



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 10.1.2
Halifax and West Community Council
November 21, 2023
December 5, 2023

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *- Original Signed -*

Jacqueline Hamilton, Executive Director of Planning and Development

DATE: September 26, 2023

SUBJECT: **PLANAPP-2023-00334: Development Agreement for 749 Herring Cove Road, Halifax**

ORIGIN

Application by Stephen Adams Consulting Services Inc, on behalf of the property owner.

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 development agreement, as set out in Attachment A, to allow for an expansion of a non-conforming commercial use at 749 Herring Cove Road, Halifax, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the 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

Stephen Adams Consulting Services Inc., on behalf of NCS Real Estate Incorporated, has applied to enter into a development agreement to build two additions to an existing commercial building, which is a non-conforming use in accordance with policy 3.14 of the Halifax Municipal Planning Strategy.

Subject Site	749 Herring Cove Road
Location	Halifax
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	LDR (Low Density Residential)
Zoning (Map 2)	R-2 (Two Family Dwelling)
Size of Site	4168 sq. metres (1.03 acres)
Street Frontage	46 metres (153 ft.)
Current Land Use(s)	Sign Shop (commercial, non-conforming use)
Surrounding Use(s)	Residential and commercial (e.g. veterinary hospital and hair salon)

Proposal Details

The applicant proposes to build two additions to an existing commercial building used as a sign shop. The major aspects of the proposal are as follows:

- The proposal is to build two additions to the existing building using a similar architectural design to the existing structure; and
- The proposed additions will result in the removal of outdoor storage on the property, and the provision of additional landscaping to provide a buffer from neighbouring residential uses.

History

A permit was issued on December 7th, 1990 to occupy a sign shop (Tremblay Signs) on the property. At that time the property was zoned C-2 (General Business). The property was rezoned from C-2 to R-2 in 1995. A commercial use is not permitted in the R-2 (Two Family Dwelling) zone, however, the use was lawfully permitted prior to the rezoning to R-2, meaning that the use is non-conforming. A non-conforming use is eligible for consideration of expansion through the development agreement process in accordance with policy 3.14 of the Halifax Municipal Planning Strategy.

Enabling Policy and LUB Context

The subject property is within the Low-Density Residential Designation, and zoned R-2 under the Halifax Municipal Planning Strategy (MPS) and Mainland Land Use Bylaw (LUB). The commercial use of the property is non-conforming, which allows Council's consideration of expansion of the structure through the development agreement process in accordance with Section 71(5) of the LUB and Policy 3.14 of the MPS. A detailed analysis of the proposal with respect to the policy considerations is included in Attachment B.

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, letters mailed to property owners within the notification area. A total of 105 letters were mailed to property owners within the notification area (Map 2). The HRM website received a total of 241 unique pageviews over the course of the application, with an average time on page of 1 minutes and 34 seconds. No comments were submitted to staff.

A public hearing must be held by Halifax and West Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the advertisement on the HRM webpage, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact neighbouring property owners during construction by way of noise. Although the additions will result in expansion of the business, the resulting removal of outdoor storage on the property, and the addition of landscaping, will reduce visible nuisance.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is consistent with the intent of the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

Attachment A contains the proposed development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement addresses the following matters:

- Enables two additions, which must meet the setback, lot coverage, and height requirements of the R-2 zone for Halifax Mainland;
- Requirements for a landscaped buffer abutting residential properties; and
- Allowing non-substantive amendments to the development agreement including changes to the landscaping plan, and extensions to the date of commencement and completion deadlines.

The attached proposed development agreement will permit two expansions to the existing building, subject to the controls identified above. Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Benefits to Neighbourhood

Historically, the subject site has been the subject of unsightly property complaints. In recent years, the sign shop has changed ownership and the new owner has renovated parts of the building, along with cleaning up some of the outdoor storage. The business is now growing, and more space is needed to meet their demand. The site currently has some remaining outdoor storage and refuse, and the applicant has noted that with the extra building space proposed in the development agreement, all outdoor storage will be moved indoors. No outdoor storage or open refuse will remain, nor be permitted by the development agreement. The clean-up of the outdoor storage on the site will lead to a demonstrable improvement to the neighbourhood because the cause of the complaints historically will be resolved. This meets the overall intent of policy 3.14.

Mitigating Adverse Effects on Adjacent Properties

The addition of a landscaped and fenced buffer around the perimeter of the subject site will screen the property from adjacent uses and mitigate any potential adverse impacts, as required under policy 3.14 c). The existing open refuse will be screened in a fenced area, and both sides of the property that abut the neighbouring residential and commercial uses will include either landscaping or fencing.

Setbacks of Existing & Proposed Building

The proposal will meet the requirements of the R-2 (Two Family Dwelling) zone for setbacks, which include a 6.1m (20ft) setback to the street line, and 2.4m (8ft) setbacks to the side and rear lot lines. Both the existing building and the proposed additions meet these setback requirements. These setbacks also meet the criteria of policy 3.14 (e).

Priorities Plans

In accordance with Policy G-14A of the Halifax Regional Plan, this planning application was assessed against the objectives, policies, and actions of the priorities plans, inclusive of the Integrated Mobility Plan, the Halifax Green Network Plan, HalifACT, and Halifax's Inclusive Economic Strategy 2022-2027. While these priority plans often contain policies which were originally intended to apply at a regional level and inform the development of Municipal Planning Strategy policies, there are still components of each plan which can and should be considered on a site-by-site basis. Where conflict between MPS policy and priority plan policy exists, staff must weigh the specificity, age, and intent of each policy, and consider how they would be applied to a specific geographic context. In this case, the proposed development does not conflict with any specific objectives, policies, or actions of the Priorities Plans.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the Halifax MPS. The proposal will expand the building with the non-conforming use but will reduce the amount of outdoor storage on the property, resulting in an improved aesthetic to buffer the commercial use from neighbouring residential uses. Therefore, staff recommend that the Halifax and West Community Council approve the proposed development agreement.

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 proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2023-2024 operating budget for Planning and Development.

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 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 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 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*.

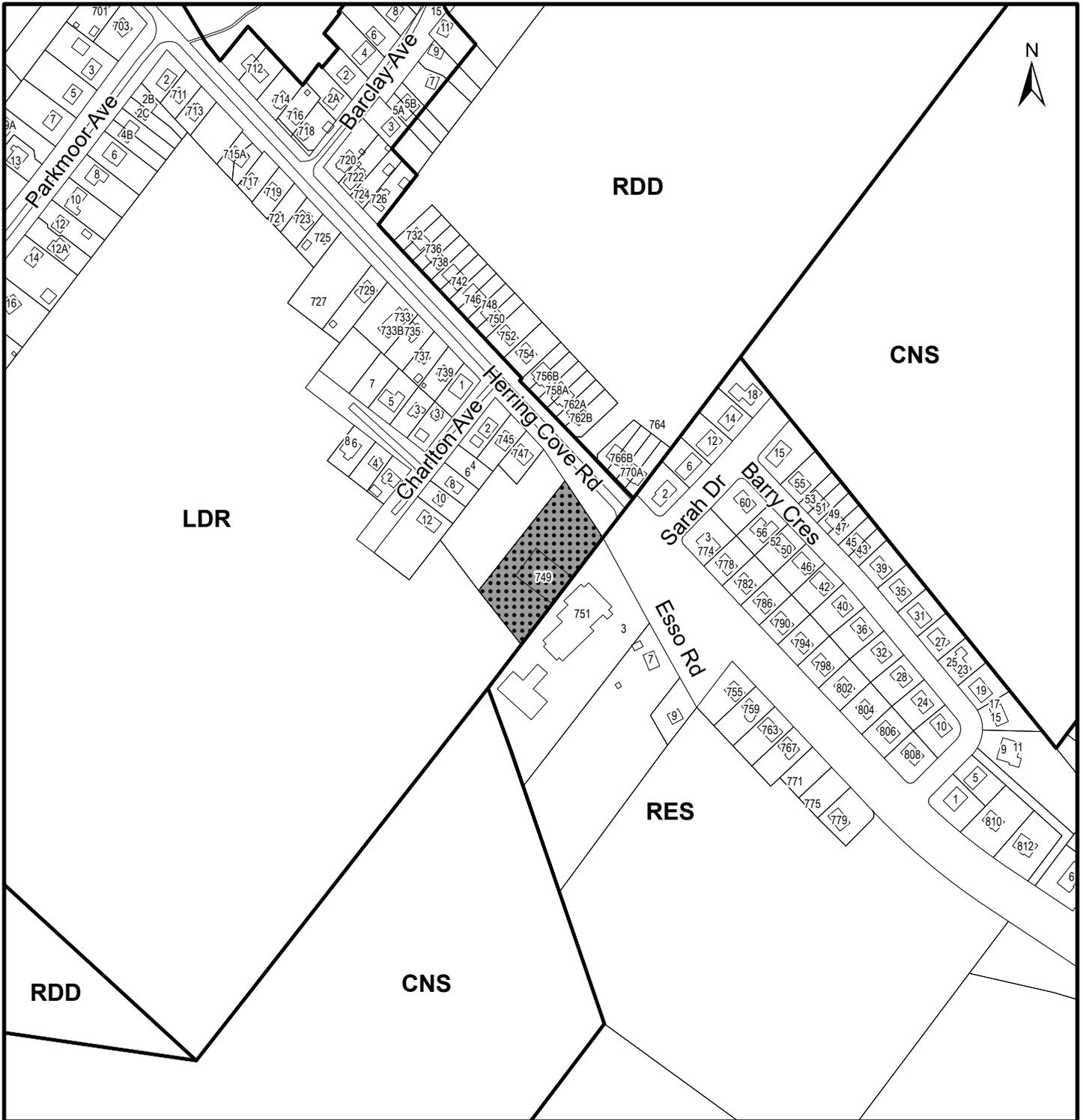
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Development Agreement
Attachment B: Review of Relevant MPS Policies

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: Alyson Dobrota, Planner II, 782-640-6189



Map 1 - Generalized Future Land Use

HALIFAX

749 Herring Cove Rd, Halifax

Designation

 Subject Property

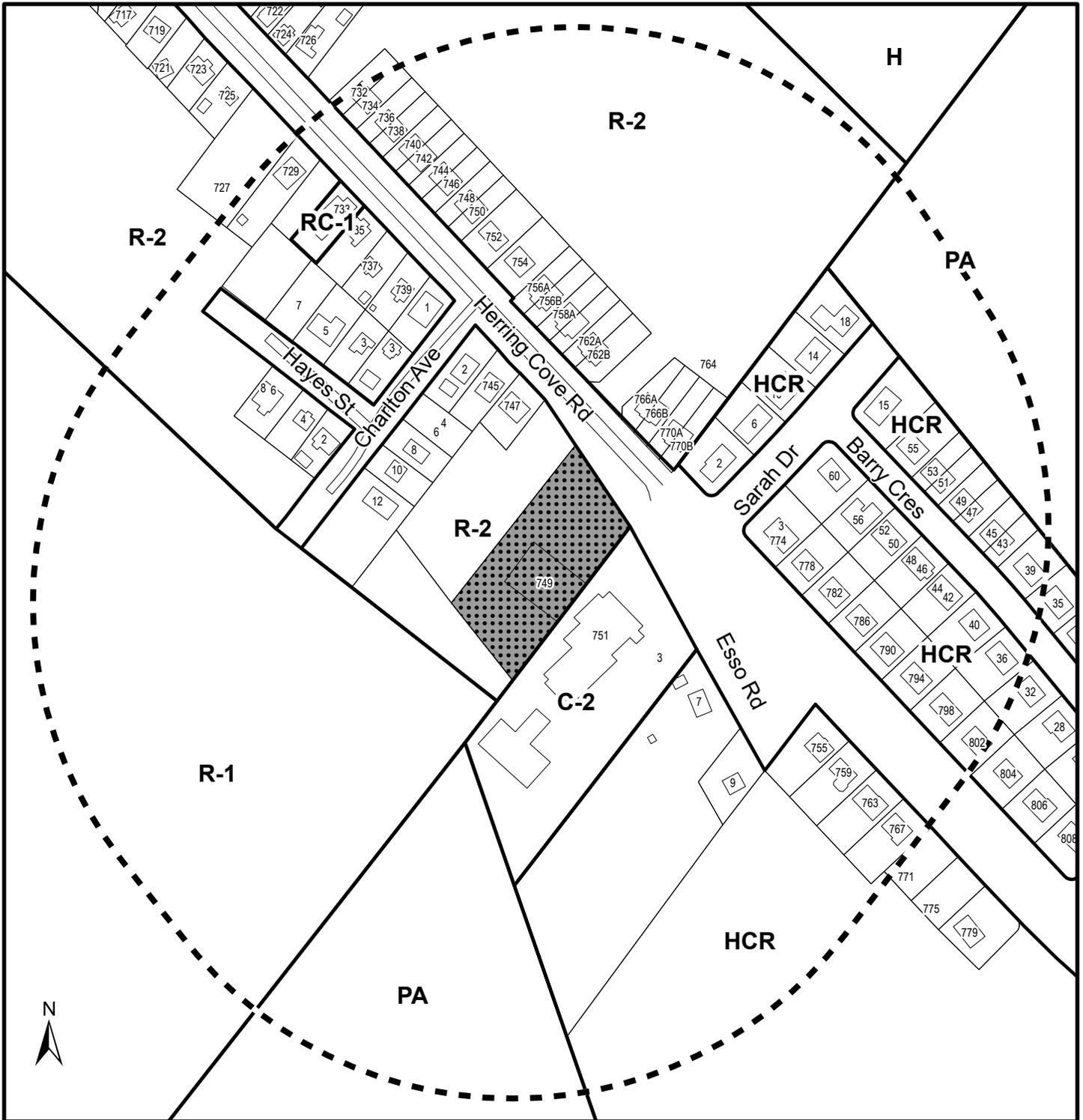
- CNS Conservation
- LDR Low Density Residential
- RES Residential
- RDD Residential Development District



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

Halifax Mainland
Land Use By-Law Area

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



Map 2 - Zoning and Notification Area

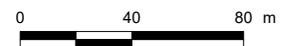
HALIFAX

749 Herring Cove Rd, Halifax

Zone

-  Subject Property
-  Area of Notification

- C-2 General Business
- H Holding
- HCR Heritage Residential Commercial
- PA Protected Area
- RC-1 Neighborhood Commercial
- R-1 Single Family Dwelling
- R-2 Two Family Dwelling



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.

Halifax Mainland
Land Use By-Law Area

Attachment A: Proposed Development Agreement

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

BETWEEN:

[Insert Name of Corporation/Business LTD.]
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

- 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 749 Herring Cove Rd, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for an expansion of a non-conforming commercial use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 3.14 of the Halifax Municipal Planning Strategy and Section 71 (5) of the Halifax Mainland Land Use By-law;

AND WHEREAS the Halifax and West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as PLANAPP 2023-00334.

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

- 1.1.1 The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

- 1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Halifax Mainland Land Use By-law and the Regional Subdivision By-law, as amended from time to time.
- 1.2.2 Variances applications enabled under Section 250 of the Halifax Regional Municipality Charter shall be permitted.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, 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 Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/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 Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 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.

1.5 Costs, Expenses, Liabilities and Obligations

- 1.5.1 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 Lands.

1.6 Provisions Severable

- 1.6.1 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.

1.7 Lands

- 1.7.1 The Developer hereby represents and warrants to the Municipality that the Developer is the owner of the Lands and that all owners of the Lands have entered into this Agreement.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.2 Definitions Specific to this Agreement

- 2.2.1 The following words used in this Agreement shall be defined as follows:
(a) Sign Shop means an establishment for the design, fabrication, maintenance, installation, and sale of signs.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as PLANAPP 2023-00334:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) Submission of a Landscaping Plan in accordance with Section 3.8.2 of this Agreement.
- 3.2.2 Prior to the issuance of the first the Occupancy Permit for the building, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) Written confirmation from a Certified Landscape Architect that the required landscaping work has been completed in accordance with Section 3.8.3.
- 3.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

- 3.3.1 The use(s) of the Lands permitted by this Agreement are the following:
- (a) The expansion of an existing non-conforming use of a Sign Shop, or;
 - (b) Any use permitted within the R-2 Zone, subject to the provisions contained within the Land Use By-law for Halifax Mainland.

3.3.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the applicable Land Use Bylaw, as amended from time to time.

3.4 Building Siting

- 3.4.1 The building's siting, bulk and scale shall generally conform to Schedule B and the requirements of the R-2 zone, with the exception of the following:
- (a) The additions shall be located no closer to the southeastern side lot line than the existing building.

3.5 Outdoor Storage

3.5.1 No outdoor storage or display shall be permitted on the lands.

3.6 Parking, Circulation and Access

- 3.6.1 The parking area shall be sited as generally shown on Schedule B. The parking area shall maintain a minimum setback of 6.1 metres (20 feet) from the front property line.
- 3.6.2 The parking area shall provide a minimum of 11 parking spaces.
- 3.6.3 All areas for vehicles, parking, and access shall be hard surfaced, and shall be defined by fencing or landscaping or curb.

3.7 Outdoor Lighting

3.7.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.8 Landscaping

- 3.8.1 All plant material shall conform to the Canadian Nursery Landscape Association's Canadian Nursery Stock Standard (ninth edition).
- 3.8.2 Prior to the issuance of a Development Permit, the Developer agrees to provide a Landscape Plan which comply with the provisions of this section and generally conforms with the overall intentions of the landscaping shown on Schedule B. The Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- 3.8.3 Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.

3.8.4 Notwithstanding Section 3.8.3, where the weather and time of year do not allow the completion of the outstanding landscape works prior to the issuance of the Occupancy Permit, the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.9 Maintenance

3.9.1 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, parking areas and 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.

3.9.2 All disturbed areas of the Lands shall be reinstated to original condition or better.

3.10 Signs

3.10.1 No additional signage on the property shall be permitted.

3.10.2 The sign requirements for existing signs shall be accordance with the Halifax Mainland Land Use By-law as amended from time to time.

3.11 Temporary Construction Building

3.11.1 A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction building shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

3.12 Screening

3.12.1 Any mechanical equipment shall be screened from view from the adjacent property to the northwest with fencing or a landscaped buffer.

3.12.2 Areas not landscaped along the side property lines shall provide screening from neighbouring properties with fencing in the locations as generally shown on Schedule B. The fencing must be opaque, and can be in the form of wood, or chain-link with privacy slats.

3.13 Hours of Operation

3.13.1 The Sign Shop, including deliveries to the building, shall be permitted to operate between the hours of 7:00am and 9:00pm.

3.13.2 Hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

3.14 Reinstatement

3.14.1 All disturbed areas shall be reinstated to original condition or better.

STREETS AND MUNICIPAL SERVICES

3.15 General Provisions

- 3.15.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

3.16 Off-Site Disturbance

- 3.16.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas 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 Officer, in consultation with the Development Engineer.

3.17 Solid Waste Facilities

- 3.17.1 The building shall include designated space for five stream commercial waste containers (1. Garbage, 2. Blue Bag Recyclables, 3. Paper, 4. Corrugated Cardboard, and 5. Organics) to accommodate source separation program in accordance with By-law S-600 as amended from time to time.
- 3.17.2 Refuse containers and waste compactors shall be located as shown on Schedule B and shall be screened from public view where necessary by means of opaque fencing or masonry walls with suitable landscaping.

PART 4: ENVIRONMENTAL PROTECTION MEASURES

4.1 Private Storm Water Facilities

- 4.1.1 All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

4.2 Stormwater Management Plans and Erosion and Sedimentation Control Plan

- 4.2.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall have been issued a Grade Alteration Permit in accordance with By-law G-200 Respecting Grade Alteration and Stormwater Management Associated with Land Development, as amended from time to time.

4.3 Sulphide Bearing Materials

- 4.3.1 The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

- 5.1.1 The following items are considered by both parties to be not substantive and may be amended in a matter consistent with the *Halifax Regional Municipality Charter*:
- (a) Changes to the landscaping as outlined in Section 3.8 and as shown on Schedule B;
 - (b) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of this Agreement; and
 - (c) The granting of an extension to the length of time for the completion of the development as identified in Section 7.4.3 of this Agreement.

5.2 Substantive Amendments

- 5.2.1 Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

- 6.1.1 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.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by the Chief Administrative Officer for the Municipality.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean issuance of a Building Permit for at least one of the two additions shown on Schedule B.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer.

6.4 Completion of Development

- 6.4.1 Upon the completion of the whole development, the Municipality may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement;; or

- (d) discharge this Agreement and apply appropriate zoning pursuant to the applicable Municipal Planning Strategy and Land Use By law as may be amended from time to time.
- 6.4.2 For the purpose of this section, completion of development shall mean issuance of Occupancy Permits for both additions shown on Schedule B.
- 6.4.3 In the event that development on the Lands has not been completed within eight (8) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law.

6.5 Discharge of Agreement

- 6.5.1 If the Developer fails to complete the development after eight (8) years from the date of execution of this Agreement, the Municipality 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.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

- 7.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

7.2 Failure to Comply

- 7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 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 Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
 - (c) The Municipality may by resolution discharge this Agreement whereupon this 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; or
 - (d) 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.

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: _____

Print Name: _____

Print Position: _____

Date Signed: _____

=====

=====

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

Date signed: _____

Witness

Per: _____
MUNICIPAL CLERK

Date signed: _____

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

Attachment B – Review of Relevant MPS Policies

Halifax Municipal Planning Strategy	
IMPLEMENTATION <u>Expansion of a non-conforming use</u>	
Policy	Staff Comments
<p><i>3.14 Council may, by development agreement, permit a non-conforming use to be changed to another less intensive non-conforming use, or permit the structure in which such a use is located to be altered or expanded, provided that:</i></p>	
<p><i>a) the layout and design of the property shall be complementary to the fabric of the neighbourhood, and this shall be achieved through attention to a variety of factors including, but not limited to, the following, on which Council shall specify conditions to be met in the development agreement:</i></p> <ul style="list-style-type: none"> <i>i) architectural design;</i> <i>ii) the size, location, and landscaping of courts, open spaces, and yards;</i> <i>iii) location of primary and secondary entrances to the building; and</i> <i>iv) size, location, and design of fences.</i> 	<ul style="list-style-type: none"> i) The applicant has advised that the architectural design of the additions will be similar to the existing structure. ii) The proposed additions maintain a minimum 4.57m (15ft) right side yard, do not go closer to the left property line than the existing building, and are over 12.19m (40ft) from the front property line. Landscaping of the perimeter of the site has been demonstrated and requirements will be included in the agreement. iii) No concerns. iv) Fencing will be chain-link with privacy slats and will be in areas where the landscaped buffer is not provided as shown on the site plan, where the additions are closest to the side property lines. Refuse storage is screened by wooden fencing.
<p><i>b) vehicular activity, particularly parking and loading, shall be controlled so as not adversely to affect the neighbourhood in terms of traffic flow and nuisance;</i></p>	<p>This application was reviewed by HRM Development Engineering, and no traffic flow concerns were raised.</p> <p>No parking can be located within 6.1m (20ft) of the front property line - this is included in Development Agreement requirements.</p> <p>As well, the additions allow for all work to be done indoors, which minimizes traffic flow and parking needs outdoors (e.g. loading and unloading). The business has very little customer traffic, and therefore, the parking areas will mainly be used for employees only.</p>

<p><i>c) facilities for parking, loading, vehicular access, outdoor display, and outdoor storage shall be designed to avoid any adverse effects on adjacent properties and to ameliorate existing problems, through attention to factors including but not limited to:</i></p> <ul style="list-style-type: none"> <i>i) location;</i> <i>ii) surface treatment;</i> <i>iii) storm drainage;</i> <i>iv) access from the street; and</i> <i>v) screening, buffering, and landscaping.</i> 	<ul style="list-style-type: none"> i) The revised plan shows that no parking is located within the required 6.1m (20ft) front yard setback. ii) The drawings show that parking and vehicular access will be asphalt. Staff have included a requirement in the development agreement that all areas for vehicles be hard surfaced. iii) No significant concerns were identified. Work will be subject to any applicable Development Engineering approvals at the permitting stage. iv) It is proposed that the existing access be maintained. Development Engineering reviewed the application and had no concerns. v) The revised plan demonstrates that the required 6.1m (20ft) front yard setback and a significant portion of the side yards will be landscaped, which will provide a vegetative buffer between the parking areas and the street. <p>Chain-link fencing will also be provided along the side property lines where landscaping will not be located. This screening is sufficient to buffer the use from the neighbouring properties, in a manner that is comparable to the screening requirements in other zones in the land use bylaw for similar uses (e.g., C-2 zone).</p>
<p><i>d) except where specific benefits to the neighbourhood can be demonstrated, all additions to a building, all off-street parking and loading areas, and all outdoor display and storage areas shall be set back from the street line by the more restrictive of:</i></p> <ul style="list-style-type: none"> <i>i) the minimum setback of the existing building; or</i> <i>ii) the mean setback of the buildings on the adjacent properties on either side; or</i> <i>iii) the minimum setback specified for the zone in which the use is located.</i> 	<p>A 6.1m (20ft) front yard setback has been provided to the nearest parking area, which satisfies the requirements of the zone and provides sufficient separation. The closest point of the addition facing the street will be located 14.02m (46 ft) from the front lot line.</p>
<p><i>e) except where specific benefits to the neighbourhood can be demonstrated,</i></p>	<ul style="list-style-type: none"> i) The R-2 zone requires an 2.44m (8ft) side setback. The existing building has a minimum 3.08m (10.1ft) setback and the proposal goes no closer than this.

<p><i>additions to the structures on the property shall not:</i></p> <ul style="list-style-type: none"> <i>i) further encroach upon the minimum side and rear yards stipulated for the zone in which the property is located; or</i> <i>ii) result in the total lot coverage or building height exceeding the maximum stipulated for the zone in which the property is located;</i> 	<p>Addition A will cause the right-side yard to be smaller, however a 4.57m (15ft) setback is maintained. A 6.1m (20ft) rear setback is required. The proposal is 10.06m (33ft).</p> <p>ii) The maximum height in the R-2 zone is 10.67m (35ft). The proposal maintains the current building max height of 5.79m (19ft). The maximum lot coverage in the R-2 zone is 35%. The proposal has been revised to reduce the lot coverage from 37.8% to 35% lot coverage, which meets the land use by-law requirements.</p>
<p><i>f) any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties;</i></p>	<p>No concerns. Staff have included this requirement in the agreement.</p>
<p><i>(g) no bulk refuse containers shall be visible from the street or from the immediate neighbourhood;</i></p>	<p>Bulk refuse containers will be located in the northeast corner of the property and will be enclosed in a wooden structure to ensure visual buffering from neighbouring properties.</p>
<p><i>h) no additional lot area shall be used for outdoor storage, and measures shall be taken to screen any outdoor storage areas from the street and immediate neighbourhood;</i></p>	<p>No outdoor storage is proposed. This proposal would allow current outdoor storage to be moved indoors. Staff have included that no outdoor storage or display be permitted in the development agreement.</p>
<p><i>i) with regard to on-site advertising for commercial or industrial uses:</i></p> <ul style="list-style-type: none"> <i>i) where the property is located in a residential zone, no additional advertising surface area or illuminated signage shall be added; and</i> <i>ii) in all other cases, such advertising shall not exceed the limits prescribed for the zone in which the property is located.</i> 	<p>No additional signage is proposed. Staff have included this as a requirement of the development agreement.</p>
<p><i>j) in the case of commercial and industrial operations in residential zones, the following additional considerations shall also apply:</i></p> <ul style="list-style-type: none"> <i>i) there shall be a demonstrable improvement to the neighbourhood;</i> <i>ii) existing conditions resulting in noise, dust, vibration, odour, and emissions shall be required to</i> 	<p>Additional building space will allow the operation to be completely enclosed.</p> <p>i) Historically, this property has had multiple unsightly complaints due to outdoor storage. Since a change in ownership, the property has been mostly cleaned up, but additional room is needed to allow for expansion and storage of the business's equipment and materials. The applicant has indicated that there will be a demonstrable</p>

<p><i>be ameliorated where these cause a nuisance or hazard; and</i> <i>iii) operating hours shall be restricted to prevent nuisance.</i></p>	<p>improvement to the neighbourhood because the addition will enable any existing outdoor storage to be located within the building, creating a cleaner property. As well, landscaped buffering will be provided between neighbours and the street.</p> <p>ii) The operation will be completely enclosed in the new structure, which will not result in nuisance or hazard.</p> <p>iii) Operating hours will remain as they currently are, from 8:00am to 5:00pm.</p>
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<p><i>(k) No subdivision of the lot shall have occurred subsequent to the time of the adoption of this section.</i></p>	<p>No concerns - this section was adopted in 1985 and the lot was created in 1975.</p>
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SECTION X: MAINLAND SOUTH SECONDARY PLANNING STRATEGY OBJECTIVES AND POLICIES
Part 2: Commercial

<p><i>2.1 The forms of commercial development provided for shall include neighbourhood commercial uses, minor commercial uses and major commercial centres.</i></p>	<p>Not Applicable. The proposed addition is an expansion of an existing legal non-conforming commercial use.</p>
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Halifax Regional Municipal Planning Strategy (Regional Plan)

CHAPTER 3: SETTLEMENT AND HOUSING
3.2 Land Use Designations

<p><i>S-1 The Urban Settlement Designation, shown on the Generalized Future Land Use Map (Map 2), encompasses those areas where HRM approval for serviced development has been granted and to undeveloped lands to be considered for serviced development over the life of this Plan. Amendments to this Boundary may be considered:</i></p> <p><i>(a) where reviews of regional population and housing forecasts have been undertaken and the proposed amendments may assist in achieving the growth targets established by this Plan; and</i> <i>(b) the lands are within or adjacent to a growth centre.</i></p>	<p>Not applicable. Although the subject site is in the Urban Settlement designation, no amendments to the designation are proposed.</p>
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G-14A In considering development agreements or amendments to development agreements, or any proposed amendments to the Regional Plan, secondary planning strategies, or land use by-laws, in addition to the policies of this Plan, HRM shall consider the objectives, policies and actions of the priorities plans approved by Regional Council since 2014, including:

- (a) The Integrated Mobility Plan;*
- (b) Halifax Green Network Plan;*
- (c) HalifACT;*
- (d) Halifax's Inclusive Economic Strategy 2022-2027; and*
- (e) any other priority plan approved by Regional Council while this policy is in effect.*

- a) See below.
- b) The subject site is in an area identified as a Core Area and Corridor on Map 5: Green Network Ecology Map. Although the site is near an essential wildlife corridor, the area is already developed, and the small area to the rear of the building that needs be cleared for the proposed addition will not have a significant impact.

The objectives, policies, and actions in the other Priorities Plans outlined in policy G-14A will not impact or be affected by this proposal.