting in March 2018, an amendment to the development agreement was approved which extended the date that construction was required to commence before by three (3) years, resulting in a commencement date of August 13, 2021. This timeline was not met and a time extension to the original agreement has been requested. The request is to extend the commencement date by three (3) years from the date of registration of the second amending agreement. If the amendments are approved, the project would have to commence by summer of 2025, at the latest.

The development agreement allows for a 42 unit apartment house and accessory uses. The staff report and original development agreement may be found at the following location:

<http://legacycontent.halifax.ca/Commcoun/west/documents/Case16367REDACTEDVersion3.pdf>

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

Staff has reviewed the proposal relative to all relevant policies and advise that it remains reasonably consistent with the intent of the Halifax MPS. There have been no changes to the proposal, nor the policy framework or local community.

Proposed Amending Development Agreement

Attachment A contains the proposed amending development agreement for the subject site. The proposed amending development agreement addresses the time extension for the commencement date and aligns the time for completion date with the registration date of the Second Amending Agreement.

The proposed change relates only to the date for the commencement of development and the building design will be unchanged. The time extension can be permitted as a non-substantive amendment pursuant to section 6.2.1(c) of the original development agreement.

Timeframe for signing of Agreements

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances presents, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that it is reasonably consistent with the intent of the MPS. The proposed amendment is only to the date of commencement. The architecture, placement and use of the structure is unchanged from that which is set out in the existing development agreement. Therefore, staff recommend that the Halifax and West Community Council approve the proposed Second Amending Development 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 amending agreement. The administration of the proposed amending agreement can be carried out within the approved 2021-2022 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 reasonably 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 agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

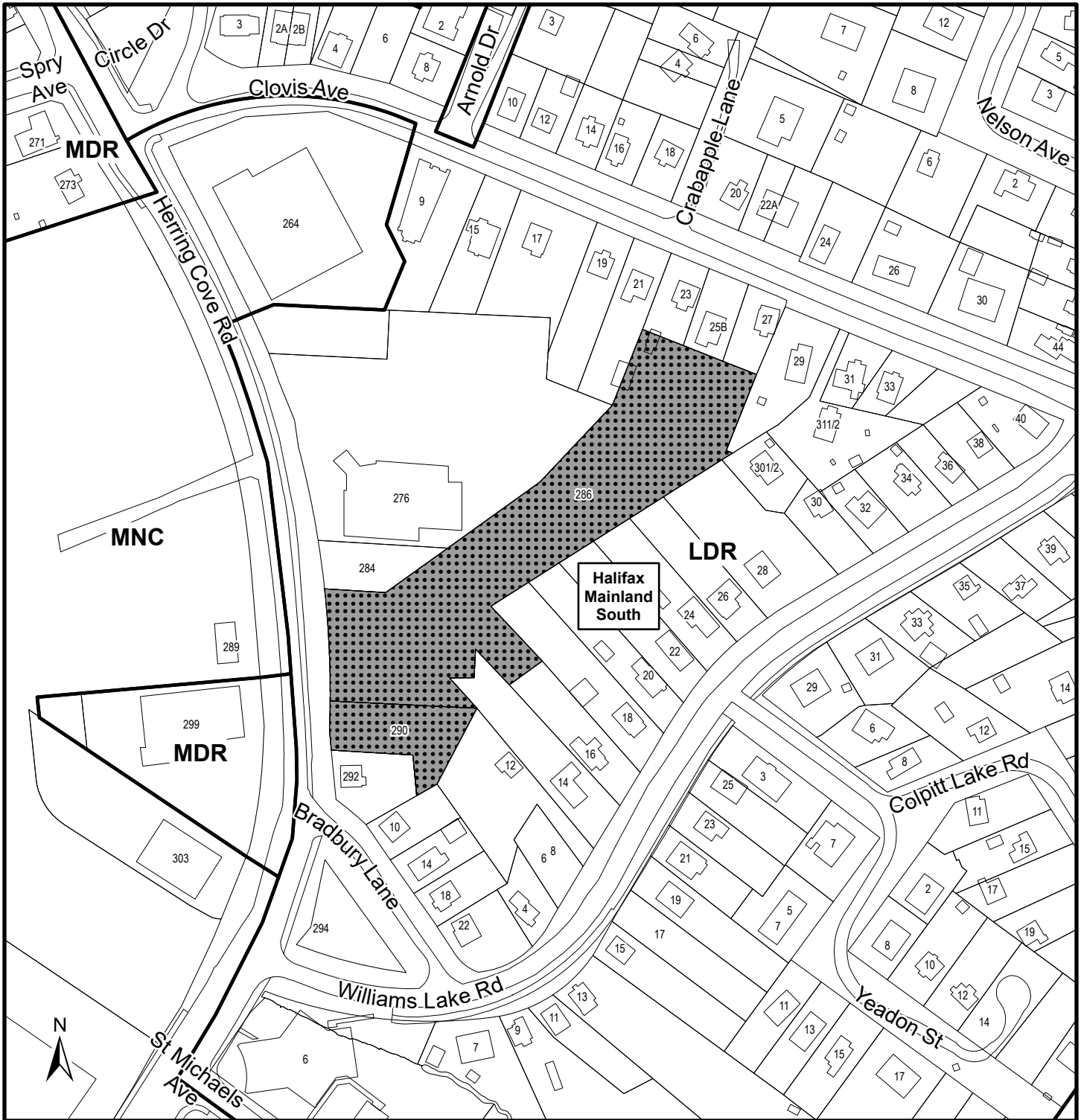
1. Halifax and West Community Council may choose to approve the proposed amending agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or a public hearing. A decision of Council to approve this amending agreement 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 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 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 Map
Attachment A:	Proposed Amending Development Agreement
Attachment B:	Applicant Request

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: Darrell Joudrey, Planner II, Current Planning, 902.225.8630



Map 1 - Generalized Future Land Use

286 and 290 Herring Cove Road,
Halifax

HALIFAX

 Subject Property

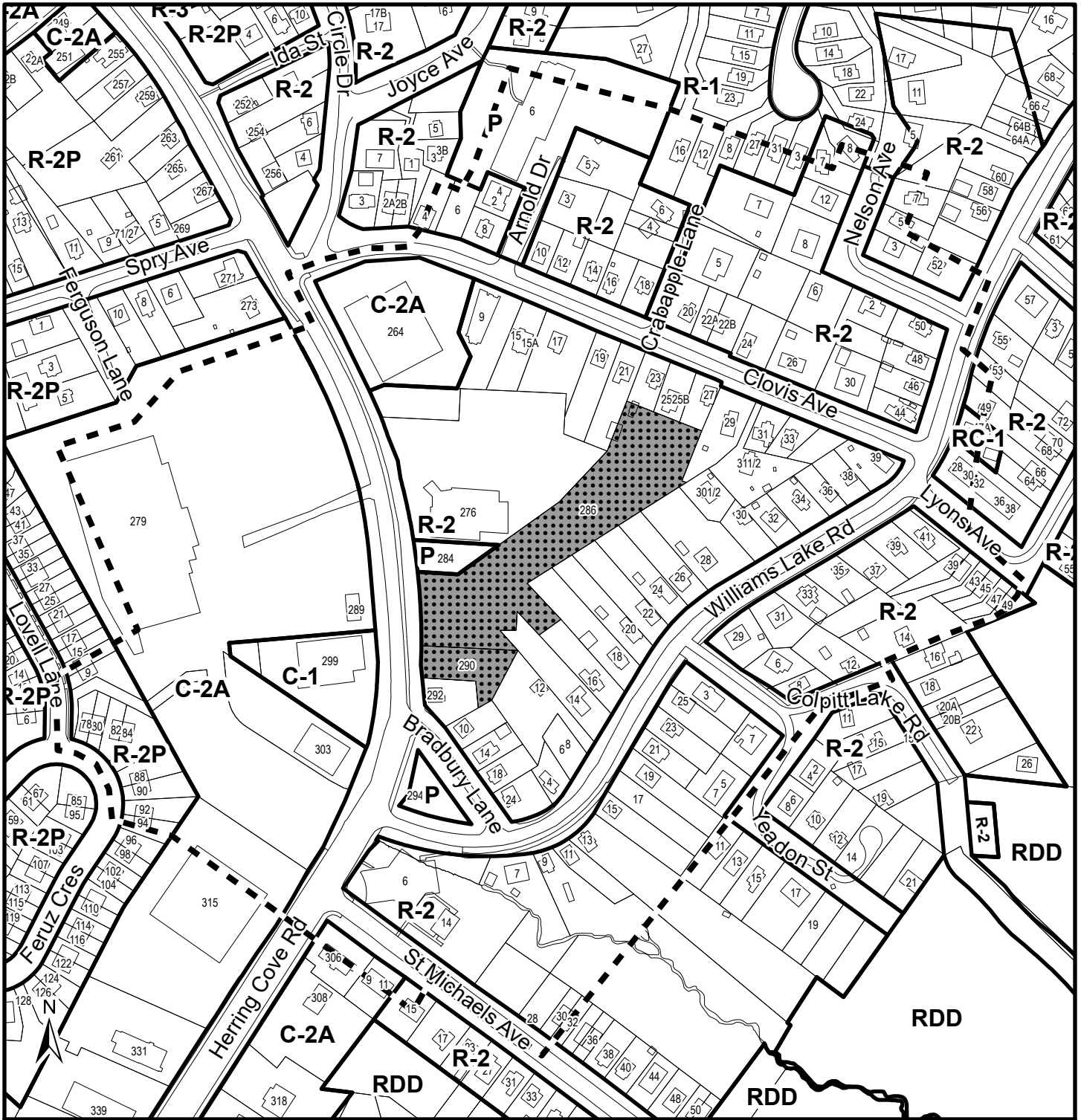
- Designation**
- INS Institutional
 - LDR Low Density Residential
 - MDR Medium Density Residential
 - MNC Minor Commercial



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.

Halifax Mainland South
Plan Area



Map 2 - Zoning and Notification Area

286 and 290 Herring Cove Road,
Halifax

-  Subject Property
-  Area of Notification

Halifax Mainland
Land Use By-Law Area

- Zone**
- C-1 Local Business
 - C-2A Minor Commercial
 - P Park and Institutional
 - R-1 Single Family Dwelling
 - R-2 Two Family Dwelling
 - R-2P General Residential
 - R-3 Low-Rise Apartment
 - RC-1 Neighbourhood Commercial
 - RDD Residential Development District

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

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

Attachment A
Proposed Amending Development Agreement

THIS SECOND AMENDING DEVELOPMENT AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality in the Province of Nova Scotia

-and-

[Insert Name of Corporation/Business LTD.],

a body corporate, in the Province of Nova Scotia,

(hereinafter collectively called the "Developer")

- and -

HALIFAX REGIONAL MUNICIPALITY

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

WHEREAS the 3156293 Nova Scotia Limited is the registered owner of certain lands located at 286 Herring Cove Road, Halifax and and About Raymond Toulany is the registered owner of certain lands located at 290 Herring Cove Road, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter collectively called the "Lands");

AND WHEREAS on August 6, 2014 the Halifax and West Community Council approved an application to enter into a development agreement to allow for an apartment house development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policies 1.2.6, 1.2.7, and 1.2.8 of Section X of the Halifax Municipal Planning Strategy and Section 72(3) of the Halifax Mainland Land Use By-law (Municipal Case 16367), and which said Agreement was registered at the Land Registration Office in Halifax on January 15, 2015 as Document Number 106492052 (hereinafter called the "Original Agreement");

AND WHEREAS on March 21, 2018 the Halifax and West Community Council approved an application to amend the Existing Agreement to allow for an additional three (3) year extension to the date of Commencement of Development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policies 1.2.6, 1.2.7, and 1.2.8 of Section X of the Halifax Municipal Planning Strategy and Section 72(3) of Halifax Mainland Land Use By-law, and which said Amending Development Agreement was registered at the Land Registration Office in Halifax on August 13, 2018 as Document Number 113074000 (hereinafter called the "First Amending Agreement") and which applies to the Lands;

AND WHEREAS the Original Agreement and the First Amending Agreement together comprise the Existing Development Agreement (hereinafter called "the Existing Agreement");

AND WHEREAS the Developer wishes to further amend the Existing Agreement to allow for a further three (3) year extension to the Commencement of Development date pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 6 of the Existing Agreement;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on [Insert - Date], referenced as Case Number **23661**;

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 Second Amending Development Agreement, all other terms, conditions and provisions of the Existing 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 Second Amending Agreement, and the Existing Agreement.
3. Subsection 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 three (3) years from the date of registration of this ~~First~~ **Second** 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 7.5.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

7.5.1 If the Developer fails to complete the development after five (5) years from the date of the registration of this ~~First~~ **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 this Agreement in its present form;
 - (b) negotiate 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:

(Insert Registered Owner Name)

Witness

Per: _____

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

HALIFAX REGIONAL MUNICIPALITY

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 Iain MacLean, 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

WM FARES

ARCHITECTS

May 21, 2021

Re: Case 16367 – 286/290 Herring Cove Road
Development Agreement for a 42-Unit Residential Building

Attention: HRM – Planning Department:

Please be advised that pursuant to section 6.2.1(c) - Non-Substantive Amendments - of Development Agreement Case # 16367, we are requesting a 3-year extension to the date of commencement of construction as identified under section 7.3 of the said agreement.

Thank you for considering our request.

Yours truly,

Original Signed

Cesar Saleh, P.Eng.
W M Fares Architects