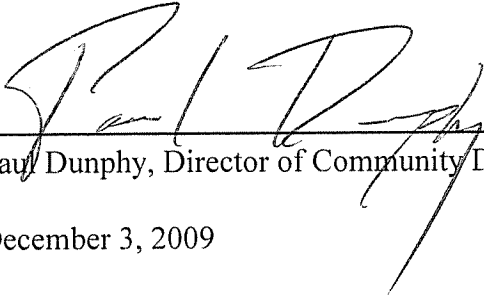




PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Western Region Community Council  
December 15, 2009**

**TO:** Chair and Members of Western Region Community Council

**SUBMITTED BY:**   
Paul Dunphy, Director of Community Development

**DATE:** December 3, 2009

**SUBJECT:** **Case 01306 - Development Agreement - 2273 Prospect Road, Hatchet Lake**

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**ORIGIN**

Application by RCS Retail Construction Specialists Inc. for lands of Atypia Limited to enter into a development agreement for a new pharmacy and medical clinic building at 2273 Prospect Road, Hatchet Lake.

**RECOMMENDATION**

**It is recommended that Western Region Community Council:**

1. Move Notice of Motion to consider the development agreement, as contained in Attachment A of this report, to allow for a new pharmacy and medical clinic at 2273 Prospect Road, Hatchet Lake, and schedule a public hearing.
2. Approve the development agreement, as contained in Attachment A.
3. Require that the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, 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**

The subject site is located in Hatchet Lake along the Prospect Road and opposite the Brookside Road/Prospect Road intersection (see Map 1). It consists of a single parcel of land having 48,318 square feet in area. The site is currently occupied by a building containing a pharmacy and medical clinic, which both service the needs of a growing community. The properties abutting the site along the northern and western property lines are owned by the Halifax Regional Municipality and are used for school and community recreational purposes. The property abutting the site along the southern property line, as well as those located directly across the Prospect Road are all commercially zoned.

The applicant seeks approval of a development agreement to allow for the construction of a replacement pharmacy and medical clinic building which will have a total floor area exceeding 10% of the lot area. The new building is proposed to contain 11,220 square feet, instead of the 7,160 square feet contained in the current building.

## **DISCUSSION**

### **Municipal Planning Strategy Policies**

The subject property is located within the C-2 (General Business) Zone and is designated Residential B under the Generalized Future Land Use Map for the Planning District 4 Municipal Planning Strategy (see Map 2). While the C-2 Zone does allow a building containing both a pharmacy and a medical clinic, it limits the size of the floor area of such buildings to 10% of the lot area. However, Policy RB-10 of the Planning District 4 MPS allows for the consideration of larger buildings through the development agreement process.

In considering a development agreement under this policy, Council is directed to assess the proposal with regard to a specific set of criteria (see Attachment B). These evaluation criteria are mainly concerned with issues of compatibility with the surrounding neighbourhood, impacts on the existing road network, the treatment of solid and liquid waste generated from the property, the handling of stormwater runoff, the general maintenance of the development and hours of operation.

### **Evaluation of Proposal and Development Agreement**

Staff's assessment of this proposal against the MPS policies is outlined in Attachment B. The salient matters relate to compatibility with nearby land uses, impacts on the existing road network, stormwater management and hours of operation. These matters are addressed as follows.

#### **Compatibility with Nearby Land Uses**

The immediate land uses surrounding the site are either institutional or commercial in nature. Staff is of the opinion that the proposed pharmacy/medical clinic building has an external appearance and scale that is in keeping with these uses, and which is also an improvement over the current situation.

### Impacts on the Existing Road Network

RCS Retail Construction Specialists Inc. commissioned Terrain Group to prepare a traffic impact statement to evaluate the site generated traffic on the Prospect Road. In its report submitted to HRM and reviewed and accepted by the Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR), Terrain Group concluded that the expanded pharmacy/medical clinic would only be expected to generate between 7 and 15 new two-way trips on the adjacent road network during the weekday peak analysis hours. This increase would add approximately 0.7% and 1.2% to the observed 2009 traffic volumes in the Weekday AM Peak Hour and PM Peak Hour, respectively.

While NSTIR had no issue with the additional traffic to be generated along this stretch of the Prospect Road, it did request that the existing site access be modified from the current configuration of two accesses down to one access located across from the Brookside Road intersection. This change is reflected in the development agreement (Attachment A).

### Stormwater Management

Terrain Group prepared a preliminary stormwater management plan for the site that was reviewed and accepted by the Nova Scotia Department of Transportation and Infrastructure Renewal. Stormwater will be partly directed towards the highway into NSTIR's drainage ditch system.

### Hours of Operation

Staff did not find any need to control the hours of operation for any of the permitted uses listed under Section 3.2 of the development agreement (Attachment A). However, a clause was added to control the hours of deliveries and garbage collection (Section 3.16).

### **Conclusion**

The proposal satisfies the applicable policies (Attachment B) of the Planning District 4 Municipal Planning Strategy and as such, it is recommended that Western Region Community Council approve the attached development agreement.

### **Public Information Meeting/Notification Area**

The public information meeting was waived in consultation with the area Councillor. Nonetheless, property owners within the area shown on Map 1 were notified of the application by mail and information concerning the proposal has been available on the HRM website. Should Community Council decide to proceed with a public hearing, in addition to published newspaper advertisements, property owners in the immediate area will be individually notified as shown on Map 1.

**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, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

**ALTERNATIVES**

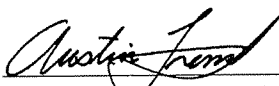
1. Community Council may chose to approve the entire development agreement, as contained in Attachment A. This is the recommended course of action.
2. Community Council may choose to alter the terms of the development agreement. This may necessitate further negotiation with the Developer, and may require an additional public hearing.
3. Community Council may choose to refuse the entire development agreement. Pursuant to Section 245(6) of the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal, based on the policies of the MPS.

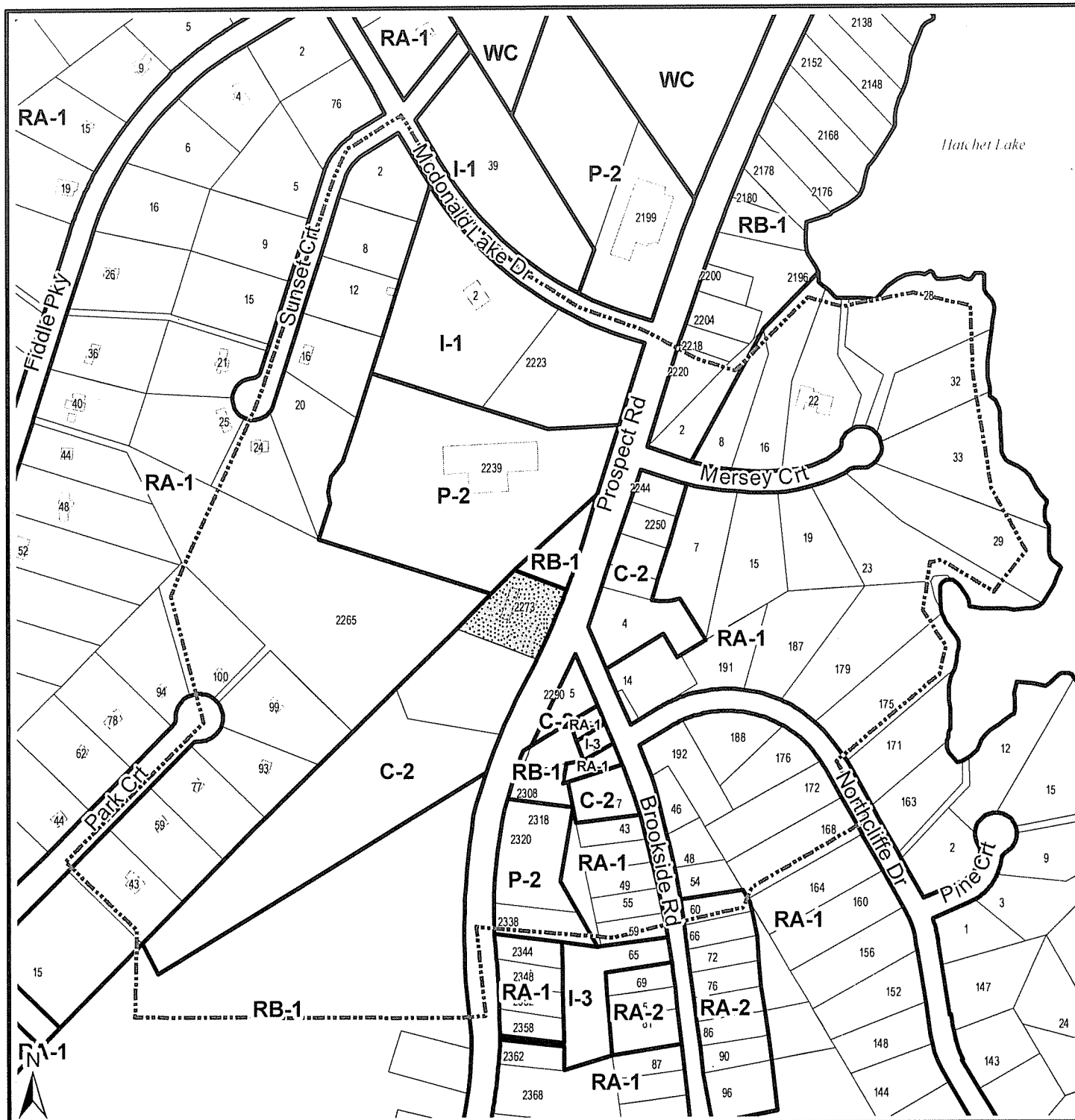
**ATTACHMENTS**

Map 1	Zoning and Notification
Map 2	Generalized Future Land Use
Attachment A	Draft Development Agreement
Attachment B	Review of Most Relevant Policies

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 : Luc Ouellet, Planner I, 490-3689



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



### Map 1 - Location and Zoning

2273 Prospect Road  
Hatched Lake



-  Subject area
-  Area of notification

Planning District 4  
(Prospect) Plan Area

Zone	
RA-1	Residential A-1
RB-1	Residential B-1
C-2	General Commercial
I-1	Light Industrial
I-3	Local Service
P-2	Community Facility





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

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



## Map 2 - Generalized Future Land Use

2273 Prospect Road  
Hatchet Lake

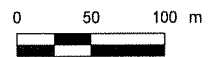
-  Subject area
-  Area of notification

Planning District 4  
(Prospect) Plan Area

### Designation

- RA Residential "A"
- RB Residential "B"
- WC Western Common

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES



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

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



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

Except as otherwise provided for herein, the development, subdivision and use of the Lands shall comply with the requirements of the Planning District 4 Land Use By-law 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 and/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 Regional Subdivision By-law.

### 2.2 Definitions Specific to this Agreement

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

- (a) “Certified Arborist” means a professional, full member in good standing with the International Society of Arboriculture.
- (b) “Forester” means a professional, full member in good standing with the Registered Professional Foresters Association of Nova Scotia.
- (c) “Forestry Technician” means a professional, full member in good standing with the Nova Scotia Forest Technicians Association.
- (d) “Landscape Architect” means a professional, full member in good standing with the Canadian Society of Landscape Architects.
- (e) “Professional Engineer” means a professional, full member in good standing with the Association of Professional Engineers of Nova Scotia.

## PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

### 3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is in conformance with the following Schedules attached to this Agreement:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Main Building Exterior Elevation - North
Schedule D	Main Building Exterior Elevation - East
Schedule E	Main Building Exterior Elevation - South

Schedule F Main Building Exterior Elevation - West

### **3.2 General Description of Land Use**

The use(s) of the Lands permitted by this Agreement are the following:

- (a) retail store including a pharmacy;
- (b) medical, dental and veterinary clinics;
- (c) offices;
- (d) banks and financial institutions;
- (e) personal service shops; and
- (f) athletic, sports and health clubs.

### **3.3 Building Siting, Massing and Scale**

3.3.1 The main building shall comply with the following siting, massing and scale requirements:

- (a) The building footprint shall not exceed 538.82 sq. m; and,
- (b) The building may be divided up into four separate units each having their own respective entrances.

3.3.2 Notwithstanding 3.3.1(a), the building footprint may be increased by five percent (5%) provided that all other provisions of this Agreement have been adhered to.

3.3.3 The Developer shall be permitted one accessory building on the Lands.

3.3.4 The accessory building shall comply with the following siting, massing and scale requirements:

- (a) The building footprint shall not exceed 37.16 sq. m; and,
- (b) The height of the building shall not exceed 4.57 m above the mean grade of the finished ground adjoining the building.

3.3.5 Unenclosed structures attached to the main building such as decks, steps and mobility disabled ramps shall be permitted provided the provisions of the Planning District 4 Land Use By-law, as amended from time to time for such structures, are adhered to.

### **3.4 Materials**

- 3.4.1 Exterior building materials shall not include vinyl siding but may include any one or more of the following:
- (a) brick;
  - (b) concrete split face masonry;
  - (c) hardi board siding or equivalent;
  - (d) stone masonry;
  - (e) horizontal clapboard stained wood siding;
  - (f) metal siding; and,
  - (g) exterior insulation finishing system (EIFS).
- 3.4.2 Any exposed foundation in excess of 0.3 m shall be architecturally detailed, veneered with stone or brick, painted, stucco, or an equivalent.

### **3.5 Functional Elements**

- 3.5.1 All vents, down spouts, electrical conduits, meters, 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.
- 3.5.2 The main building on the Lands shall be designed such that the mechanical systems (HVAC, etc.) are not visible from the Prospect Road. Furthermore, no mechanical systems shall be located between the main building and the abutting properties unless screened as an integral part of the building design and noise reduction measures are implemented.
- 3.5.3 Mechanical and telecommunication equipment shall be permitted on the roof of the main building provided the equipment is screened and not visible from the Prospect Road or incorporated into the roof structure.

### **3.6 Parking, Circulation and Access**

- 3.6.1 The layout of the internal driveway system, circulation aisles and parking areas on the Lands shall be in conformance with Schedule B.
- 3.6.2 The parking areas shall provide a minimum of 48 parking spaces.
- 3.6.3 All parking areas, driveways and circulation aisles on the Lands shall have a finished hard surface such as asphalt, concrete, paving stones, interlocking paving stones, or an acceptable equivalent in the opinion of the Development Officer.

### **3.7 Submission of a Detailed Landscape Plan**

- 3.7.1 Prior to the issuance of Construction Permits for any of the components of the development on the Lands, the Developer agrees to provide a Detailed Landscape Plan, certified by a Landscape Architect, Certified Arborist, Forester, or Forestry Technician, which complies with the provisions of Sections 3.7 through 3.8, inclusive, and be in conformance with the overall intentions of Schedule B.
- 3.7.2 The Detailed Landscape Plan shall include, as a minimum, planting as identified in this Agreement. The plan should maintain as much of the natural landscape and vegetation as can be reasonably achieved.
- 3.7.3 Planting details for each type of plant material proposed on the Detailed Landscape Plan shall be provided, including species list with quantities, size of material, and common and botanical names (species and variety).

### **3.8 General Landscape Provisions**

- 3.8.1 All plant material shall conform to the current Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the current Canadian Nursery Sod Growers' Specifications.
- 3.8.2 Deciduous trees shall be a minimum of 45 mm caliper in size. Coniferous trees shall be a minimum of 1.5 m high and upright shrubs shall be a minimum height or spread of 60 cm.
- 3.8.3 All pedestrian walkways shall have a finished hard surface such as poured in place concrete, interlocking paving stones, or an acceptable equivalent in the opinion of the Development Officer. However, pedestrian walkways shall not be finished with asphalt.
- 3.8.4 Shrub material shall be used to screen any electrical transformers or other utility boxes.
- 3.8.5 All disturbed areas shall be reinstated to original condition or better.
- 3.8.6 The Development Officer may, in consultation with the planner, approve modifications to the species and location of plant stock as illustrated on Schedule B.

### **3.9 Retaining Walls**

- 3.9.1 Retaining walls are not a requirement under this Agreement, but any that are proposed shall be identified on the Detailed Landscape Plan, including the height and type of fencing that may be proposed in conjunction with it.

- 3.9.2 Any proposed retaining wall(s) shall be constructed of a decorative precast concrete or modular stone retaining wall system or equivalent as approved by the Development Officer.
- 3.9.3 A construction detail of any proposed retaining wall(s), or retaining wall and fence combination(s), shall be provided and certified by a Professional Engineer.

### **3.10 Compliance with Detailed Landscape Plan**

- 3.10.1 Prior to issuance of the first Occupancy Permit, the Developer shall submit to the Development Officer a letter prepared by a Certified Arborist, Landscape Architect, Forester, or Forestry Technician certifying that all landscaping has been completed according to the terms of this Agreement.
- 3.10.2 Notwithstanding Section 3.10.1, the first Occupancy Permit may be issued provided that weather conditions and the time of year do not allow the completion of the landscape work and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The Developer shall engage the services of a Certified Arborist, Landscape Architect, Forester, or Forestry Technician to prepare and submit, as part of the Occupancy Permit application, a cost estimate for the uncompleted work. The cost estimate, including quantities, unit prices and a 10% contingency fee, shall be approved by the Development Officer. 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. Should the Developer not complete the landscaping within twelve months of issuance of first Occupancy Permit, the Municipality may, but is not required to, use the deposit to complete the landscaping as set out in this 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 by a Certified Arborist, Landscape Architect, Forester, or Forestry Technician.

### **3.11 Signage**

- 3.11.1 Signage for the development permitted under this Agreement shall be in accordance with the Planning District 4 Land Use By-law.
- 3.11.2 Notwithstanding Section 3.11.1, the Developer shall be permitted to re-use the existing pylon sign located on the Lands in the location shown on Schedule B.
- 3.11.3 Notwithstanding Section 3.11.1, the sign bands as illustrated on Schedules C to F, inclusive shall be permitted.

### **3.12 Outdoor Storage and Display**

- 3.12.1 No outdoor storage shall be permitted on the Lands except for refuse, recycling, and composting materials.
- 3.12.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact from the Prospect Road and abutting properties. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing/masonry walls with suitable landscaping.

### **3.13 Solid Waste Facilities**

- 3.13.1 The main building shall be assigned a designated space for source separation services, which may be included either inside or outside the main building.
- 3.13.2 All refuse, recycling, and composting materials to be stored outside the main building shall be contained within suitable containers located in either the rear or side yard, which shall themselves be fully screened from view from any street and abutting properties by means of opaque fencing/masonry walls with suitable landscaping.
- 3.13.3 The designated spaces for source separation services shall be shown on either the building plans or the site plan and shall conform with By-law S-600 (Solid Waste Collection & Disposal).

### **3.14 Maintenance**

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(s), 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 removal/salting/sanding of walkways and driveways.

### **3.15 Deliveries and Collection on the Lands**

Deliveries to the Lands, and the collection of refuse, recycling, and composting materials, shall only occur between the hours of 7:00 am and 8:00 pm.

### **3.16 Requirements Prior to Approval**

- 3.16.1 Prior to the issuance of any municipal permits for any of the buildings allowed under this Agreement, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional) process, as outlined by the Municipality.

3.16.2 Prior to the issuance of Construction Permits for any of the components of the development on the Lands, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Development Officer:

- (a) A Detailed Landscape Plan certified by a Landscape Architect, Certified Arborist, Forester, or Forestry Technician in accordance with Sections 3.7 and 3.8 of this Agreement;
- (b) Nova Scotia Environment approval of the existing or any new on-site water distribution system as described in Section 4.2 of this Agreement;
- (c) Nova Scotia Environment approval of the existing or any new on-site sanitary system as described in Section 4.3 of this Agreement;
- (d) Nova Scotia Department of Transportation and Infrastructure Renewal approval of the site access; and,
- (e) Nova Scotia Department of Transportation and Infrastructure Renewal approval of the Stormwater Management Plan, as described under Section 5.1(c).

3.16.3 Prior to the issuance of the Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Development Officer:

- (a) Certification from a Professional Engineer indicating that the Developer has complied with the Stormwater Management Plan required pursuant to this Agreement; and,
- (b) Certification from a Certified Arborist, Landscape Architect, Forester, or Forestry Technician indicating that the Developer has complied with the Detailed Landscape Plan required pursuant to this Agreement.

3.16.4 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.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 Off-Site Disturbance**

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 and/or relocated by the Developer as directed by the Development Officer, in consultation with the Municipality's Development Engineer.

### **4.2 On-Site Water Distribution System**

The Lands shall be serviced through a privately owned and operated on-site water distribution system. In accordance with clause (b) of Section 3.16.2, no Construction Permit for any component of the development on the Lands shall be issued prior to the Development Officer receiving a copy of all permits, licences, and approvals, as applicable, from Nova Scotia Environment respecting the design, installation, and operation of the on-site water distribution system.

### **4.3 On-Site Sanitary System**

The Lands shall be serviced through a privately owned and operated on-site sanitary system. In accordance with clause (c) of Section 3.16.2, no Construction Permit for any component of the development on the Lands shall be issued prior to the Development Officer receiving a copy of all permits, licences and approvals, as applicable, from Nova Scotia Environment respecting the design, installation, and operation of the on-site sanitary system.

## **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

### **5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans**

Prior to the commencement of any site work on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed and those that will remain undisturbed;
- (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance 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 Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all



proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and,

- (c) Submit to the Development Officer a detailed Final Site Grading and Stormwater Management Plan prepared by a Professional Engineer.

## **5.2 Stormwater Management System**

5.2.1 The Developer agrees to construct at its own expense the Stormwater Management System which conforms to the concept design submitted to the Development Officer and reviewed by the Nova Scotia Department of Transportation and Infrastructure Renewal pursuant to Section 5.1. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.

5.2.2 The Developer agrees, at its own expense, to maintain in good order all stormwater facilities on the Lands.

## **5.3 Failure to Conform to Plans**

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Municipality's Development Engineer to ensure compliance with the environmental protection measures.

## **PART 6: AMENDMENTS**

### **6.1 Substantive Amendments**

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and shall only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

### **6.2 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 development, as identified under Section 7.3.3 of the Agreement;
- (b) The granting of an extension to the length of time for the completion of the development, as identified under Section 7.4 of the Agreement;

- (c) Changes to the exterior architectural appearance of the building, which in the opinion of the Development Officer are not in conformance with Schedules C to F, inclusive;
- (d) Changes to the exterior building materials detailed in Section 3.4.
- (e) Changes to the landscaping measures which in the opinion of the Development Officer are not in conformance with Schedule B;
- (f) Changes to the location of the main building on the Lands;
- (g) An increase in the size of the footprint of the main building beyond the provision of Section 3.3.2, provided that the increase is not greater than ten percent (10 %) of the permitted footprint as outlined under Section 3.3.1 of this Agreement; and,
- (h) Changes to Section 3.2 to allow other uses permitted within the C-2 (General Commercial) Zone of the Planning District 4 Land Use By-law.

## **PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 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 for Halifax County, Nova Scotia and the Developer shall incur all costs in recording such documents.

### **7.2 Subsequent Owners**

- 7.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.
- 7.2.2 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).

### **7.3 Commencement of Development**

- 7.3.1 In the event that development on the Lands has not commenced within three 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.
- 7.3.2 For the purpose of this Agreement, commencement of development shall mean the installation of the concrete slab for the main building.

7.3.3 Council may consider granting an extension of the commencement of development time period through a resolution under clause (a) of Section 6.2, if the Municipality receives a written request from the Developer prior to the expiry of the commencement of development time period.

#### **7.4 Completion of Development**

Upon the completion of the development or portions thereof, or after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new agreement; or
- (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Planning District 4, as may be amended from time to time.

### **PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

#### **8.1 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.

#### **8.2 Failure to Comply**

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

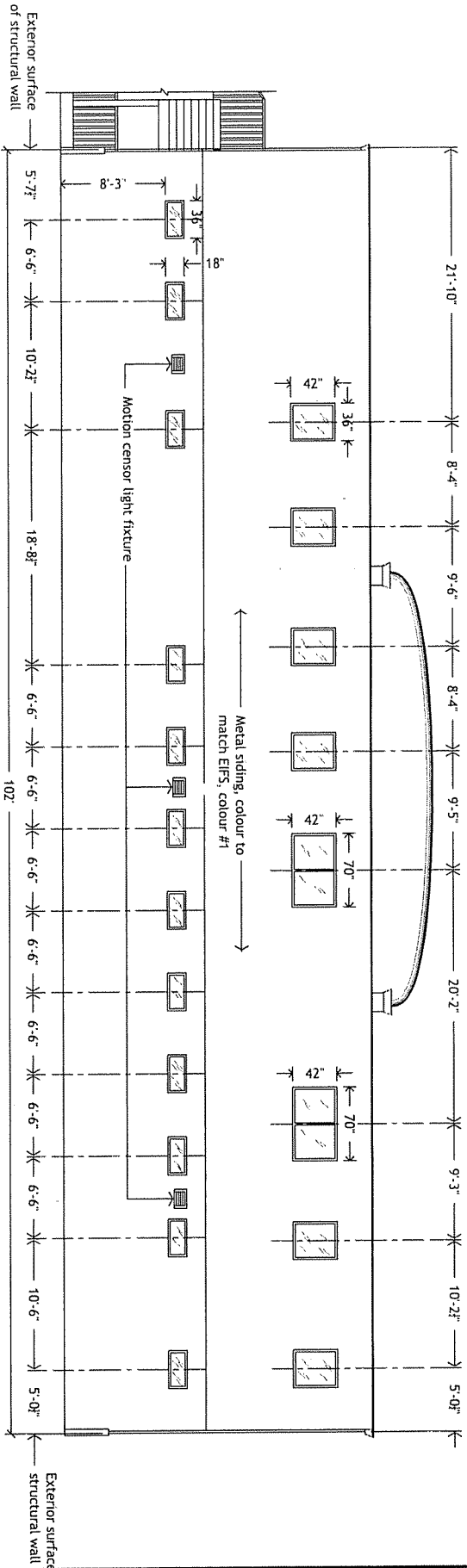
- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation 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











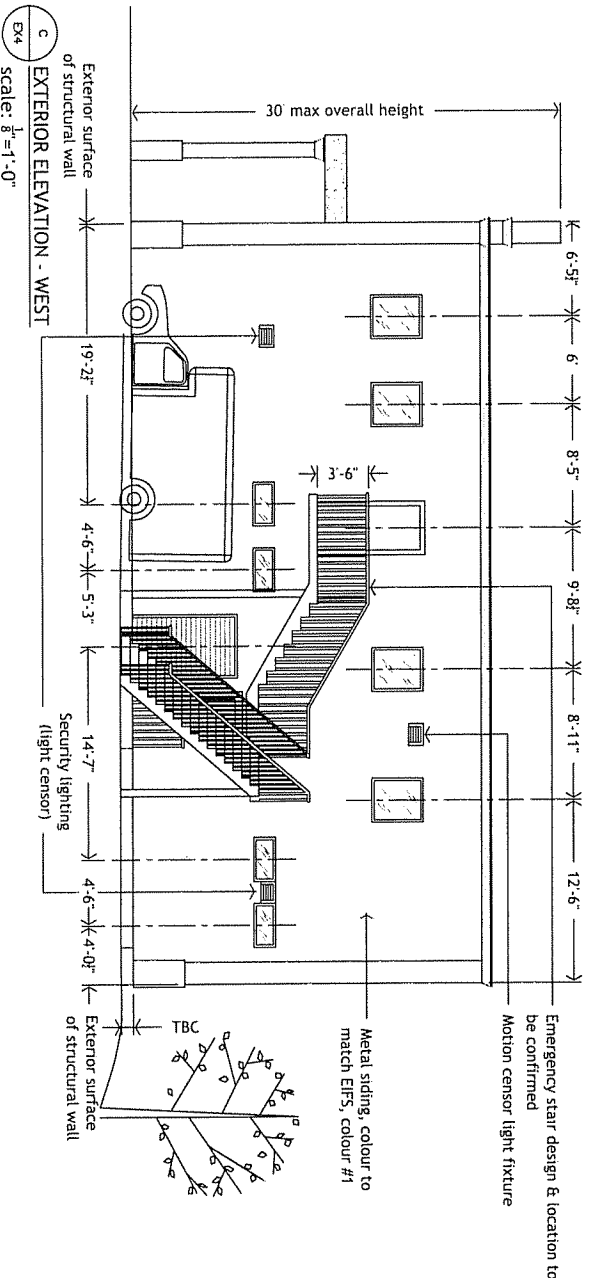
D EX5  
 EXTERIOR ELEVATION - SOUTH  
 scale: 1/8"=1'-0"

Project Title: Prospect Road Pharmasave & Medical Clinic		Drawing Title: EXTERIOR ELEVATIONS	
Revisions:			
No.	Date	By	Description
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
Date: Dec 2, 2009		Scale: 1/8"=1'-0"	
Drawn By: KMA		Checked By:	
Project No.:		Drawing No.:	
CAD file: Prospect Road B3.dwg		EX5	

Case 01306 - Schedule E (Main Building Exterior Elevation - South)



Project Title: <b>Prospect Road Pharmasave &amp; Medical Clinic</b>		Drawing Title: <b>EXTERIOR ELEVATIONS</b>	
Revisions:			
No.	Date	By	Description
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
Date: Dec 2, 2009		Scale: 1/8"=1'-0"	
Drawn By: KJM		Checked By:	
Project No.:		Drawing No.:	
CAD file: Prospect Road RJ.dwg		<b>EX4</b>	



**NOTE:**  
Structural engineer drawings for stair design & specifications to be provided by contractor.  
Note: Stairs requires non-slip treatment and visual colour contrast at leading edge of tread & landings.



Policy Criteria	Staff Comments
(f) the effects of the development on the natural environment and the means for handling stormwater runoff;	A preliminary stormwater management plan was reviewed and accepted by the Nova Scotia Department of Transportation and Infrastructure Renewal.
(g) the general maintenance of the development;	General maintenance is covered under Section 3.14 of the draft development agreement.
(h) the hours of operation; and	Staff did not find any need to control the hours of operation for any of the permitted uses listed under Section 3.2 of the draft development agreement. However, a clause was added to control the hours of deliveries and garbage collection (Section 3.15).
(i) the provision of Policy IM-11.	See review below.

IM-11 In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:

Policy Criteria	Staff Comments
(a) that the proposal is in conformity with the intent of this Planning Strategy and with the requirements of all other municipal by-laws and regulations;	<p>There exists policy support for this type of proposal under the Planning District 4 Municipal Planning Strategy (Policy RB-10). See review of Policy RB-10 above.</p> <p>This draft development agreement does not supercede the applicability of other by-laws, statutes and regulations, other than the Planning District 4 Land Use By-law to the extent varied by the agreement.</p>

Policy Criteria	Staff Comments
<p>(b) that the proposal is not premature or inappropriate by reason of:</p> <p>(i) the financial capability of the Municipality to absorb any costs relating to the development;</p> <p>(ii) the adequacy of on-site sewerage and water services;</p> <p>(iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;</p> <p>(iv) the adequacy of road networks leading to or within the development; and</p> <p>(v) the potential for damage to or for destruction of designated historic buildings and sites.</p>	<p>(i) This development will not result in additional costs to the Municipality.</p> <p>(ii) Sections 4.2 and 4.3 cover the adequacy of the on-site water distribution system and the on-site sanitary system, respectively.</p> <p>(iii) This development will not increase the demand for schools, recreation or other community facilities in the area.</p> <p>(iv) A traffic statement was reviewed and accepted by the Nova Scotia Department of Transportation and Infrastructure Renewal. It concluded that trips generated by the proposed development would not have any significant impact on the performance of the Prospect Road.</p> <p>(v) There are no designated historic buildings or sites in the immediate area.</p>
<p>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</p> <p>(i) type of use;</p> <p>(ii) height, bulk and lot coverage of any proposed building;</p> <p>(iii) traffic generation, access to and egress from the site, and parking;</p> <p>(iv) open storage;</p> <p>(v) signs; and</p> <p>(vi) any other relevant matter of planning concern.</p>	<p>(i) Section 3.2 lists the uses permitted under the draft development agreement.</p> <p>(ii) Section 3.3 of the draft development agreement covers height, bulk and lot coverage for both the main building and the accessory building.</p> <p>(iii) Section 3.6 of the draft development agreement covers parking, circulation and access to and egress from the site.</p> <p>(iv) No outdoor storage will be permitted on the property.</p> <p>(v) Section 3.11 of the draft development agreement covers signage on the site.</p> <p>(vi) No other relevant matter of a planning concern were identified by staff.</p>
<p>(d) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</p>	<p>The site does not possess steep grades or any watercourse, marsh or bog.</p> <p>Staff is unaware of the presence of any unsuitable soil or geological conditions.</p>

Policy Criteria	Staff Comments
<p>(e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-July 2, 2002 / E-August 17, 2002)</p>	<p>The development is to occur on an existing lot fronting on the Prospect Road. No subdivision will be required.</p>