

Peninsula Community Council
March 5, 2012

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:



Peter Stickings, Acting Director, Planning and Infrastructure

DATE: February 14, 2012

SUBJECT: Case 16803 - Development Agreement in the Brunswick Street Heritage Area (Schedule HA-1) to allow for a multiple unit dwelling at 2569-2581 Brunswick Street, Halifax

SUPPLEMENTARY REPORT

ORIGIN

- December 16, 2011, staff report to District 12 Planning Advisory Committee
- January 23, 2012, District 12 Planning Advisory Committee Meeting and Report
- February 12, 2012, Peninsula Community Council

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Give Notice of Motion to consider an application for the City of Halifax Non-Profit Housing Society to enter into a development agreement for the properties at 2569-2581 Brunswick Street, Halifax, and schedule a public hearing;
2. Approve the proposed development agreement to allow a 34 unit dwelling on Brunswick Street, as outlined in Attachment A of this report; and
3. Require the Development Agreement be signed by the property owner within 180 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 any obligations arising hereunder shall be at an end.

BACKGROUND

A staff report dated December 16, 2011, was presented to the District 12 Planning Advisory Committee (PAC) on January 23, 2012. The staff report discusses a proposed development agreement for 2569-2581 Brunswick Street, to permit a 34 unit residential building in the Brunswick Street Heritage Area. The proposed development agreement can be considered through the policies in the Brunswick Street Heritage Area that permit new multiple unit buildings that compliment and contribute to the historical character of the street.

District 12 PAC provided a negative recommendation to this application for various reasons as detailed in the January 23, 2012, Committee Report. A key reason for the negative recommendation was the proposed unit mix. The applicant had proposed that 31 of the 34 units be comprised of bachelor and one bedroom units. The remaining 3 units would be two bedroom units. District 12 PAC felt this unit mix did not provide enough diversity and would not attract an appropriate mix of residents.

Based on the comments of the District 12 PAC, the applicant has changed the unit mix so that 10 of the 34 units are two bedroom units. Accordingly, minor changes need to be made to the proposed development agreement as outlined in staff's report dated December 16, 2011.

Staff's and PAC's reports were tabled with the Peninsula Community Council on February 13, 2012, and Council was advised of the change in unit mix. Based upon the unit mix change and the proposed development agreement, Community Council set a date for a public hearing on the application.

DISCUSSION

Staff has revised the original drafted development agreement based upon the change in unit mix and the resulting agreement is as shown in Attachment A to this report. The minor changes have occurred specifically in Schedules G and H and in Section 2.3.1(b).

Schedules G and H

To achieve larger units, the applicant is proposing to expand some units into a proposed basement. Through creating this space, the proposed grade will change slightly on Schedules G and H of the proposed agreement. The Schedules will also include additional windows near the base of the elevation.

Section 2.3.1(b)

Section 2.3.1(b) of the proposed development agreement outlined in the December 16, 2011, staff report, requires that 3 of the dwelling units be at least 74.32 square meters (800 square feet) in gross floor area and contain at least 2 bedrooms. To reflect the proposed changes to the unit mix, Section 2.3.1(b) has been changed to require 10 of the units contain at least 2 bedrooms. The reference to unit size has been removed.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy as describe in the staff report dated December 16, 2011.

ALTERNATIVES

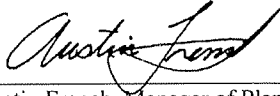
1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiations with the applicant.
3. Council may choose to refuse the proposed development agreement and, in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended for the reasons stated within this report.

ATTACHMENTS

Attachment A Proposed Development Agreement - Revised

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jillian MacLellan, Planner, 490-4423



Report Approved by: Austin French, Manager of Planning Services, 490-6717

Attachment A
Proposed Development Agreement - Revised

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

BETWEEN:

[DEVELOPER]

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 2596, 2571, 2573, 2575, 2579 and 2581 Brunswick Street, 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 a 34 unit apartment building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies 9.3, 9.3.2, 9.3.2.1 of Section XI of the Halifax Municipal Planning Strategy and Section 93 of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 16803;

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 Halifax Peninsula 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: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

2.1 Schedules

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 16803:

Schedule A	Legal Description of the Lands(s)
Schedule B	Subdivision Plan
Schedule C	Site Plan
Schedule D	Landscaping Plan
Schedule E	Front Elevation (Facing Brunswick Street)
Schedule F	Rear Elevation
Schedule G	Right Side Elevation
Schedule H	Left Side Elevation
Schedule I	Window and Door Detailing

2.2 Requirements Prior to Approval

- 2.2.1 Prior to the issuance of a Construction Permit, a subdivision in accordance with Schedule B and Section 2.6.1 shall be approved by the Municipality.
- 2.2.2 Prior to the issuance of the first Occupancy Permit, a letter prepared by a member in good standing of the Canadian Society of Landscape Architects shall be provided to the Development Officer certifying that all landscaping has been completed according to Schedule D and Section 2.9 of this Agreement.

2.3 General Description of Land Use

- 2.3.1 The use of the Lands permitted by this Agreement is the following:

- (a) A multiple unit dwelling containing no more than 34 units; and
- (b) A minimum of 10 units shall contain at least 2 bedrooms.

2.4 High Potential Zone for Archaeological Site

- 2.4.1 The Lands falls within the High Potential Zone for Archaeological Sites identified by the Province. The Developer shall contact the Curator of Special Places with the Heritage Division of the Department of Tourism, Culture and Heritage of the Province of Nova Scotia prior to any disturbance of the site and the Developer shall comply with requirements set forth by the Province in this regard.

2.5 Siting and Architectural Requirements

- 2.5.1 The building shall be located as shown on Schedule C. Variations to the setbacks provided on Schedule C may be permitted provided the variation does not exceed 0.6 meters (2 feet).
- 2.5.2 The maximum height of the building shall not exceed 11.28 meters (37 feet). Height shall be defined as the vertical distance of the highest point of the roof above the mean grade of the finished ground adjoining the building along Brunswick Street.
- 2.5.3 The building shall be developed as illustrated on the Schedules. The building shall be divided into 4 components, A, B, C and D as shown on Schedules. The components will be joined by the main body of the building labelled as the circulation corridor. The circulation corridor will be stepped back from the building line of each component as shown on the Schedules.
- 2.5.5 The exterior building materials and colour of each component of the building shall be as shown on Schedules E through I.
- 2.5.7 The exterior building material of the circulation corridor shall be metal siding.
- 2.5.8 At least 18 French Balconies shall be located along the windows on the rear and side elevations as shown on Schedule F, G and H. The placement of the balconies may be varied under the discretion of the Development Officer, however, no balconies shall be located on the front elevation facing Brunswick Street.
- 2.5.9 The main entrances to each component off of Brunswick Street shall be designed as illustrated on Schedule I. Variations exclusively to the style of door shall be permitted.
- 2.5.10 Windows for each component shall be designed as illustrated on the Schedules.
- 2.5.11 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.

2.5.12 Buildings shall be designed such that the mechanical systems (HVAC, exhaust fans, etc.) are not visible from Brunswick St, North St. or abutting residential properties. Furthermore, no mechanical equipment or exhaust fans shall be located between the building and the adjacent residential properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

2.5.13 The roof of each component shall be mansard.

2.5.14 The roof of each component shall include a dormer facing Brunswick St. Each dormer shall be of a different design as shown on Schedule E.

2.6 SUBDIVISION OF THE LANDS

2.6.1 A subdivision application to consolidate the properties shown on Schedule B shall be submitted to the Development Officer in accordance with the Regional Subdivision Bylaw. No Construction Permit shall be issued until subdivision approval is provided by the Municipality.

2.7 PARKING, CIRCULATION AND ACCESS

2.7.1 Vehicle parking is not required. The requirements of Sections 6(1) to 6(13) of the Land Use Bylaw for Peninsula Halifax as amended from time to time shall not apply.

2.8 OUTDOOR LIGHTING

2.8.1 Lighting shall be directed to building entrances and walkways and shall be arranged to divert the light away from streets, adjacent lots and buildings.

2.9 LANDSCAPING

2.9.1 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.

2.9.2 Prior to the issuance of a Construction Permit, the Developer agrees to provide Landscape Plan which complies with the provisions of this section and generally conforms with the overall intentions of the Preliminary Landscape Plan shown on Schedule D. 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.

2.9.3 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.

- 2.9.4 Every effort shall be made to ensure the preservation of existing trees on site. The Landscape Plan, required in Section 2.9.2, shall identify the limit of disturbance, tree preservation areas, the hoarding fence location and the stock pile location.
- 2.9.5 Any aspect of the development that may affect trees located on public lands shall comply with HRM By-Law T-600.
- 2.9.6 Notwithstanding Section 2.9.3, the Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies 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.

2.10 MAINTENANCE

- 2.10.1 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, 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.
- 2.10.2 All disturbed areas shall be reinstated to original condition or better.

2.11 TEMPORARY CONSTRUCTION BUILDING

- 2.11 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.

2.12 SCREENING

- 2.12.1 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.
- 2.12.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact from Brunswick St., North St. and adjacent residential properties. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing or masonry walls with suitable landscaping.

PART 3: STREETS AND MUNICIPAL SERVICES

- 3.1 All design and construction of primary and secondary service systems shall satisfy the most current version of both Municipal Design Guidelines and Halifax Water Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.
- 3.2 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.
- 3.3 The building shall include designated space for five stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources. Screening shall be required pursuant to Section 2.12.1 of this agreement.

PART 4: ENVIRONMENTAL PROTECTION MEASURES

- 4.1 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 Prior to the commencement of any onsite works on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plans shall comply with the *Erosion and Sedimentation Control Handbook for Construction Sites* as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.

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 by resolution of Council.

- (a) Changes to the Landscaping requirements as detailed in Section 2.9 or which, in the opinion of the Development Officer, do not conform with Schedule D
- (b) The granting of an extension to the date of commencement of construction as identified in Section 6.3 of this Agreement;
- (c) The length of time for the completion of the development as identified in Section 6.4.3 of this Agreement;

5.2 Substantive Amendments

5.2.1 Amendments to any matters not identified under Section 5.1 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

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 Council.

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 3 years 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 Land Use By-law.

6.3.2 For the purpose of this section, commencement of development shall mean final subdivision approval of the lots

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 5.1.1(b), 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.

6.4. Completion of Development

6.4.1 For the purpose of this section, completion of development shall mean the issuance of the first occupancy permit

6.4.2 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 Municipal Planning Strategy and Land Use By-law for Halifax Peninsula, as may be amended from time to time.

6.4.3 If the Developer fails to complete the development after 5 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 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 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.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 14 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.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED

in the presence of:

=====

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

(Insert Registered Owner Name)

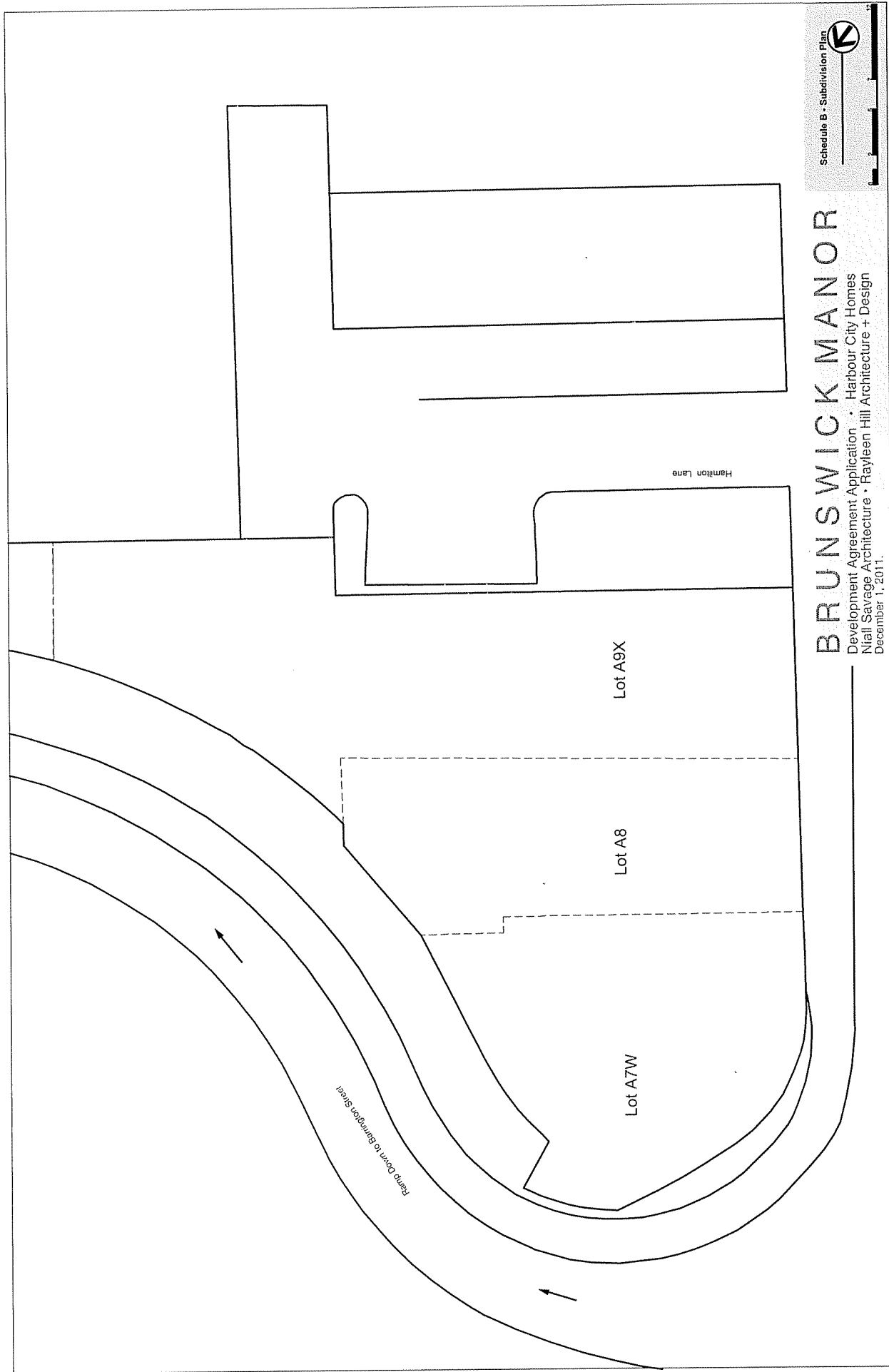
Per: _____

Per: _____
=====



**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____
Mayor

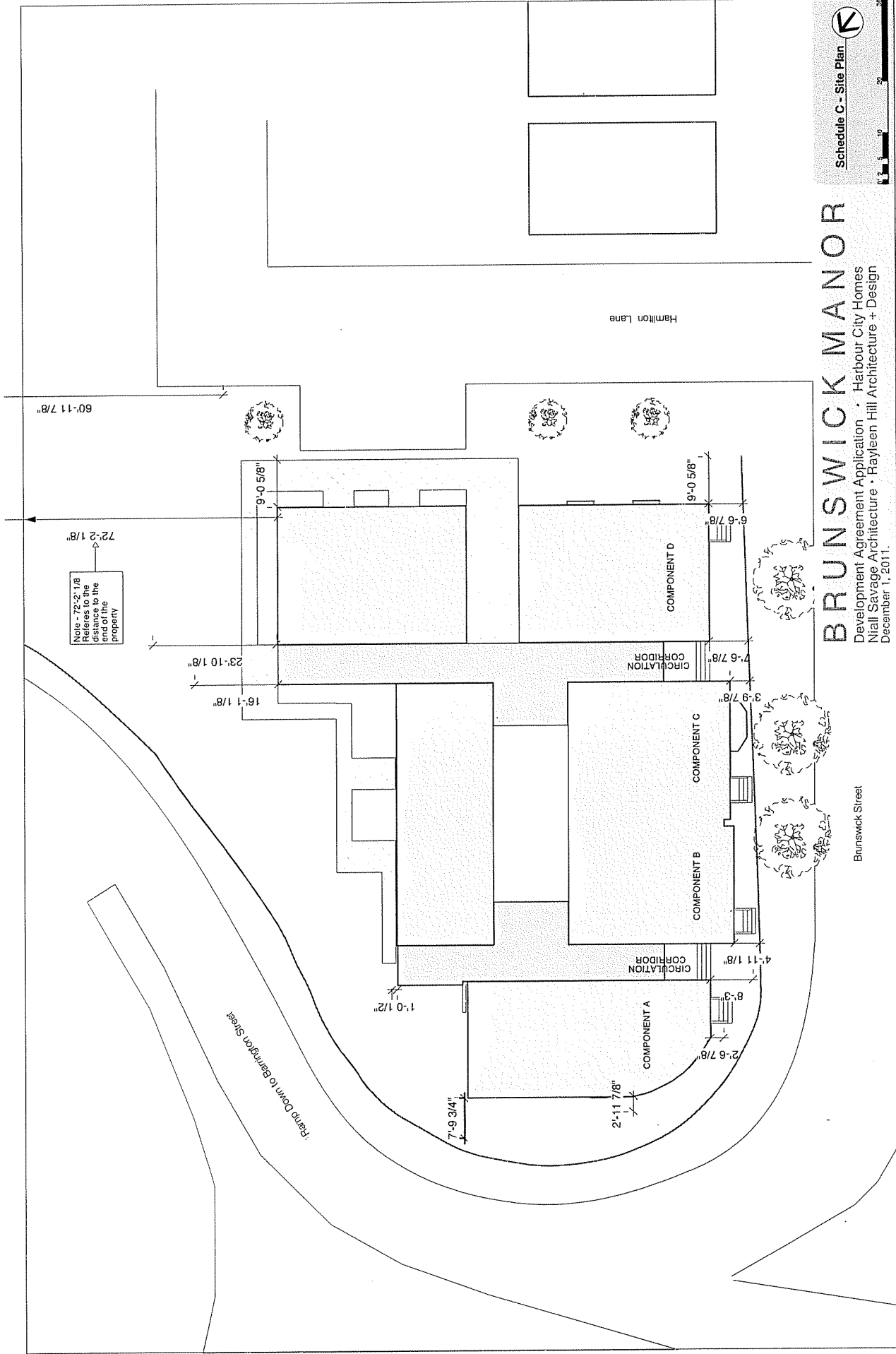
Per: _____
Municipal Clerk



Schedule B - Subdivision Plan



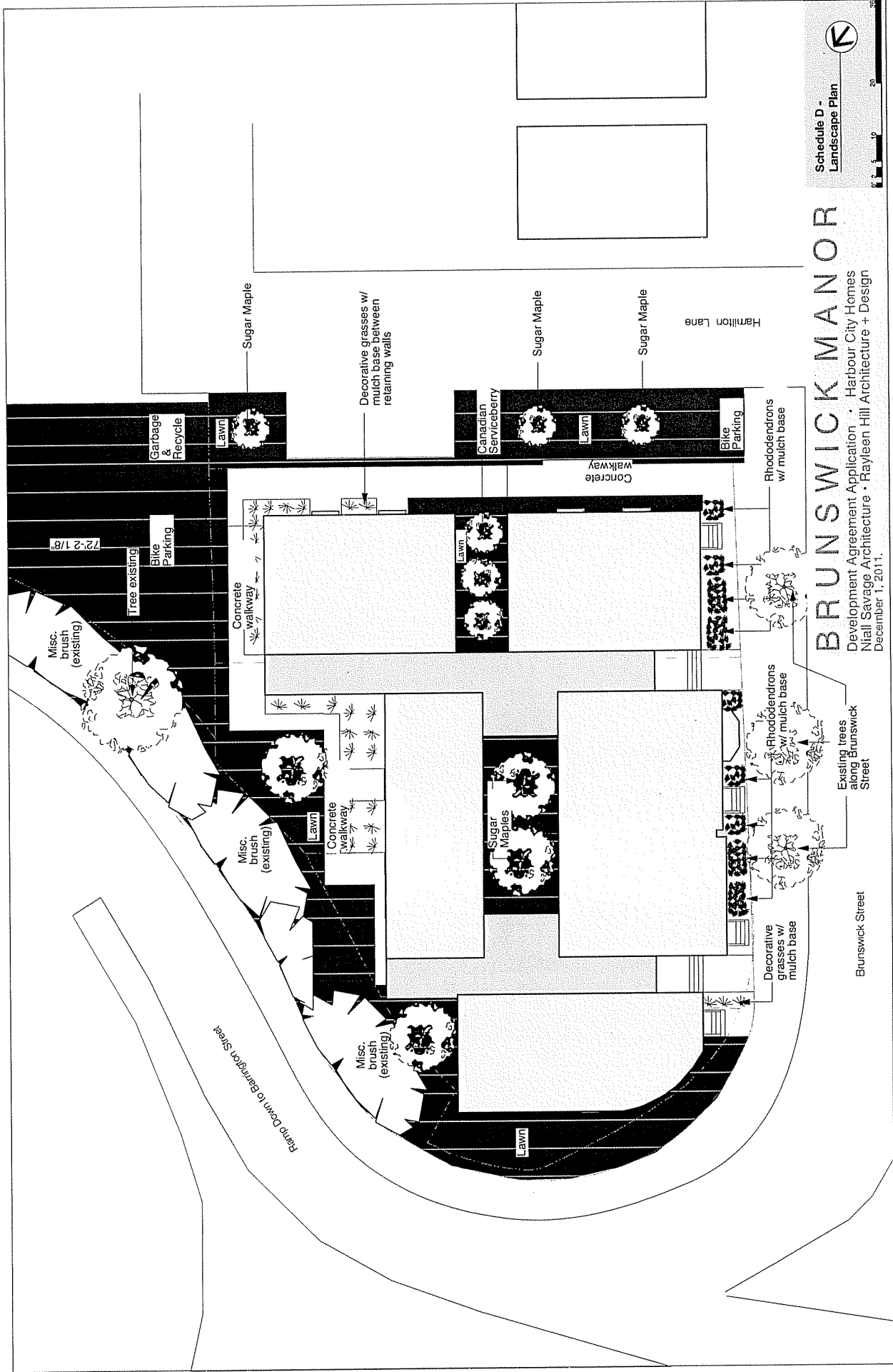
BRUNSWICK MANOR
Development Agreement Application • Harbour City Homes
Niall Savage Architecture • Rayleen Hill Architecture + Design
December 1, 2011.

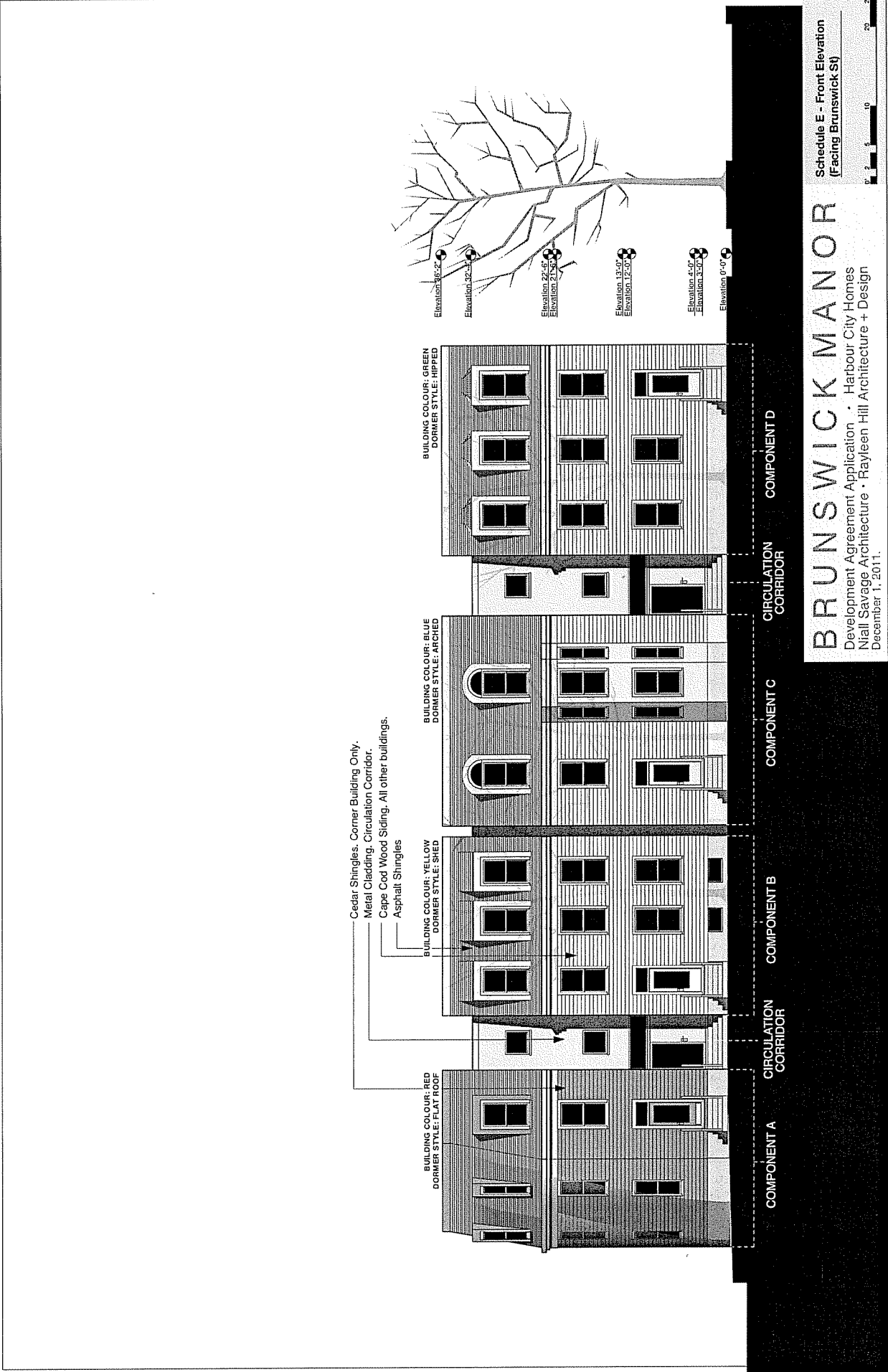


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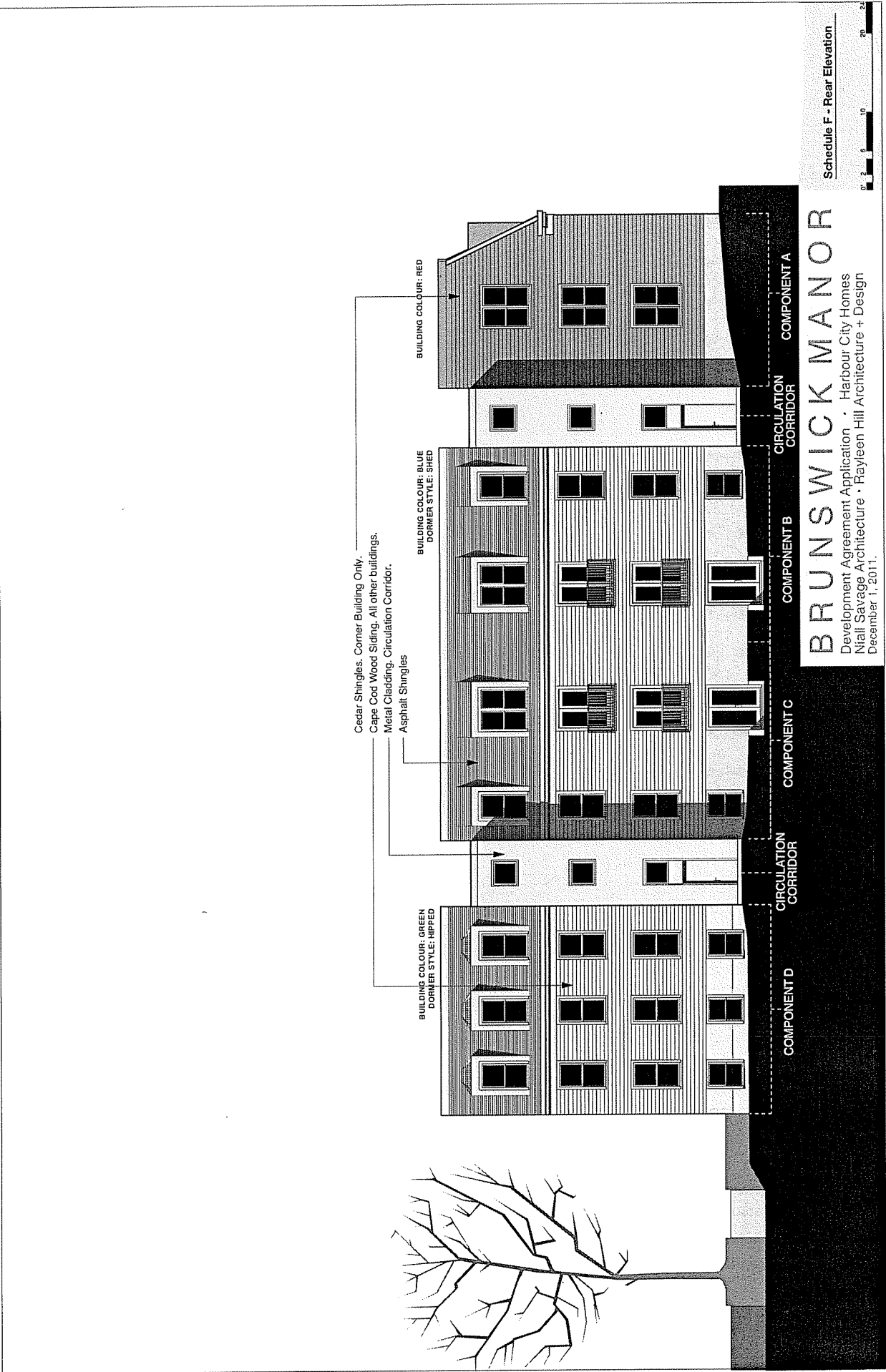
Development Agreement Application • Harbour City Homes
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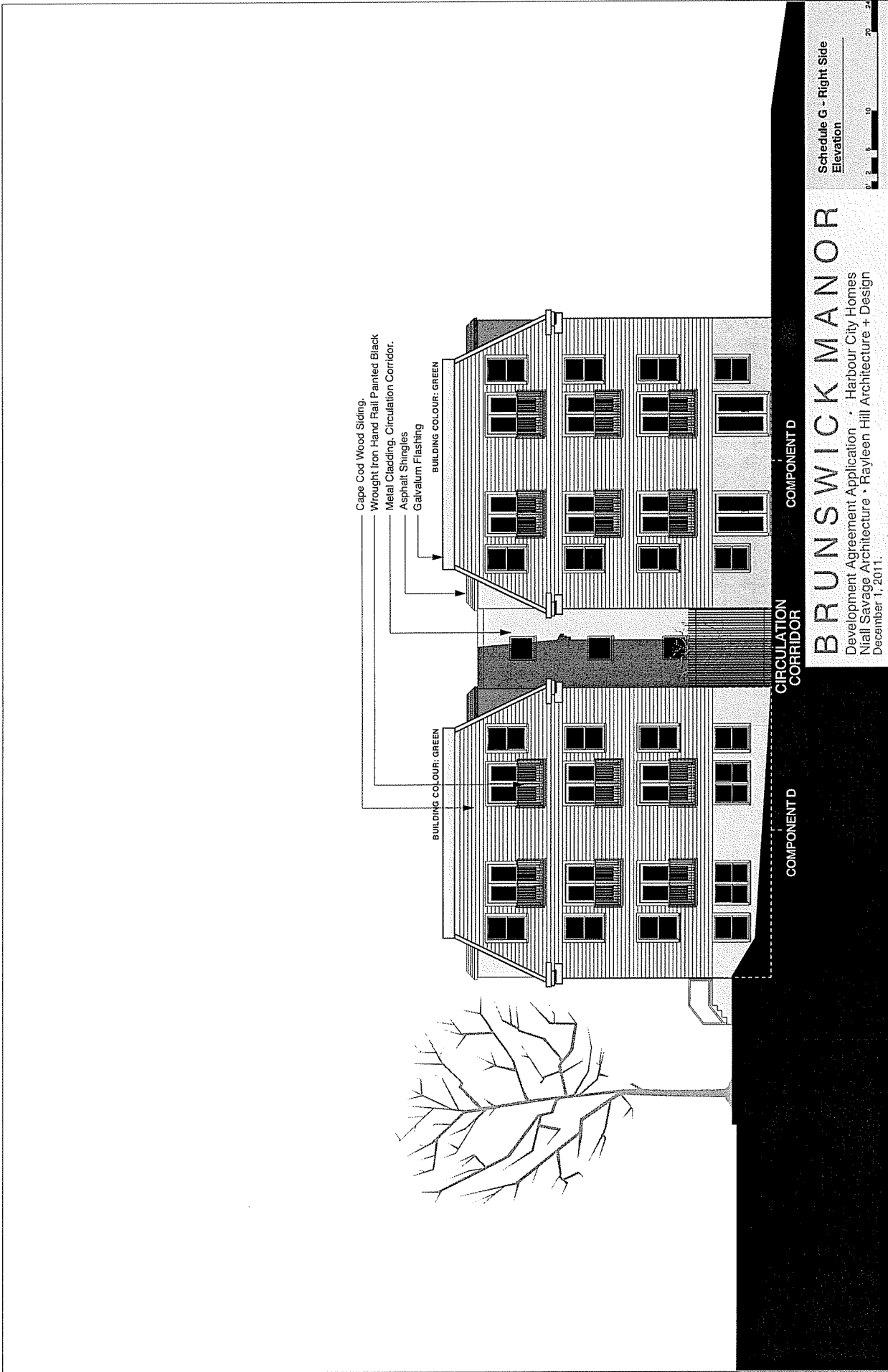
Schedule C - Site Plan





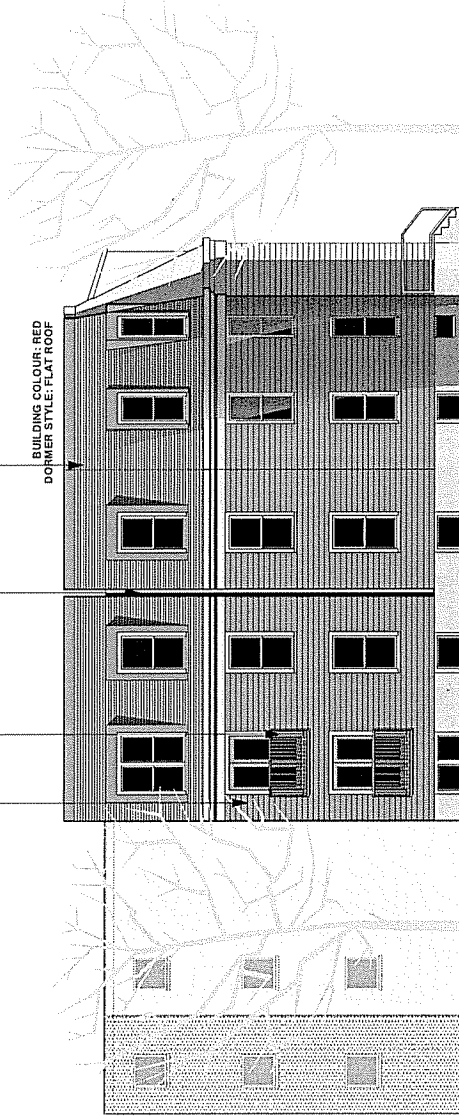
Case 16803 - Schedule E





Cedar Shingles.
Wrought Iron Balcony, Painted Black
Metal Reveal
Asphalt Shingles

BUILDING COLOUR: RED
DORMER STYLE: FLAT ROOF



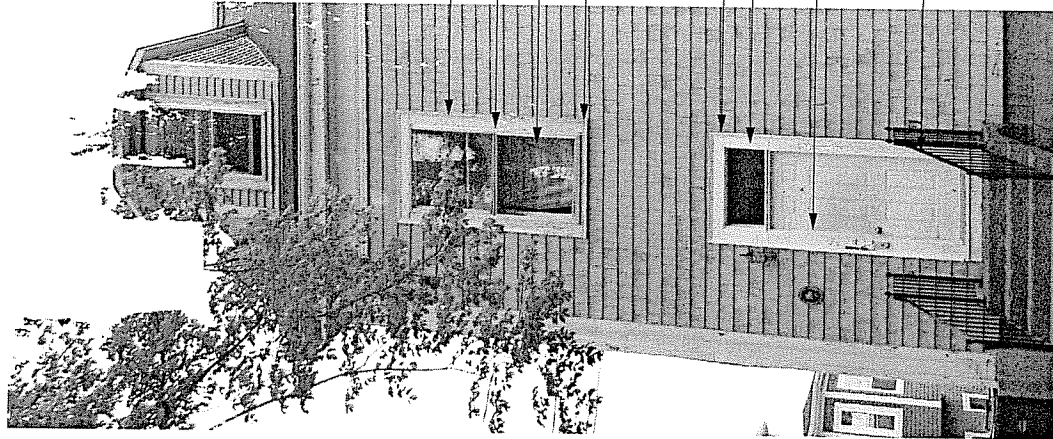
COMPONENT A

BRUNSWICK MANOR

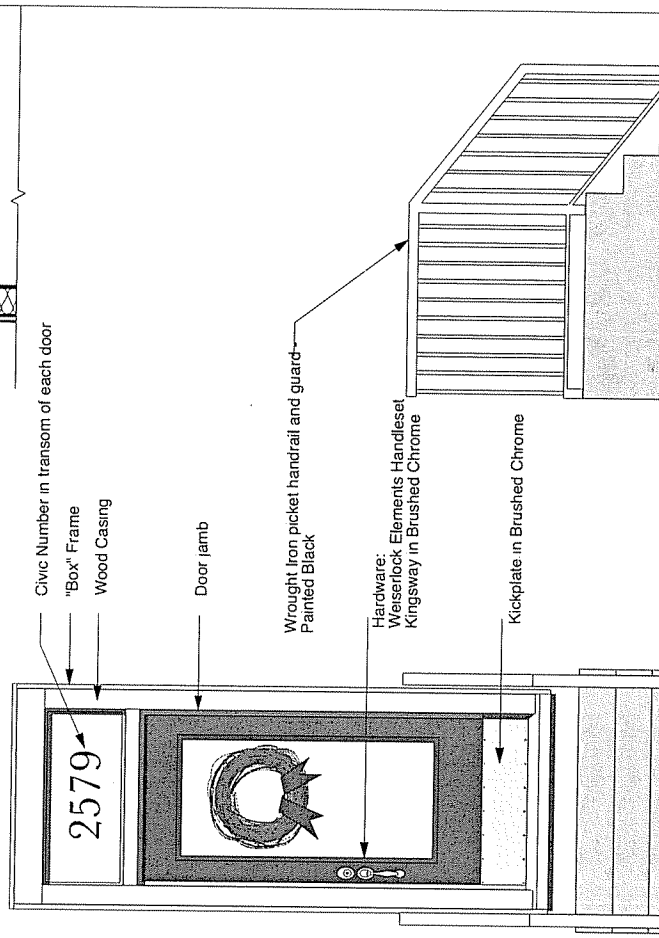
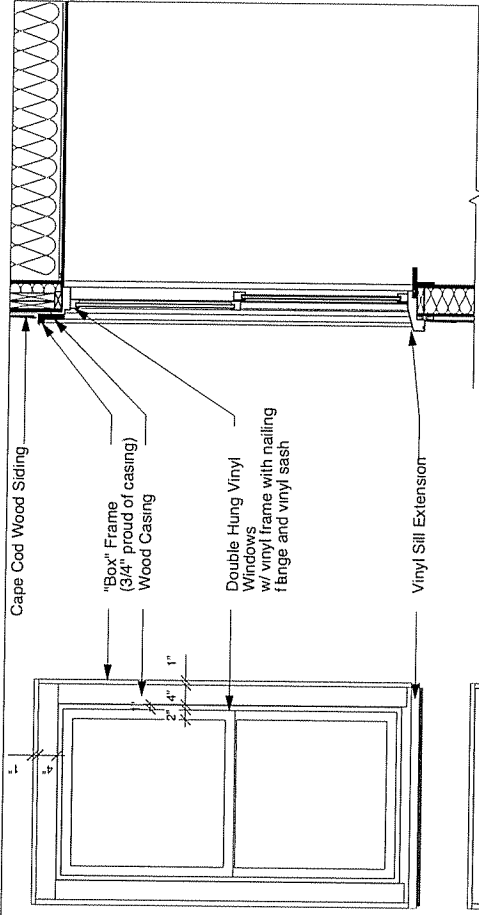
Development Agreement Application • Harbour City Homes
Niall Savage Architecture • Rayleen Hill Architecture + Design
December 1, 2011.

Schedule H - Left Side
Elevation





BRUNSWICK STREET PRECEDENT
FOR FACADE DETAILING



BRUNSWICK MANOR

Development Agreement Application • Harbour City Homes
Niall Savage Architecture • Rayleen Hill Architecture + Design
December 1, 2011

Schedule I - Window
and Door Detailing

