



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

10.2

**Harbour East Community Council**  
**June 14, 2007**

**TO:** Harbour East Community Council

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

**DATE:** May 30, 2007

**SUBJECT:** Case #00817 - Development Agreement, 32 Primrose Street

### **SUPPLEMENTARY REPORT**

#### **ORIGIN**

- Approval by Regional Council at a joint public hearing on April 10, 2007, of amendments to the Dartmouth MPS and LUB to permit the consideration of a development agreement to permit office uses and two residential units at 32 Primrose Street, Dartmouth.

#### **RECOMMENDATION**

It is recommended that **Harbour East Community Council:**

1. Approve the proposed development agreement as provided in Attachment A; and
2. Require 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 of said agreement by Council and any other bodies as necessary, whichever is later, including applicable appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

### **BACKGROUND**

On April 10, 2007, Regional Council approved amendments to the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) to permit the consideration of a development agreement for office uses and up to two residential units at 32 Primrose Street, Dartmouth (Map 1).

The building was constructed as a legal 15 room lodging house under the R-3 (Medium Density Residential) Zone, but was down zoned in the early 1990s to a zone permitting only single detached dwellings. The down-zoning was intended to limit the construction of new apartment buildings in the Pinecrest neighbourhood. The building has been vacant for several years now and is not really suitable for re-use as a single family home (as the zone intends) due to its size, physical configuration and location. Prior to these MPS amendments, the land use designation did not permit any commercial office uses in this area.

### **DISCUSSION**

The public hearing for the proposed development agreement was held jointly with Regional Council on the same evening that the MPS amendments were considered. However, before the development agreement can be formally approved, the MPS amendments need to have taken effect. On May 14, 2007 the Province approved the MPS amendments and Community Council may now consider approval of the development agreement that was enabled under these new policies.

### **BUDGET IMPLICATIONS**

None

### **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. Council may choose to approve the development agreement. This is the recommended course of action.
2. Council may choose to refuse the development agreement. This is not recommended, because the proposal reasonably carries out the intent of the Dartmouth Municipal Planning Strategy.

### **ATTACHMENTS**

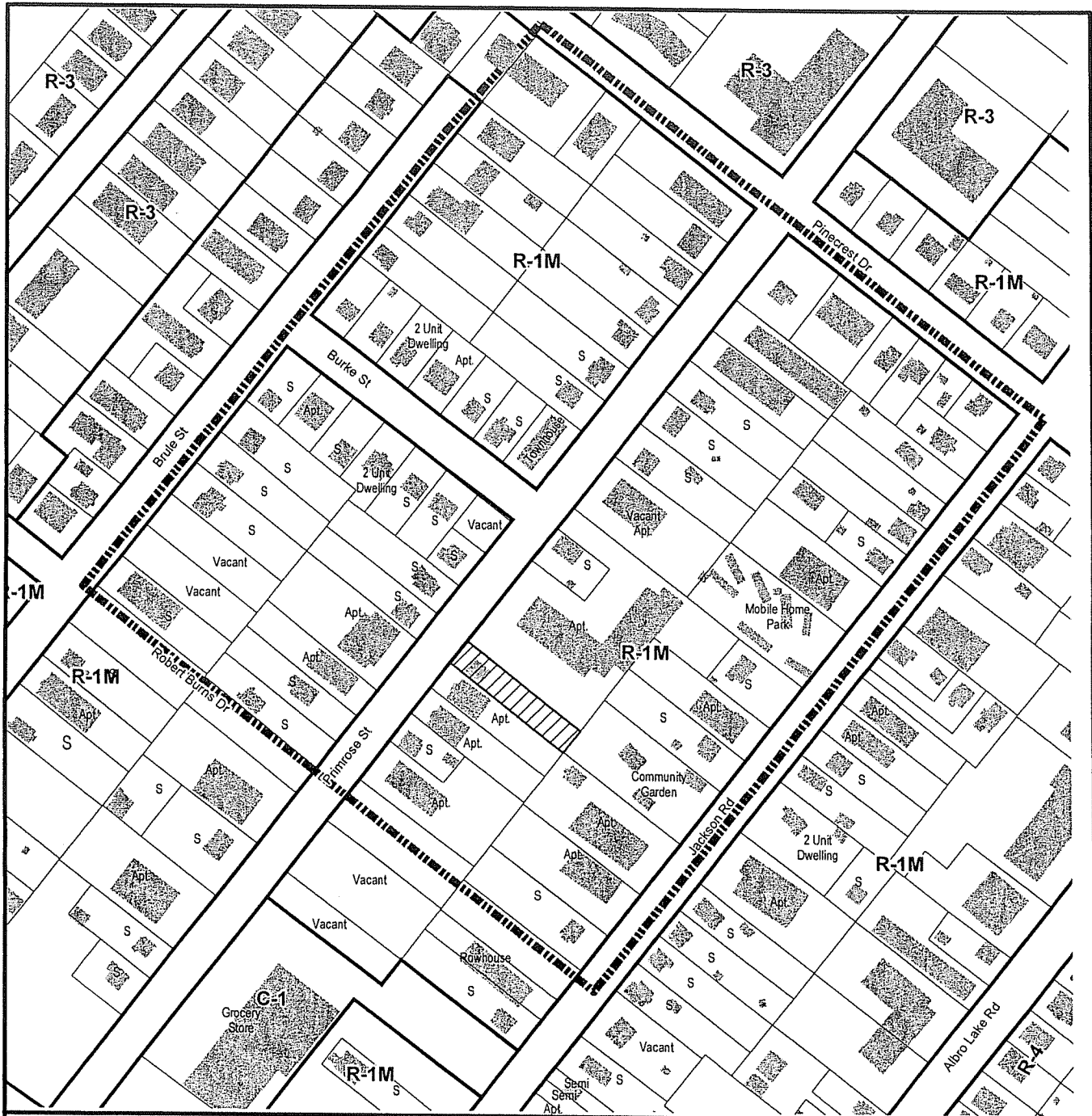
Map 1: Location  
Attachment A: Proposed Development Agreement

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 : Hanita Koblents, Planner 490-4181



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



Map 1  
Location & Zoning and Notification

#### Land Use

S Single Unit Dwelling  
Apt Apartment Building

Dartmouth Land Use By-Law Area

#### Zone

R-1M

Single Family (Modified) Residential Zone

C-1

Local Business Zone



Subject Property - 32 Primrose Street



Notification Area



**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT

50 25 0 50 100 150 200 Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-Law area.

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

**ATTACHMENT A**  
**Proposed Development Agreement**

**THIS AGREEMENT** made this                      day of                      , 2007,

**BETWEEN:**

D.D. 32 PRIMROSE LTD.  
a body corporate, in the County of  
Halifax, Province of Nova Scotia

(hereinafter called the "Developer")

**OF THE FIRST PART**

and

HALIFAX REGIONAL MUNICIPALITY,  
a municipal body corporate,  
(hereinafter called the "Municipality")

**OF THE SECOND PART**

**WHEREAS** the Developer is the registered owner of certain lands located at 32 Primrose Street (PID #00037937), Dartmouth, Nova Scotia, and which said lands are more particularly described in Schedule 'A' to this Agreement; (hereinafter called the "Lands");

**AND WHEREAS** the Developer has requested that the Municipality enter into a development agreement to allow for office and residential uses on the Lands pursuant to the provisions of the Community Planning Strategy and Land Use Bylaw for Dartmouth;

**AND WHEREAS** the Harbour East Community Council approved this request at a meeting held on \_\_\_\_\_, 2007, referenced as Municipal Case Number 00817;

**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     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     Except as otherwise provided for herein, development and use of the Lands shall comply with the requirements of the Dartmouth Land Use Bylaw, as may be amended from time to time.

- 1.3 Except as otherwise provided for herein, the subdivision/ consolidation of the Lands shall comply with the requirements of the Municipality's Regional Subdivision Bylaw, as may be amended from time to time.
- 1.4 Pursuant to Section 1.2 and 1.3, 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 Bylaw of the Municipality applicable to the Lands (other than the Land Use Bylaw and Subdivision Bylaw to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, Bylaws and regulations in connection with the development and use of the Lands.
- 1.5 Where the provisions of this Agreement conflict with those of any Bylaw of the Municipality applicable to the Lands (other than the Land Use Bylaw and Subdivision Bylaw to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.6 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this Agreement and all federal, provincial and municipal regulations, Bylaws or codes applicable to any lands owned by the Developer or lot owner.
- 1.7 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 AND DEVELOPMENT PROVISIONS**

### **2.1 Schedules**

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

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Ground Floor Plan
Schedule D	Second Floor Plan
Schedule E	North and South Elevation
Schedule F	East and West Elevation
Schedule G	Proposed Ground Sign

- 2.2 Where the written text of this agreement conflicts with information provided in the attached Schedules, the written text of this agreement shall prevail.

## **2.3 Permitted Uses**

2.3.1 The following uses only shall be permitted on the Lands:

- a) A two storey building containing office uses with a maximum of 550 square feet (168m<sup>2</sup>) of associated storage and a maximum of two residential units as generally shown on the Schedules attached hereto;
- b) R-1M uses as set out in the Dartmouth Land Use Bylaw.

2.3.2 The entire building may be converted to office uses.

2.3.3 The entire building may be converted to a maximum of two residential units.

## **2.4 Architectural Requirements**

2.4.1 The exterior of the building shall be generally residential in appearance and substantially in conformance with Schedules E and F.

2.4.2 Notwithstanding 2.4.1, the Development Officer may approve minor changes to the appearance of the back and sides of the building.

## **2.5 Parking**

2.5.1 Vehicle parking shall be provided as generally shown on Schedule B.

2.5.2 Bicycle parking shall be provided as per the Dartmouth Land Use Bylaw.

## **2.6 Landscaping**

2.6.1 A detailed landscape plan prepared by a qualified person who is either an Architect who is a member of the Nova Scotia Association of Architects or a Landscape Architect who is a member in good standing of the Atlantic Provinces Association of Landscape Architects, shall be submitted prior issuance of a Construction Permit.

2.6.2 The landscape plan shall provide details to ensure the survival of landscape plant material in the amount and location as generally shown on Schedule B. It shall also contain details to ensure the construction of 6 foot (1.8m) high opaque (e.g. wood) fencing around the entire rear yard, and shall ensure that a minimum of 3 evergreen trees are planted along the rear lot line in an eight foot deep by forty foot wide (2.4m x 12m)sodded strip, and that there is at least one deciduous tree planted in the front yard and one in the back yard.

2.6.3 No outdoor storage of any kind is permitted on the lands.

2.6.4 No occupancy permit shall be issued until such time as the landscaping required under this section has been completed. The Developer shall provide written certification from a qualified person as defined in 2.6.1 to the Development Officer indicating that all landscaping has been completed in accordance with 2.6.1 and 2.6.2 above. However, where

such building has been completed and all other terms of this agreement except for landscaping have been met, an occupancy permit may be issued provided that the developer supplies a security deposit in the amount of 120 percent of the estimated cost to complete the landscaping. The security deposit shall be in the form of a certified cheque or an automatically renewing letter of credit issued by a chartered bank to 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 on the landscape plan. The security deposit or unused portion of the security deposit shall be returned to the developer upon completion of the work and its certification.

**2.7 Solid Waste Facilities**

- 2.7.1 The proposed building shall include designated space for three stream (refuse, recycling and composting) source separation services (containers, rooms, facilities, etc.). This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Official. Such space shall be located entirely internal to the building and no storage of solid waste will be permitted outside the building.

**2.8 Maintenance**

- 2.8.1 The Developer shall maintain and keep in good repair all portions of the development and Lands, including but not limited to, the interior and exterior of the buildings and driveways; maintenance of all landscaping including the replacement of damaged or dead plant stock; litter control, and snow removal/salting of walkways and driveways.

**2.9 Signage**

- 2.9.1 One ground sign may be permitted in the front yard, provided the size and shape is substantially similar with that shown in Schedule G.
- 2.9.2 The sign permitted under 2.9.1 may not be internally illuminated.

**2.10 Hours of Operation**

- 2.10.1 Hours of operation of the office use shall be limited from 8am to 8pm Monday to Friday and 9am to 5pm on Saturdays and Sundays.

**PART 3: AMENDMENTS**

- 3.1 The provisions of this Agreement relating to the following matters are identified as, and shall be deemed to be, not substantive and may be amended by resolution of Harbour East Community Council:
- a) Changes to the exterior appearance of the front of the building;
  - b) Changes to the hours of operation.

- 3.2 Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

**PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

- 4.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.
- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 4.3 Notwithstanding any subdivision approvals granted pursuant to this Agreement or any transfer or conveyance of any lot or of all or any portion of the Property, this Agreement shall continue to apply to and bind the Developer, the Property and each lot owner and the Developer shall continue to be bound by all terms and conditions of this Agreement.
- 4.4 Upon the transfer of title the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 4.5 Notwithstanding Section 4.4 or any transfer of title, the Developer shall continue to be responsible for the fulfilment of the Developer's covenants under this Agreement and any Subdivision Agreement entered pursuant to this Agreement.
- 4.6 In the event that construction on the Lands has not commenced within 5 (five) years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.
- 4.7 Upon the completion of all development on the Lands, or portions thereof, or after 10 (ten) years from the date of registration of this Agreement at the Registry of Deeds, 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;
  - (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 Bylaw, as may be amended.



**PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

- 5.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours and in the presence of the developer or its representative 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 one day of receiving such a request.
- 5.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) 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 Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property 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 Bylaw; and/or
  - (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

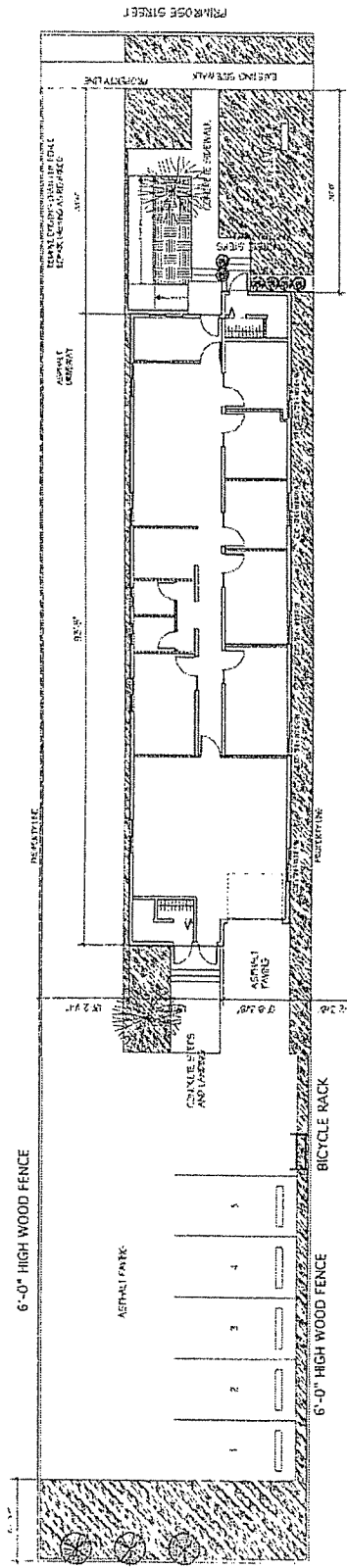
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered	)	D.D. 32 PRIMROSE LTD.
in the presence of:	)	
	)	
per: _____	)	per: _____
	)	
Sealed, Delivered and Attested	)	HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of	)	
Halifax Regional Municipality	)	
duly authorized on that behalf	)	per: _____
in the presence of	)	MAYOR
	)	
per: _____	)	per: _____
	)	MUNICIPAL CLERK

GRASS

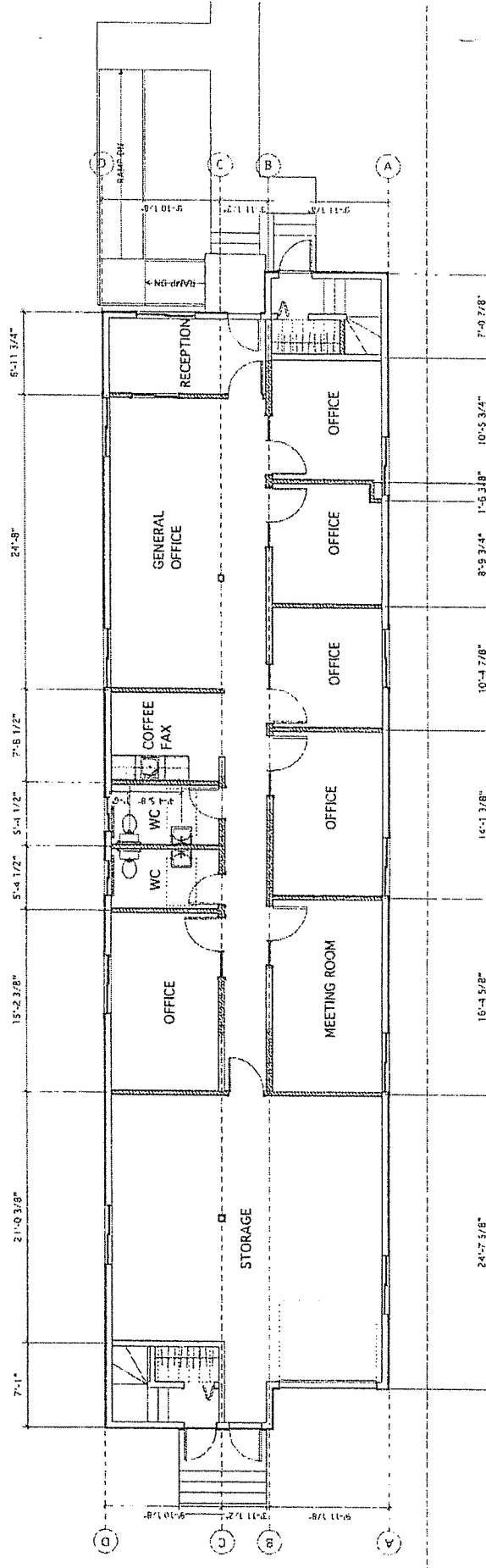
**From Health Care**

ANNUAL FLOWERS



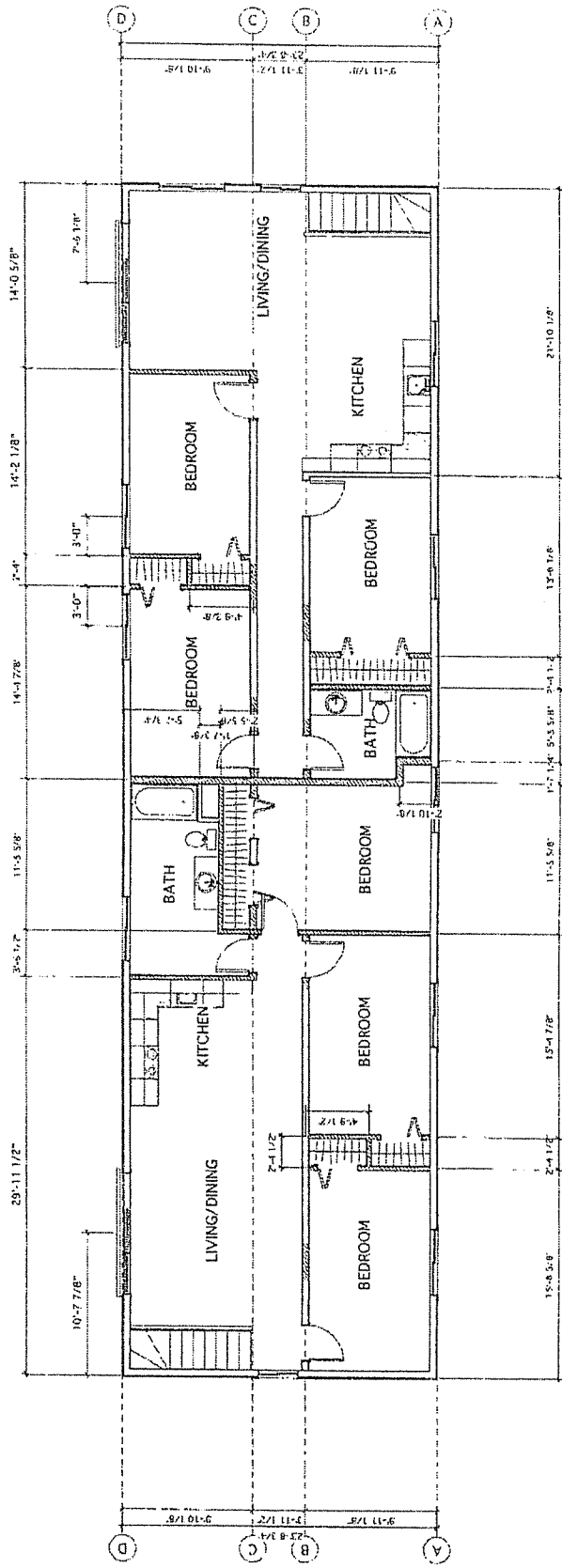
### SITE PLAN ( SCHEDULE B )

Nov 28/06



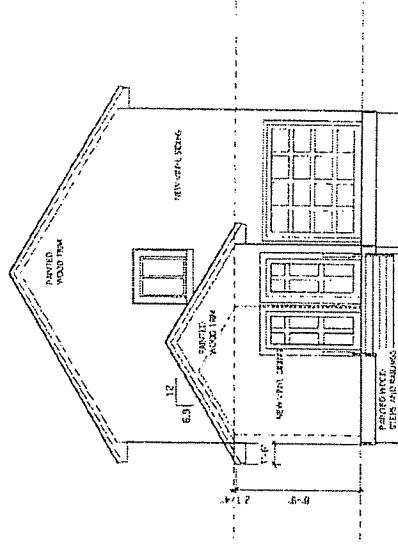
GROUND FLOOR PLAN ( SCHEDULE C )

NOV 28/06

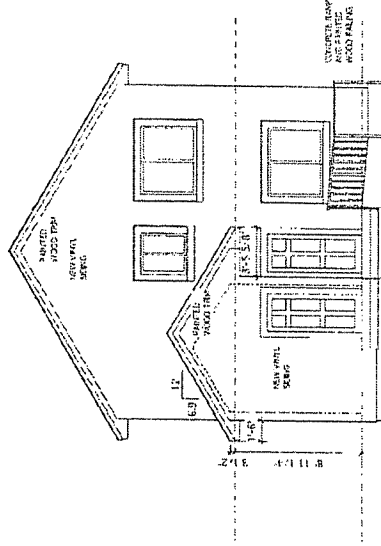


D SECOND FLOOR PLAN ( SCHEDULE D)

**RECEIVED**  
Nov 28/06

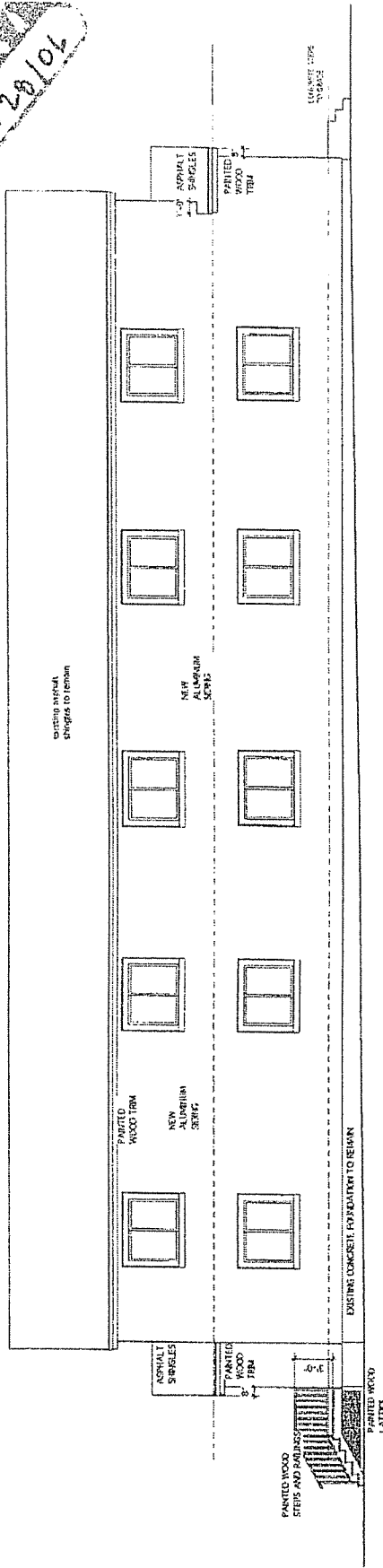


**E NORTH ELEVATION ( SCHEDULE E )**

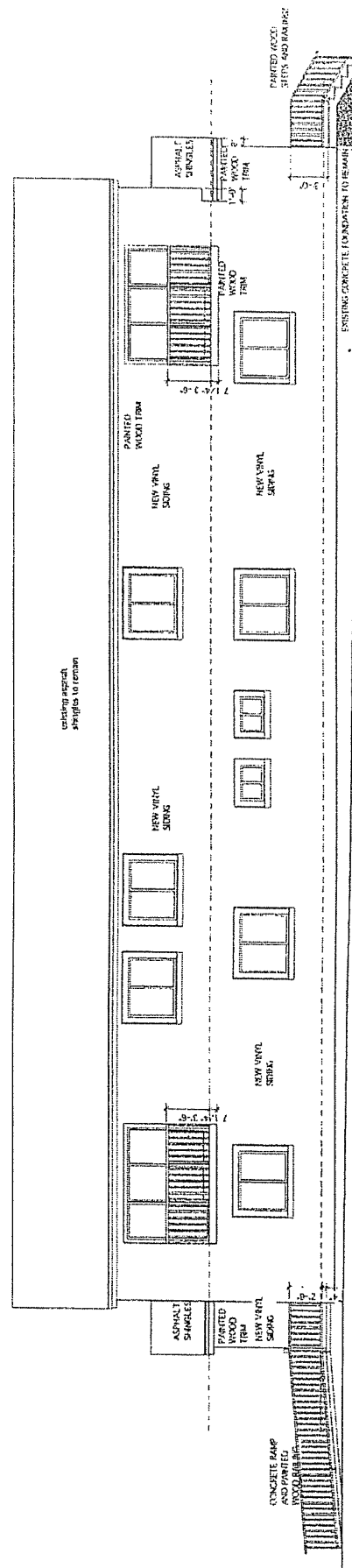


**E SOUTH ELEVATION ( SCHEDULE E )**

Nov 28/06

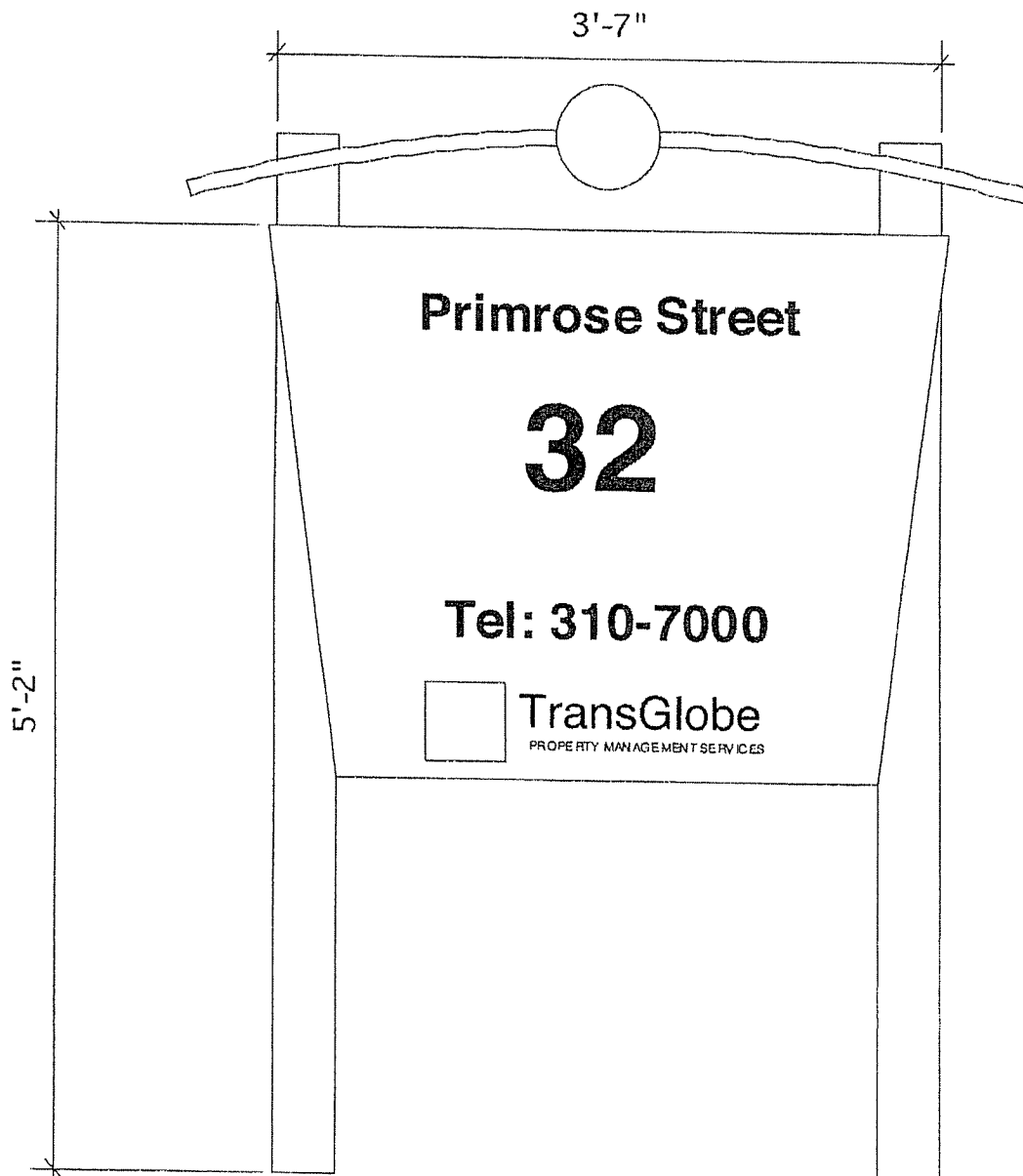


(F) EAST ELEVATION ( SCHEDULE F )



(F) WEST ELEVATION ( SCHEDULE F )

RECEIVED  
Nov 28/06



1 TYPICAL SITE SIGN  
Scale: 1" = 1'-0"



