



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

Item No. 13.1.2
Harbour East Marine Drive Community Council
June 7, 2018

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

SUBMITTED BY: Original Signed

Kelly Denty, Acting Director, Planning and Development

Original Signed

Brad Anguish, A/Chief Administrative Officer

DATE: May 14, 2018

SUBJECT: **Case 20436: Development Agreement for 102 Albro Lake Road,
Dartmouth**

SUPPLEMENTARY REPORT

ORIGIN

- On February 27, 2018, Regional Council approved MPS amendments and LUB amendments to enable an automotive repair garage in an existing commercial building at 102 Albro Lake Road, Dartmouth by development agreement
- May 12, 2018 coming into effect of MPS and LUB amendments

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A, to permit an automotive repair garage within an existing commercial building at 102 Albro Lake Road, Dartmouth; and
2. Require that the proposed development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

On February 27, 2018, Regional Council and Harbour East-Marine Drive Community Council held a joint public hearing to consider proposed amendments to the Municipal Planning Strategy for Dartmouth (MPS) and the Land Use By-law for Dartmouth (LUB), as well as a proposed development agreement, to permit an automotive repair business in an existing commercial building at 102 Albro Lake Road, Dartmouth. Following the public hearing, Regional Council approved the proposed MPS and LUB amendments. These amendments now allow for Community Council to consider a development agreement for the automotive repair garage at 102 Albro Lake Road. For more information, please see the January 11, 2018 staff report at the following link:

<https://www.halifax.ca/sites/default/files/documents/city-hall/regional-council/180227rc111.pdf>

The proposed development agreement addresses the following matters:

- An automotive repair garage contained within the building is permitted, as well as any uses permitted by the zoning applied to the site. “Automotive repair garage” is defined so that neither auto body work nor fuel sales are permitted;
- The automotive repair garage is limited to the footprint and volume of the existing building. Service bay installation and changes to the façade of the building will be permitted, but any additions or expansions to the building will be permitted only for a use permitted by the zone applied to the site;
- Outdoor storage will require screening;
- Any non-operating vehicles that require servicing may only be kept within the parking area temporarily, and otherwise must be stored indoors;
- The driveways will be limited to the existing driveways on Albro Lake Road and Victoria Road, with no access from Chappell Street permitted; and
- Hours of operation permitted for the automotive repair garage use are 7:00 am to 8:00 pm.

As noted in the January 11, 2018 staff report, Harbour-East Marine Drive Community Council could not decide on the proposed development agreement until the MPS and LUB amendments became effective. As the MPS and LUB amendments became effective on May 12, 2018, Community Council is now able to consider the proposed development agreement as contained in Attachment A of this report.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy, the HRM Charter, and the alternative engagement program approved by Regional Council on August 1, 2017 for this application. The approved engagement program included a mail-out notification of the proposal sent to surrounding property owners within the notification area (Map 2) on August 3, 2017, as well as a specific web page on the Municipal website; and signage posted on the subject site. The mailout notification and website provided the application details and contact information for Planning staff, and comments by email and telephone were welcomed. This application was also available for comment at a public meeting on December 7, 2016, held in conjunction with 17 other plan amendment applications within the Regional Centre. The public hearing was held on February 27, 2018.

FINANCIAL IMPLICATIONS

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this amending development agreement. The administration of the development agreement can be carried out within the approved 2018-2019 budget 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 Development Agreement are contained within the Discussion section of the January 11, 2018 staff report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

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

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification Area
Attachment A	Proposed 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: Leah Perrin, Planner II, 902.490.4338

Original Signed

Report Approved by:


Kate Greene, Policy & Strategic Initiatives Program Manager, 902.225.6217



Map 1 - Generalized Future Land Use

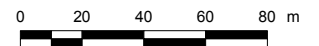
Albro Lake Road
Dartmouth

HALIFAX

 Subject Property

Designation

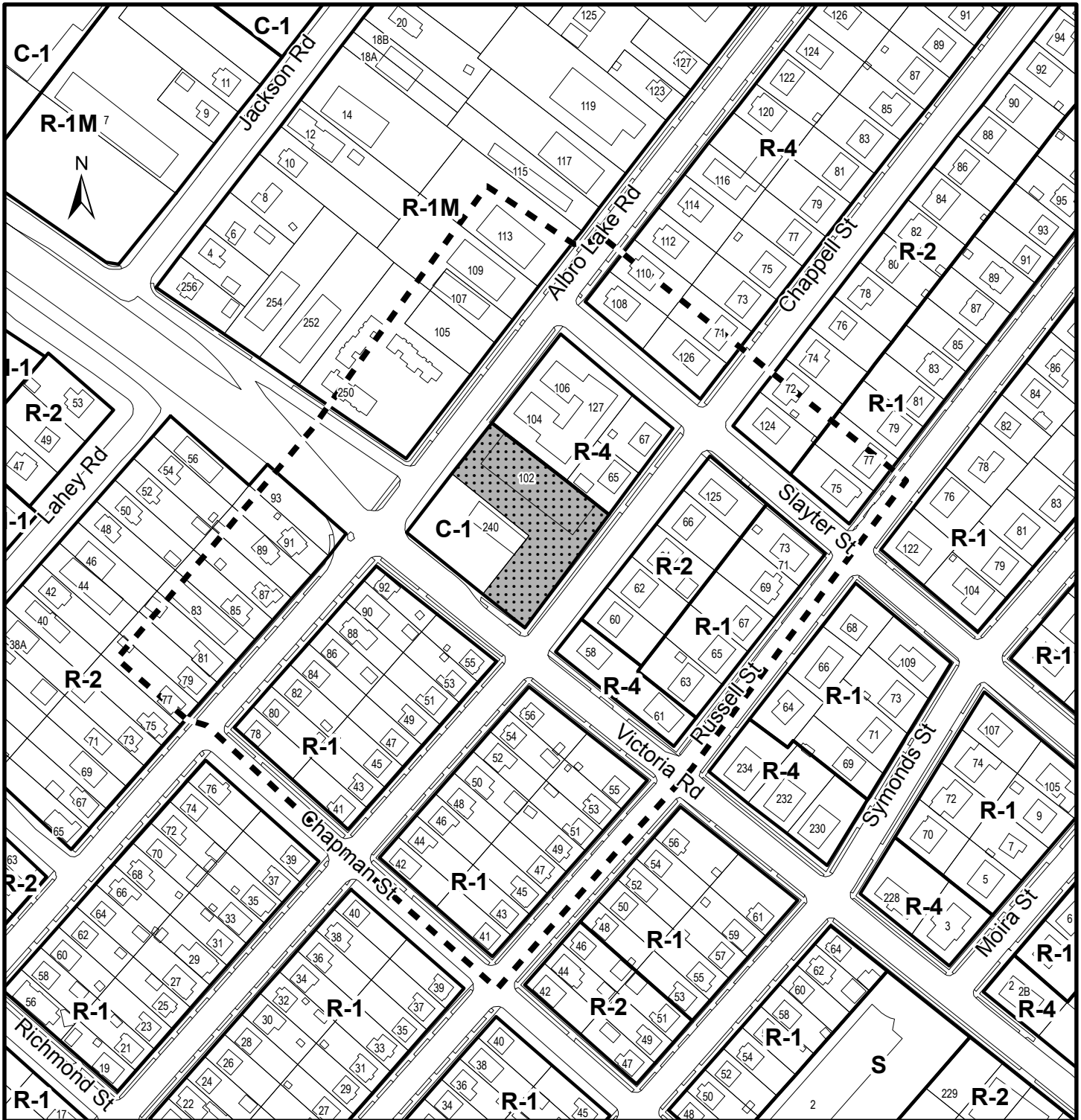
- R Residential
- C Commercial



Dartmouth
Plan Area


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


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



Map 2 - Zoning and Notification

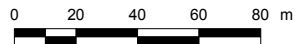
Albro Lake Road
Dartmouth

 Subject Property

 Area of Notification

Dartmouth
Land Use By-Law Area

- Zone**
- R-1 Single Family Residential
 - R-1M Single Family (Modified) Residential
 - R-2 Two Family Residential
 - R-4 Multiple Family Residential (High Density)
 - C-1 Local Business
 - S Institutional



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
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")

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 102 Albro Lake Road, Dartmouth, 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 automotive repair garage in an existing commercial building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy C-20 of the Dartmouth Municipal Planning Strategy and Section 18G of the Dartmouth Land Use By-law;

AND WHEREAS the Harbour East Marine-Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 20436;

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

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

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Dartmouth and the Regional Subdivision By-law, as may be amended from time to time.

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

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

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.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

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

The following words used in this Agreement shall be defined as follows:

- (a) **Automotive Repair Garage** means premises used for the repair and servicing of motor vehicles and motor vehicle inspections, but does not include the retailing of motor vehicle fuels and lubricants.
- (b) **Outdoor Storage** means the storage of merchandise, goods, inventory, materials or equipment or other items which are not intended for immediate sale, by locating them on the Lands exterior to a building.

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 Case Number 20436:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan and Landscaping
Schedule C	Elevations

3.2 Requirements Prior to Approval

- 3.2.1 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) An Automotive Repair Garage contained within the building on the Lands as shown on Schedules B and C;
- (b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the applicable Land Use By-law, as amended from time to time.

3.4 Siting and Architectural Requirements

- 3.4.1 The footprint of the building on the Lands to be used in whole or part as an automotive repair garage shall generally conform to Schedules B and C. The volume of the building shall not be increased.
- 3.4.2 Minor modifications to the building that do not conform to Schedules B and C but are necessary to meet Building Code requirements, or for the installation of mechanical equipment shall be permitted. Any mechanical equipment addition that is not shown on the Schedules shall be screened and located away from residential properties.
- 3.4.3 Notwithstanding subsection 3.4.1 and Schedules B and C, any addition or an expansion of the building shall be permitted only for uses permitted by the existing zone applied to the Lands, subject to the provisions contained within the applicable Land Use By-law, as amended from time to time.
- 3.4.4 Outdoor storage shall be screened by an opaque fence, and limited to the area shown on Schedule B.
- 3.4.5 Outdoor display of new tires associated with an automotive repair garage use shall be permitted on the Lands during the hours of operation described in subsection 3.11.1.
- 3.4.6 Notwithstanding subsections 3.3.1 (a) and 3.4.4, non-operating vehicles associated with the automotive repair garage may be placed in the parking area shown on Schedule B for not more than 7 days, and otherwise shall be stored interior to the building.

3.5 Parking, Circulation and Access

- 3.5.1 The parking area and parking spaces shall be sited as shown on Schedule B.
- 3.5.2 The parking area shall be asphalt or an equivalent hard surface.
- 3.5.3 The limits of the parking area shall be defined by fencing or landscaping or curb.
- 3.5.4 Driveway access shall be limited to the existing driveways on Victoria Road and Albro Lake Road. No driveway access shall be permitted from Chappell Street.
- 3.5.5 Bicycle parking shall be provided in accordance with the applicable Land Use By-law.

3.6 Outdoor Lighting

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

3.7 Landscaping

- 3.7.1 Prior to the issuance of a Development Permit, the Developer agrees to provide a Site and Landscape Plan which complies with the provisions of this section and generally conforms with the Site and Landscape Plan shown on Schedule B.
- 3.7.2 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.7.3 Prior to issuance of an Occupancy Permit the Developer shall submit to the Development Officer evidence that the landscaping has been completed in compliance with the Site and Landscape Plan shown on Schedule B.

3.7.4 Notwithstanding Section 3.7.3, 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.

3.8 Maintenance

3.8.1 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, 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 Signs

3.9.1 The sign requirements shall be in accordance with the applicable Land Use By-law as amended from time to time.

3.10 Screening

3.10.1 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

3.11 Hours of Operation

3.11.1 The automotive repair garage shall be permitted to operate between the hours of 7:00am and 8:00pm.

3.11.2 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00am and 8:00pm.

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

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

(a) The granting of an extension to the date of commencement of construction as identified in Section 5.3.1 of this Agreement; and

- (b) The length of time for the completion of the development as identified in Section 5.5.1 of this Agreement.

4.2 Substantive Amendments

Amendments to any matters not identified under Section 4.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

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.

5.2 Subsequent Owners

- 5.2.1 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 Council.
- 5.2.2 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).

5.3 Commencement of Development

- 5.3.1 In the event that development on the Lands has not commenced within one (1) year from the date of registration of this 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 applicable Land Use By-law.
- 5.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Building Permit.
- 5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

5.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, 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;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, 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.

5.5 Discharge of Agreement

- 5.5.1 If the Developer fails to complete the development after three (3) years from the date of registration of this 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) negotiate a new Agreement; or
 - (c) discharge this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

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.

6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (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 defense 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

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

Witness

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

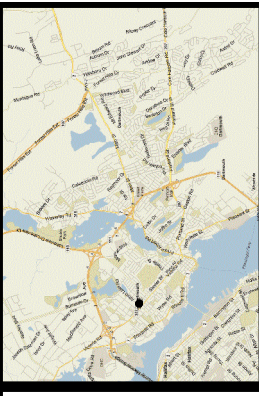
Per: _____

MAYOR

Per: _____

MUNICIPAL CLERK

SCHEDULE B: SITE PLAN AND LANDSCAPING



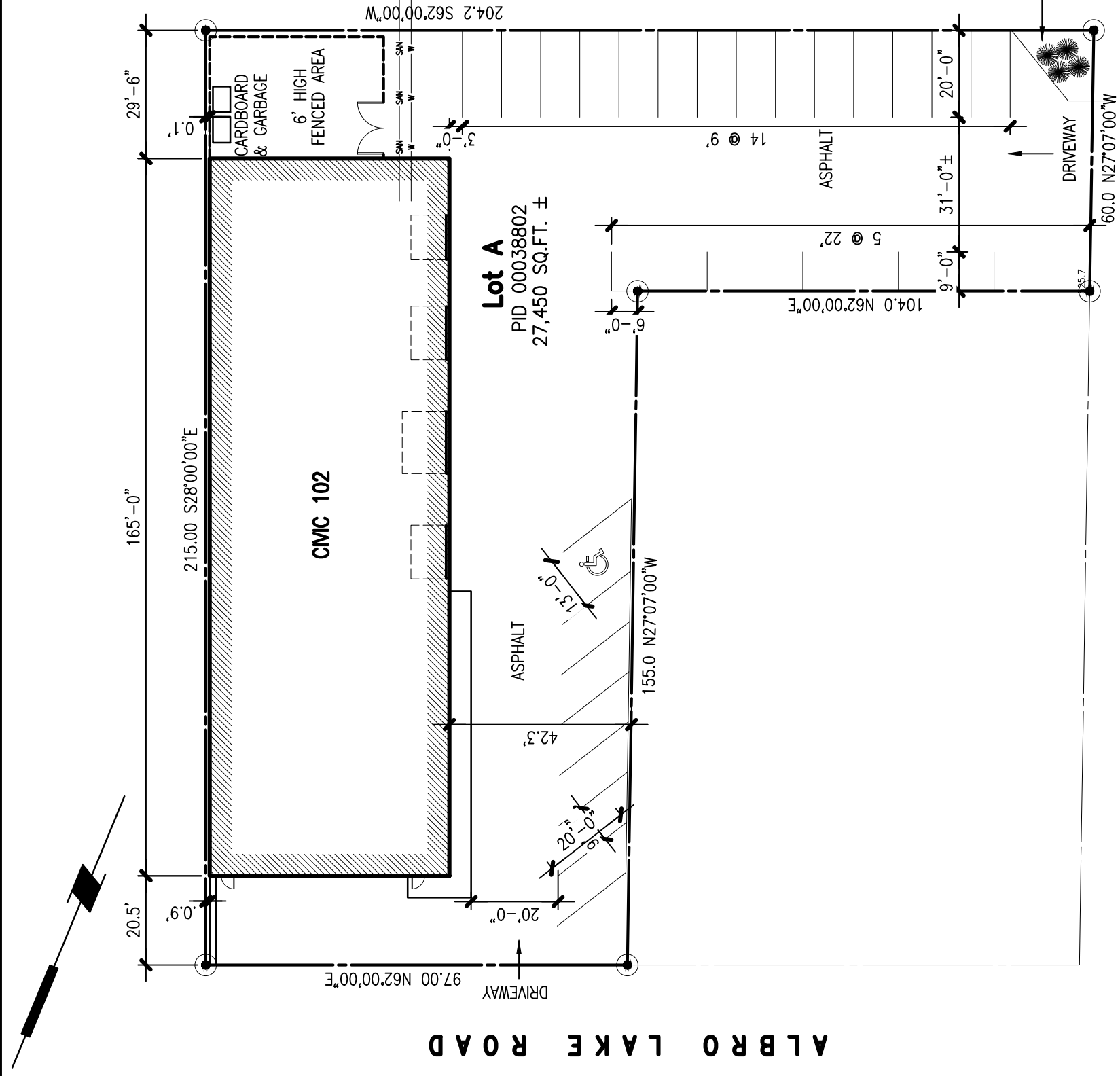
key plan:

Lot A
 PID 00038802
 Subdivision lands of Canadian Petrofina limited
 Civic 102, Albro Lake Road
 Dartmouth, HRM, NS

CHAPPELL STREET

LANDSCAPING DETAIL:

- 8 ELIJAH BLUEGRASS
- 3 THREADLEAFS
- 2 FOUNTAIN GRASS
- 1-weeping JAPANESE MAPLE
- 1 MULCH BED
- LANDSCAPING



**102 ALBRO
 LAKE ROAD
 DARTMOUTH, NS**

project name:
**PROPOSED COMMERCIAL
 RETROFIT**

client:
CHAD KENNEDY

drawing name:
SITE PLAN

drawn by: CADtech

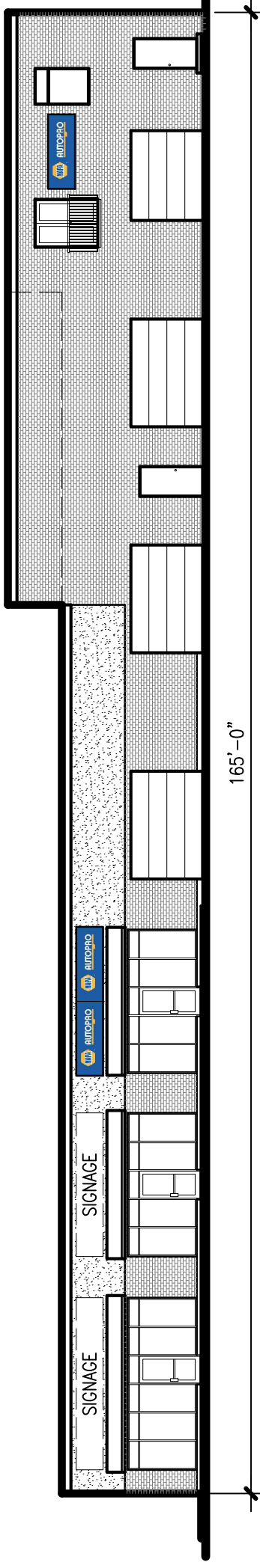
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date: OCTOBER 30, 2017

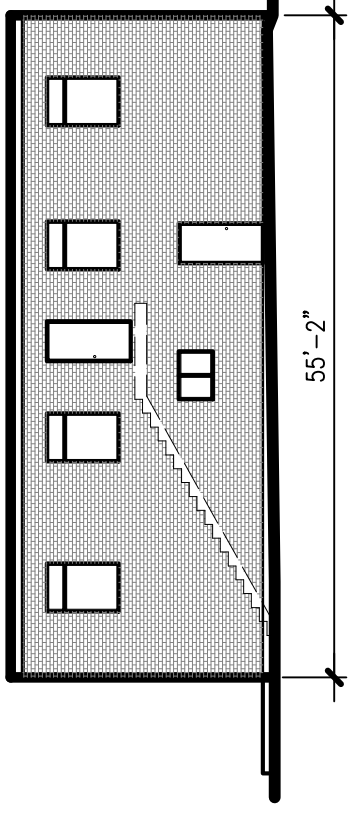
project no.
102 ALR

drawing no.
SP1

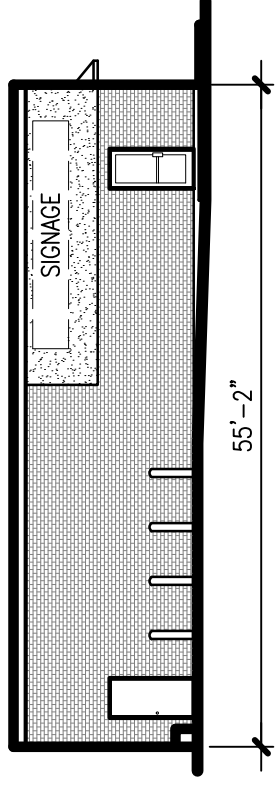
SCHEDULE C: ELEVATIONS



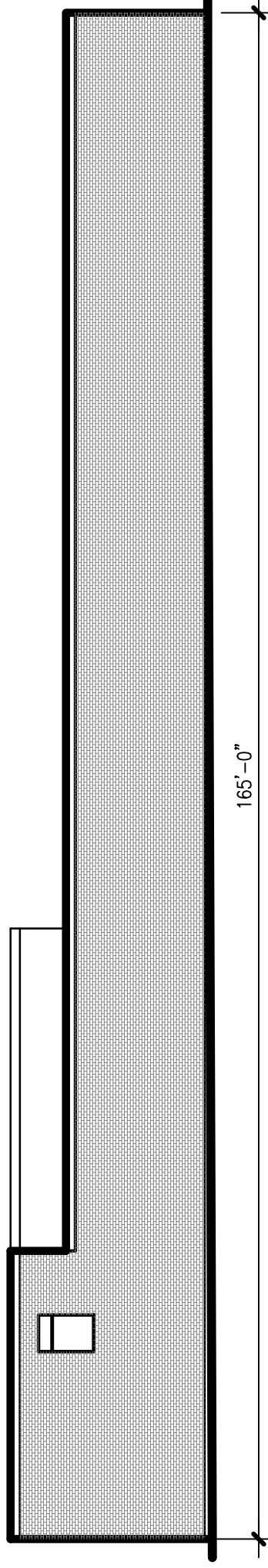
WEST ELEVATION
SCALE: 1/16" = 1'-0"



SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



NORTH ELEVATION
SCALE: 1/16" = 1'-0"



EAST ELEVATION
SCALE: 1/16" = 1'-0"

**102 ALBRO
LAKE ROAD
DARTMOUTH, NS**

project name:
**PROPOSED COMMERCIAL
RETROFIT**

client:
CHAD KENNEDY

drawing name:
ELEVATIONS

drawn by: CADtech

scale: AS NOTED

date: OCTOBER 30, 2017

project no. **102 ALR** drawing no. **A1**