

THE MUNICIPALITY OF THE DISTRICT OF EAST HANTS

Development Agreement

Between:

3337637 Nova Scotia Limited

And

**Municipal Council for the
Municipality of the District of East
Hants, Nova Scotia**

To permit the development of a multi-premise commercial building including a restaurant, drive-thru on lands located in Elmsdale.

Original agreement approved by Municipal Council on the 25th day of October, 2023.

Signed and entered into this 18th day of December, 2023.

This DEVELOPMENT AGREEMENT made this 18th day of December, 2023.

BETWEEN:

3337637 Nova Scotia Limited of Elmsdale, Nova Scotia

(hereinafter called the "**Developer**")

OF THE FIRST PART;

- and -

MUNICIPALITY OF THE DISTRICT OF EAST HANTS, a body corporate pursuant to the *Municipal Government Act* (SNS 1998, c. 18), having its chief place of business at Elmsdale, in the District of East Hants, Nova Scotia,

(hereinafter called the "**Municipality**")

OF THE SECOND PART.

WHEREAS the **Developer** is the registered owner of lands known as 251 Highway 214, Elmsdale (PID 45084969), more particularly described in Schedule "A" of this agreement (the "**Property**");

AND WHEREAS the **Developer** has requested that they be permitted to develop a multi-premise commercial building including a restaurant, drive-thru, in the Village Core (VC) Zone on the **Property** by entering into a development agreement with the **Municipality** pursuant to the *Municipal Government Act*, and pursuant to the *Municipality of East Hants Municipal Planning Strategy Policies* UD15, IM27, and IM28 so that the **Developer** may develop and utilize the **Property** in a manner not otherwise permitted by the Land Use Bylaw.

AND WHEREAS the Council of the **Municipality** (the "**Council**"), at its meeting held the 25th day of October, 2023, approved the **Developer's** application to enter into a development agreement to permit a multi-premise commercial building including a restaurant, drive-thru facility in the Village Core (VC) Zone (the "**Development**"), subject to the registered owners of the **Property** entering into this agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, promises and agreements contained herein, the parties hereto agree as follows:

1 LAND USE

- (a) The use of the Property permitted by this Agreement, subject to its terms and as generally illustrated on Schedule "B", shall be a dental clinic and a restaurant, drive-thru.
- (c) Except where specifically stated otherwise in this agreement, all provisions of the Land Use Bylaw of the Municipality of the District of East Hants, approved by Municipal Council on July 27, 2016 as amended, shall apply to this development.

2 PLANS

- (a) The Property shall be developed and used generally in accordance with the site plan attached to this agreement as Schedule "B" and with reference to this Schedule:
- (b) The Developer shall construct and maintain the parking area generally as shown on the site plan. The outdoor parking area shall conform to the following requirements:
 - i. the Developer shall construct the parking area generally in conformity with the site plan hereto attached as Schedule "B".
 - ii. the limits of the parking area shall be defined by a fence, curb, or other suitable obstruction designed to provide a neat appearance;
 - iii. the parking area shall be properly illuminated for safe and effective circulation of both automobile and pedestrian traffic at night and such illumination shall be directed away from adjoining properties and adjacent streets;
 - iv. individual parking stalls shall be a minimum dimension of 2.8 m x 5.6 m exclusive of driveways or aisles;
 - v. The parking area shall be paved with hot milled asphaltic concrete (HMAC) or portland cement concrete (PCC), paving stones, or some other suitable paving material.
- (c) Four bicycle parking spaces shall be provided.
- (d) Where fencing is required, black chain-link fencing shall be constructed. The fencing shall have a maximum height of 1.2 metres.
- (e) The grounds exclusive of the driveway, walkways, and building shall be landscaped with a combination of mulch, lawn, shrubs, trees, and other vegetation. All landscaping, required or otherwise, shall be regularly maintained.
- (f) Outdoor refuse containers shall be permitted provided they are wholly enclosed by landscaping and/or opaque fencing of sufficient height and design to screen the storage area or refuse containers from public view or from abutting residential uses.
- (g) One internally illuminated ground sign for the property shall be permitted.
 - i. the sign shall not exceed 10.3 square metres in area;
 - ii. the sign shall have a maximum height of 8 metres; and
 - iii. no portion of the sign (base, post, frame, or face) is located within 0.6 metres of any public right-of-way or common property line. The Developer shall also comply with the setback requirements of the Nova Scotia Department of Public Works.
- (h) An 'Order/Menu Screen' sign, a 'Pre-Menu' sign and a 'Height Restriction' sign shall be permitted generally in accordance with the site plan hereto attached as Schedule "B".
- (i) Two externally illuminated facial wall signs shall be permitted. One for the street facing façade and one for the side facing façade. The combined area of the two facial wall signs shall not exceed the lesser between:
 - I. 8% of the area of the wall of the street facing façade; or

II. 0.8 m² of sign area per metre of street facing façade.

- (j) The multi-premise commercial building shall be developed generally in accordance with the Rendering Drawings attached to this agreement as Schedule "C"

3 ACTIVE TRANSPORTATION TRAIL

- (a) The New 'AT' Trail as identified on the site plan attached to this agreement as Schedule "B" shall hereafter be referred to as the Active Transportation Trail.
- (b) Prior to an Occupancy Permit being issued, the Active Transportation Trail, shall be constructed and laid out generally in accordance with the site plan attached to this agreement as Schedule "B" and Schedule "D". The Active Transportation Trail shall be constructed at the sole cost of the Developer.
- (c) Prior to an Occupancy Permit being issued, a three (3) metre wide registered easement over the Active Transportation Trail has been secured for the benefit of the "Municipality" for the purpose of providing access to and maintaining an Active Transportation Trail. The location of the easement shall generally be as identified on the site plan identified as Schedule "B". The Municipality shall prepare and register the easement at its cost.
- (d) The Developer agrees to a subordination agreement which shall be registered stating that all mortgages are subordinated and postponed to the Active Transportation Trail easement. The Municipality shall prepare and register the subordination agreement. The Developer shall arrange to have the agreement executed by CIBC and any other mortgagees for this purpose. The subordination agreement shall be registered prior to an Occupancy Permit being issued.
- (e) Following confirmation from the Municipality that the Active Transportation Trail has been constructed in accordance with Schedule "B" and Schedule "D" and at the completion of the construction of the Active Transportation Trail, at the sole cost of the Developer, the Municipality shall contribute \$324,000 plus HST to the Developer. The cash contribution is provided for the construction of the Active Transportation Trail and associated works.
- (f) The Municipality shall be responsible for all future maintenance of the Active Transportation Trail as located within the easement.
- (g) Landscaping within the easement may include grass, gravel, mulch. The Developer may landscape with plants, shrubs or ornamental grasses but the Municipality will not maintain or replace any plants, shrubs or ornamental grasses within the easement for any reason. Future maintenance of any plants, shrubs or ornamental grasses will remain the Developers responsibility. The Municipality will maintain grass, gravel or mulch within the easement to a standard acceptable to the Municipality.
- (h) Prior to an Occupancy Permit being issued, the Black Metal Chain Link Fence shall be constructed at the sole cost of the Developer. The Municipality shall be responsible for the future maintenance of the Black Metal Chain Link Fence, the location for which is identified on the site plan attached to this agreement as Schedule "B". The Developer may replace the fence if they require replacement but the Municipality determines that the replacement is not needed. In these circumstances, if the Developer replaces the fence, they shall be responsible for the entire cost of the fence replacement.
- (i) The Municipality will be responsible for snow removal and de-icing of the Active Transportation Trail. Snow removal and de-icing shall occur as deemed necessary by the Municipality.
- (j) The Development Agreement shall be read in conjunction with the "Standard Specification for Municipal Services" as published by the Nova Scotia Road Builders Association – Consulting Engineers of Nova Scotia – Landscape Nova Scotia Joint Committee on Contract Documents. In case of discrepancy, the more stringent requirement shall apply.
- (k) The Developer shall be responsible for the construction and future maintenance of the retaining wall.

4 WATERMAIN EASEMENT

- (a) The Municipality will be provided unrestricted access to enter the property for the purpose of repairing the existing water main that is currently located within the Utility Service Easement as identified as an 'Easement/Right of Way' registered at the land registration office on November 17, 2017.
- (b) The Municipality will provide as much notice as possible of any disruption to the commercial use of the property, but in emergency situations, such notice may not be provided.
- (c) Following the completion of municipal repair works required to the water main, the Municipality agrees to reinstate the asphalt surface and any grassed areas. The Municipality shall not be responsible for reinstating any concrete curb or landscaping other than grass.
- (d) The Developer is not permitted to bury any services within the existing Utility Service Easement.
- (e) No part of any building shall be located within or over the existing Utility Service Easement.

5 SERVICING

- (a) The Developer agrees that the disposal of all refuse collected from the development is the responsibility of the Developer;
- (b) The Developer agrees that snow removal and de-icing the public parking area, driveway, crosswalks, and sidewalk located within the site is the responsibility of the Developer and not the Municipality. Snow removal shall occur as necessary so as to keep driveways, crosswalks, sidewalks and parking areas clear at all times during winter season.
- (c) The Development shall be connected, at the Developer's expense, to the Municipality's water and sewer system within the Highway No. 214 right-of-way or at another point on the system subject to the approval of the Municipal Engineer.
- (d) The Developer shall be responsible for paying all infrastructure and connection fees associated with the Development; and
- (e) The Developer agrees that the Municipality does not warrant that the municipal water system can provide adequate fire flow or sufficient pressure for a sprinkler system and that as the Developer, they are responsible for carrying out their own hydrant testing.

6 DEVELOPMENT PERMIT

- (a) This development agreement shall be administered by the Development Officer as appointed by the Council of the Municipality of East Hants.
- (b) The development described in this agreement shall not be commenced until the Development Officer has issued a development permit. A development permit for the land use described in Section 1 of this agreement shall not be issued until the Development Officer is satisfied that the detailed plans are in conformance with the site plan attached as Schedule "B" and the requirements for the components in Schedule "B". In addition, the Development Officer shall not issue a development permit until:
 - i. The Developer has submitted site plans in conformance with the terms and conditions of this development agreement (Schedule "B"); and
 - ii. Payment for all required permit fees, registration of the document at the Registry of Deeds, and costs associated with advertising and processing the application have been received by the Municipality's Planning and Development Department; and

- iii. The Nova Scotia Department of Public Works (NSPW) has granted positive recommendation on all transportation issues within their responsibility and has given their approval if any is required; and
- iv. Servicing details has been submitted and the Municipality's Department of Infrastructure and Operations and approval has been granted for the Developer to connect into Municipal sewer and water services and the Developer has otherwise satisfied that Department's requirements; and
- v. The Municipality's Department of Infrastructure and Operations has confirmed that sufficient water and wastewater capacity exists to service the development; and
- vi. A stormwater management plan prepared by a professional engineer has been submitted in accordance with the 'Municipal Standards'. The management of the stormwater shall be carried out in accordance with the submitted stormwater management plan; and
- vii. A lot grading plan pursuant to the Municipality's Lot Grading By-law has been submitted.

7 IMPLEMENTATION

- (a) Upon breach of this agreement, the Municipality may proceed in accordance with Section 264 of the Municipal Government Act.
- (b) Subject to the provisions of this agreement, the Developer shall be bound, unless specifically stated otherwise in this agreement, by all Bylaws and regulations of the Municipality as well as to any applicable statutes, policies, and regulations of the Province of Nova Scotia or the Government of Canada.
- (c) This agreement shall run with the land and be binding upon the Developer, its lessees, and the occupiers of the land.
- (d) This agreement shall be filed by the Municipality in the Registry of Deeds at Windsor, Nova Scotia, and shall form a charge or encumbrance upon the property as described in Schedule "A" attached hereto.
- (e) The costs of recording and filing all documents in connection with the agreement shall be paid by the Developer.
- (f) The provisions of this agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.
- (g) The Developer shall at all times indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, brought or prosecuted to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the Developer or his servants or his agents or his employees in the fulfillment of any of his obligations under this Agreement.
- (h) Upon completion of the Development, or after three (3) years from the date of approval of this Agreement, whichever time period is less, Council may review this agreement, in whole or in part, and may:
 - i. retain the Agreement in its present form
 - ii. discharge the Agreement on the condition that for those portions of the development that are deemed complete by the Council, the Developer's rights hereunder are preserved and Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use Bylaw.

8 TIME LIMITS

- (a) The parties shall enter into this agreement within one (1) year of Council's approval to enter into this agreement.
- (b) Pursuant to the terms and conditions of this agreement, the Developer shall apply for a development permit to construct the multi-premises commercial building within two (2) years of the parties entering into this development agreement, or the agreement for the property identified as PID 45084969 may be terminated and the existing zone and all provisions of the Land Use By-law shall apply for this property.
- (c) The development shall be made consistent with all terms and conditions of this agreement and all features of the site plan attached as Schedule "B" no later than two (2) years after the development permit has been issued for the multi-premise commercial building otherwise the development agreement may be terminated and the existing zone and all provisions of the Land Use By-law shall apply.

9 UNSUBSTANTIAL AMENDMENTS

- (a) Any amendment to this agreement, whether substantive or otherwise, must be approved by both parties in writing:
- (b) Any unsubstantial amendment to either the terms of this agreement or to any Schedules shall be subject to the amendment procedures set out in the Municipal Government Act.
- (c) Amendments which are considered unsubstantial are the following:
 - i. A written request to have the time limits identified in Section 8 of this agreement extended by a period to be decided by Council.
 - ii. Changes to the site plan that are necessary to accommodate features that are subject to approval or authorization by other authorities such as, but not limited to, the Nova Scotia Department of Public Works, the Nova Scotia Department of the Environment and Climate Change and the Municipality of East Hants Department of Infrastructure and Operations.
 - iii. Changes to the multi-premise commercial building in order to comply with any by-law or building code requirements.
 - iv. Changes to the site plan to allow for the locating of accessory utility structures and any accessory fuel storage tanks. Such structures shall be located such that they do not interfere with elements required by the Agreement, such as parking.
 - v. A written request to expand the building up to 5% of the floor area.
 - vi. Changes to the parking lot layout.
 - vii. Changes to the external elevation design of the multi-premise commercial building which are not considered 'generally in accordance' with Schedule "C", unless otherwise permitted by this Development Agreement.
 - viii. Changes to the vehicular access design which are needed to comply with Nova Scotia Department of Public Works requirements.
 - ix. Changes of use from dental office and restaurant, drive-thru to a different use as permitted in the VC Zone. The application for an unsubstantial amendment shall include the submission of a revised Traffic Impact Study.
 - x. A request to amend the fencing requirements.


IN WITNESS WHEREOF the parties hereto for themselves, their successors and assigns have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

DEVELOPER

R. G. G. G.
Witness

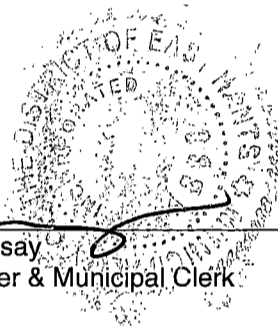
Andrew Kim
ANDREW KIM
3337637 Nova Scotia Limited



MUNICIPALITY OF EAST HANTS

Sheralee Mae Ewan
Witness

Kim Ramsay
Kim Ramsay
Chief Administrative Officer & Municipal Clerk



Province of Nova Scotia, County of Hants.

On this 12th day of December, 2023, before me the, subscriber personally came and appeared Rachel Gilbert, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that the Developer, one of the parties thereto, signed, sealed and delivered the same in his/her presence.

Marlee Langille
A Commissioner of the Supreme Court of Nova Scotia

Marlee Langille
A Commissioner of The
Supreme Court of Nova Scotia

Province of Nova Scotia, County of Hants.

On this 18th day of December, 2023, before me, the subscriber personally came and appeared Sheralee Mae Ewan, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that Kim Ramsay, CAO & Municipal Clerk, signing authority for the Municipality of East Hants, one of the parties thereto, signed, sealed and delivered the same in his/her presence.

Jenna Robar
A Commissioner of the Supreme Court of Nova Scotia

Jenna Robar
A Commissioner of The
Supreme Court of Nova Scotia

Schedule A

Deed Description of Property

Parcel Description for PID 45084969

Registration County: HANTS COUNTY

Street/Place Name: ELMSDALE

Title of Plan: PLAN SHOWING LOTS "C" AND "D" SUBDIVISION OF LANDS OWNED BY JAMES HINES, ELMSDALE, HANTS CO., N.S.

Designation of Parcel on Plan: LOT C AS ADDITION TO LOT B

Registration Number of Plan: 196802660591

SUBJECT TO an Easement in favour of the Municipality of the District of East Hants recorded as Document Number 111752219.

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HANTS COUNTY

Registration Year: 1968

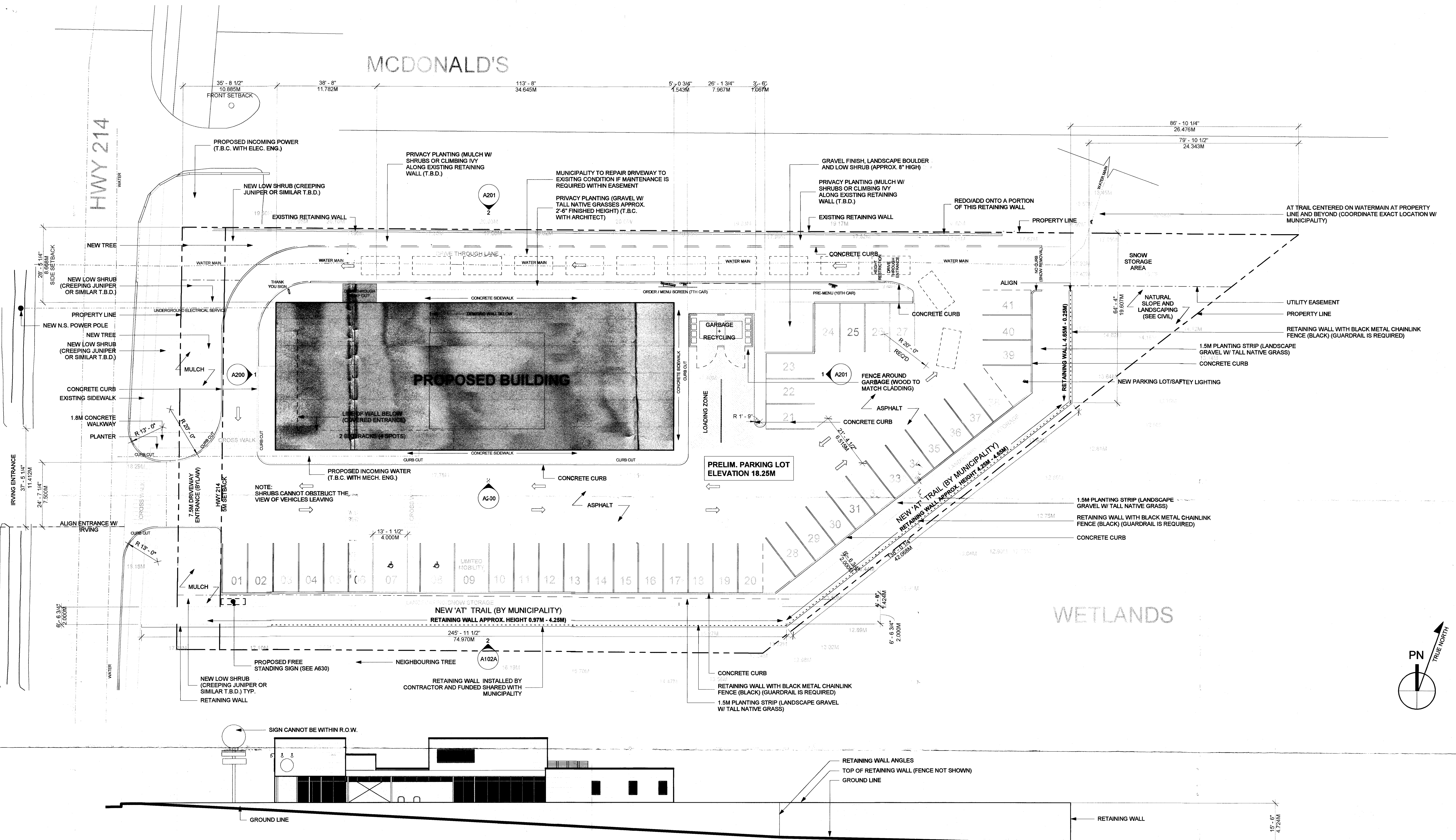
Plan or Document Number: 196802660591

**Development Agreement:
3337637 Nova Scotia Limited and the
Municipality of East Hants**

Schedule B

Site Plan

MCDONALD'S



Copyright: The use of this drawing shall be covered by standard copyright law. This drawing may not be used for any purpose other than the stated project.
Requirements and Approvals: It is the Submitter's responsibility to obtain prior written approval for changes to materials or workmanship which deviates from the instructions provided for these documents.
Authorities Requirements and Approvals: All materials and workmanship must comply with the National Building Code of Canada, present edition, and with the requirements of all authorities having jurisdiction over the work. It is the Submitter's responsibility to obtain necessary approvals and inspections from relevant authorities.
Disclaimer: All dimensions must be verified on site. Do not scale drawings. If discrepancies exist notify the designer. All minimum dimensions must comply with the National Building Code of Canada.

RHAD ARCHITECTS
 "DESIGN IT RHADICALLY"
 RHAD/CA
 902-464-8095
 63 KING ST.
 DARTMOUTH, NS, B2Y 1R7

This is a Document Attachment
 See Document # 123649817

LEGEND/SCHEDULE:
 HANTS COUNTY LAND REGISTRATION OFFICE
 I certify that this plan was registered or recorded as shown here.
 Cheryl Wagner, Regional Registrar
 123649957 LR/R/RODD
 JAN 25 2024 15:10
 MM DD YYYY Time
 aw

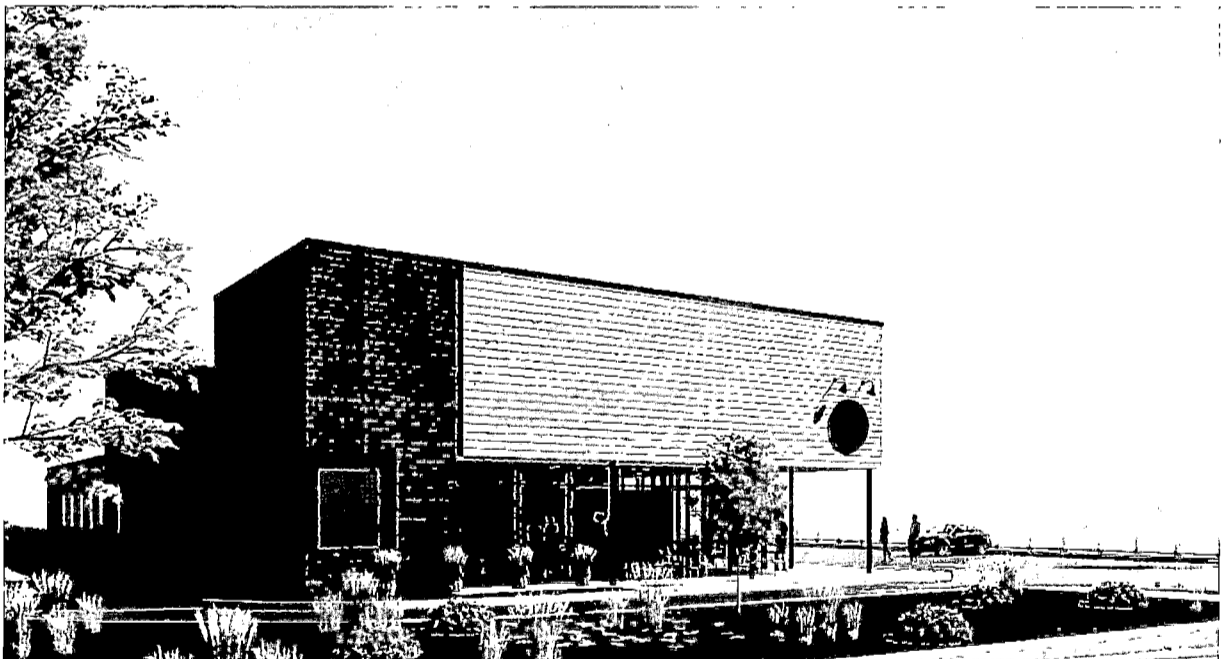
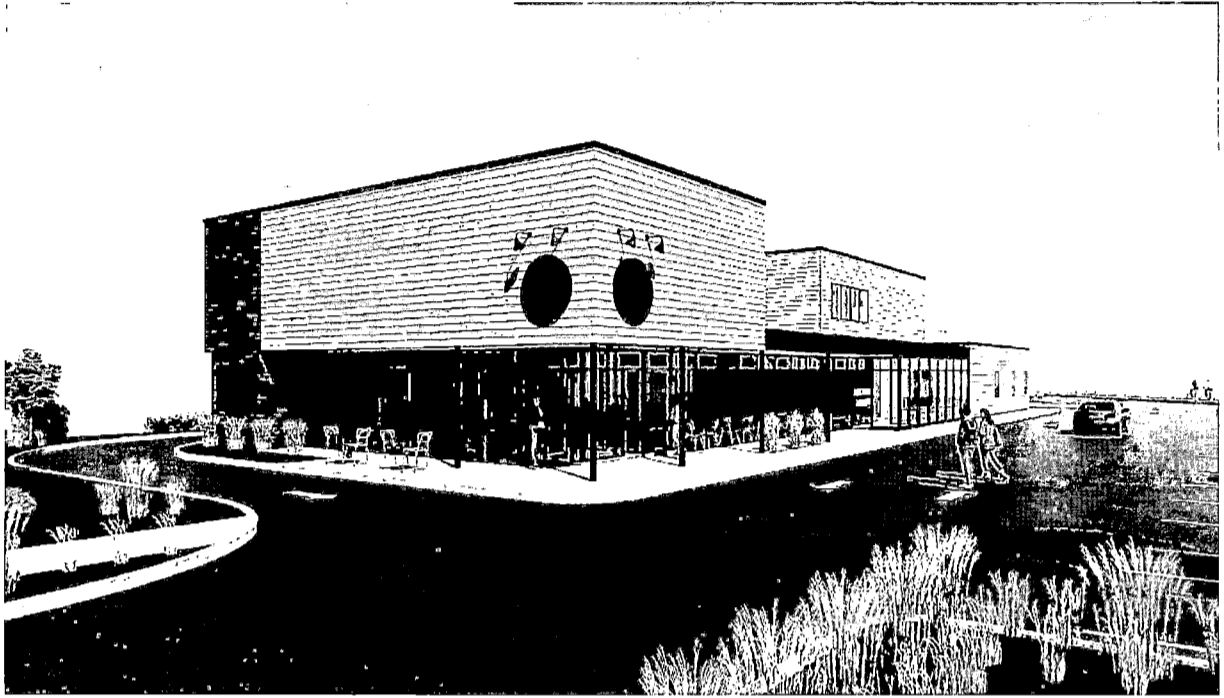
STAMP:

THIS ISSUE:
 FOR MUNICIPAL REVIEW (NOT FOR CONSTRUCTION)

PROJECT: ELMSDALE MIXED USE BUILDING		DRAWING TITLE: SITE PLAN	
251 HWY 214 ELMSDALE, NS B2S 1J1		DRAWN BY: DF, CG	DRAWING NUMBER: A102A
DATE: JUNE 07/2023		REVISION:	
SCALE: AS NOTED		ISSUED FOR DA: 2023.01.31	

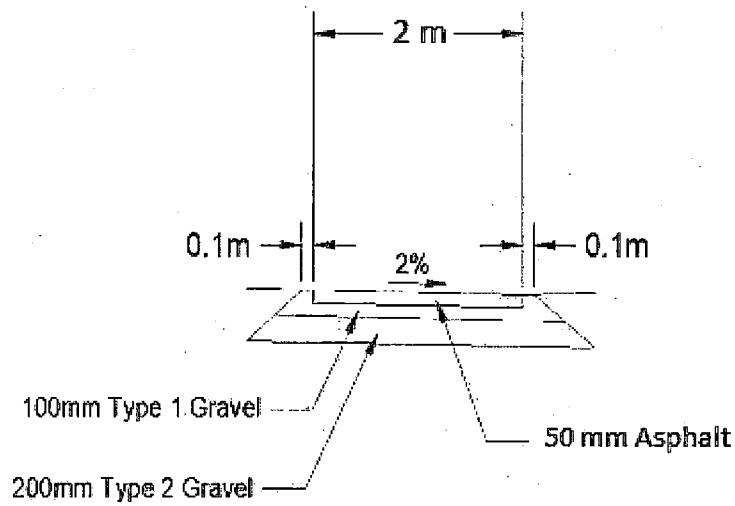
Schedule C

Rendering Drawings of multi-premise commercial building



Schedule D

Active Transportation Standard



Notes:

1. Dimensions shown are considered the minimum acceptable.
2. Use of proposed materials and associated thicknesses, compaction, placement, etc. to be supported by a geotechnical report.
3. Backfill material to be approved by a Geotechnical Engineer.