



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

Item No. 8.2.1
Halifax and West Community Council
January 20, 2015

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: December 11, 2014

SUBJECT: Case 19063: Appeal of Variance Refusal - 5236 Kent Street, Halifax

ORIGIN

Appeal of the Development Officer's decision to refuse a request for a variance.

LEGISLATIVE AUTHORITY

HRM Charter. Part VIII, Planning and Development

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

A variance request has been submitted for the property at 5236 Kent Street, Halifax, to permit the existing multi-unit dwelling to be renovated and expanded to accommodate a total of nine dwelling units. In order to facilitate this project, a variance has been requested to relax the maximum permitted lot coverage. The property is currently developed with a multi-unit dwelling comprised of eight units.

Site Details:

Zoning: R-3 (Multiple Unit Dwelling) Zone, Halifax Peninsula Land Use By-law

	Zone Requirement	Variance Requested
Maximum Lot Area:	40%	50.63%

For reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (Attachment A). The applicant subsequently filed an appeal of the refusal on (Attachment B) and the matter is now before the Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

In hearing a variance appeal, Community Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the Halifax Regional Municipality Charter. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

250 (3) A variance may not be granted if:

- (a) The variance violates the intent of the development agreement or land use by-law;*
- (b) The difficulty experienced is general to properties in the area;*
- (c) The difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

It is the Development Officer's opinion that this proposal violates the intent of the Land Use By-law.

Section 1.1.1.2 of the Halifax Municipal Planning Strategy states, "The Zoning By-law shall further define elements of scale, proportion, setback and use consistent with the policies of this Plan to ensure compatibility with the districts and neighbourhoods." The Land Use By-law carries out this intent through the application of zones containing various provisions

including lot coverage. This variance request proposes to increase the amount of lot area occupied by buildings on this property by almost 11%. The By-law requirements regarding open space are quite specific and are intended to ensure that an appropriate proportion of landscaped area or open space is retained for these types of land uses. By increasing the lot coverage, the amount of open space will be reduced which will violate the By-law's intent relative to neighbourhood compatibility.

2. Is the difficulty experienced general to the properties in the area?

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The area consists of a mixture of large and small multi-unit dwellings. Within the 30 m notification area (Map 1) there are a total of 23 residential properties. Out of these 23 properties, eight are developed with a lot coverage in excess of 40%. Therefore, the difficulty is general to the properties in the area and the Development Officer refused the variance request.

3. Is the difficulty experienced the result of intentional disregard for the requirements of the Land Use By-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case in this request. The applicant has applied for a variance prior to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the refusal of the variance request.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Community Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment B) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
There is an increased demand for new apartment units and therefore an extreme need to renovate these types of structures.	The maintenance of older structures is important to meet the intent of the MPS. This is supported by the R-2A Zone provisions which permit conversion and additions to existing structures and increased lot coverage from the typical 35% to 40%. The Land Use By-law could be met and the same number of units could be achieved by reducing unit size and changing the design.
The renovation will bring an attractive look to the street.	Building aesthetics are not a consideration in the approval or refusal of a variance request.

Section 10(3)(b)(i) of the land use by-law should apply. That section permits 50% lot coverage for two or more buildings in the R-2A Zone.	That section of the By-law pertains to the development of multiple main buildings on a lot, not a single structure, and is therefore not applicable to the subject proposal. In application, this provision along with the R-2A siting and height requirements, would result in a significant reduction of the bulk of each building.
There are five properties in the area with lot coverage equal to or greater than 50%.	The notification area consists of 23 properties and 15 of the 23 do not exceed 40% lot coverage.

Staff reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was denied as it was determined that the proposal did not meet the statutory criteria provided by the *HRM Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance request.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the HRM Charter. Where a variance refusal is appealed, a hearing is held by Community Council to provide the opportunity for the applicant and assessed property owners within 30 metres of the subject property to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Community Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance.
2. Community Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

Map 1

Notification Area

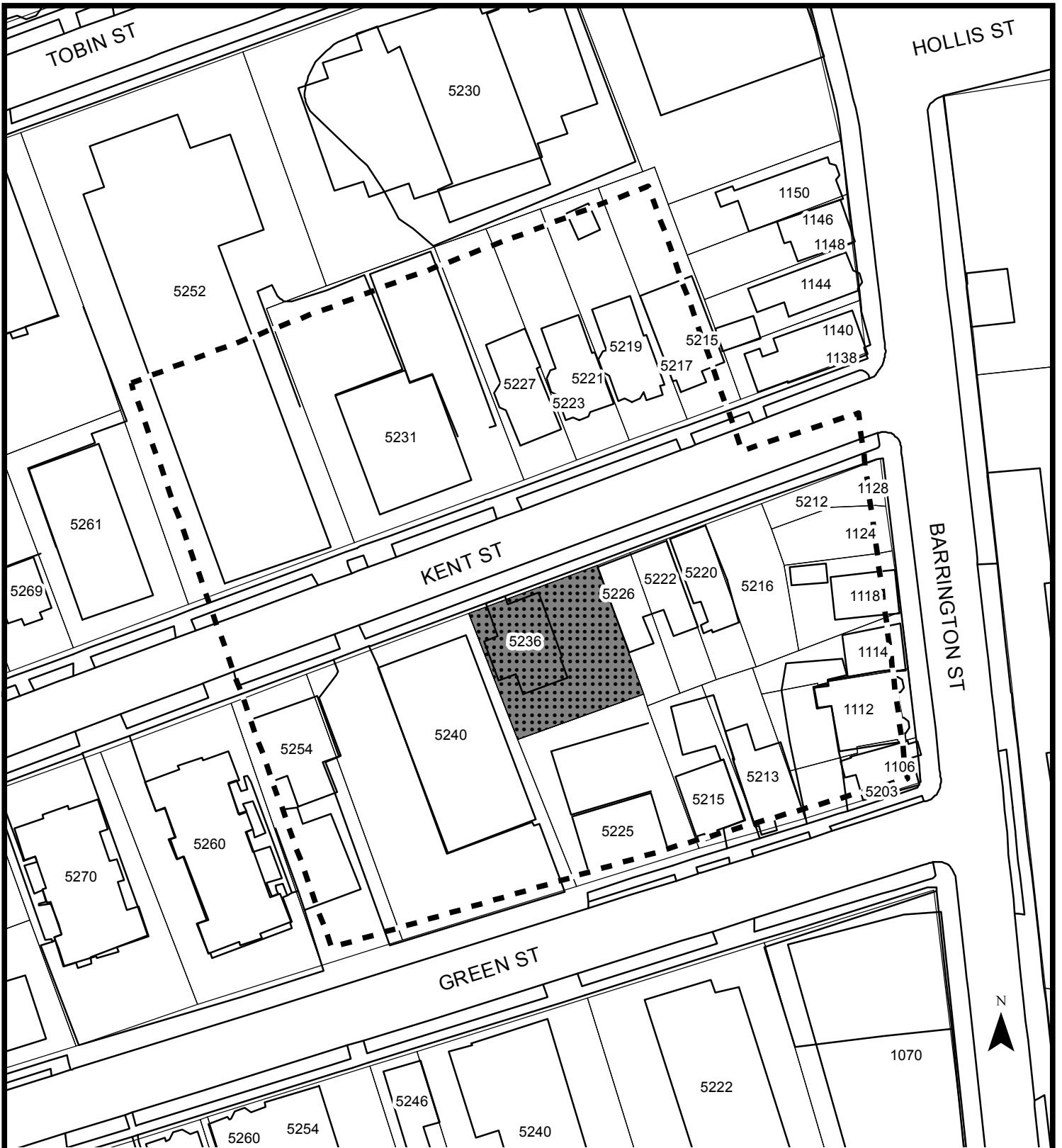
Map 2	Site Plan
Attachment A	Variance Refusal Notice
Attachment B	Letter of Appeal
Attachment C	Proposed Building Elevations

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Connie Sexton, Development Technician, 902-490-1208
Andrew Faulkner, Development Officer, 902-490-4341

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902-490-4800



Map 1 Notification Area

5236 Kent Street,
Halifax



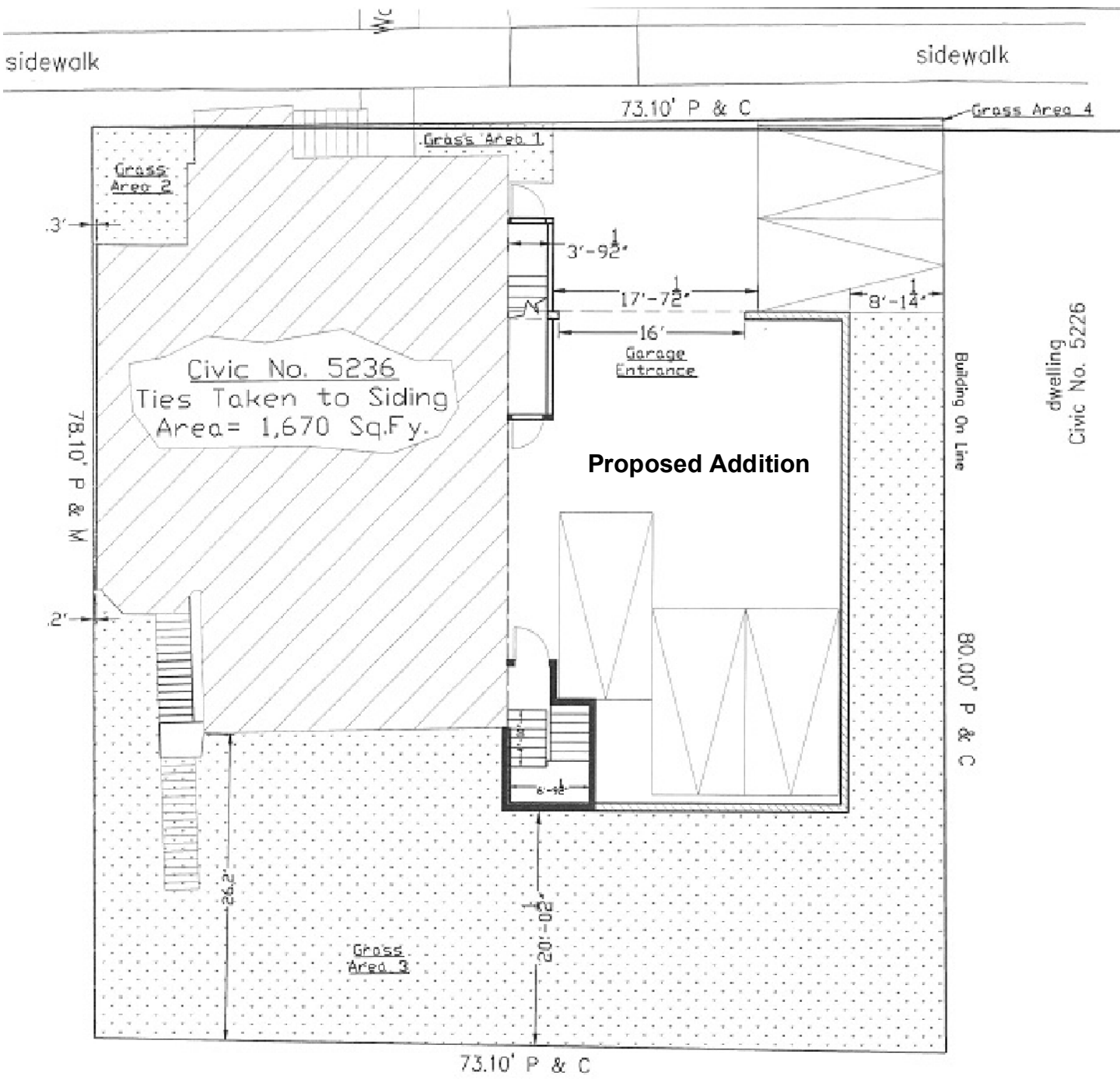
Subject Property



Notification Area

HALIFAX

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



dwelling
Civic No. 5226

Map 2 Site Plan

5236 Kent Street,
Halifax

HALIFAX

Unknown Scale

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

Attachment A - Variance Refusal Notice



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

May 26, 2014

Simor Holdings Ltd.

Dear Ranjbarzadeh:

RE: Application for Variance # 19063 – 5235 Kent Street

This will advise that I have refused your request for variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location:	5236 Kent Street
Project Proposal:	Addition to Existing Multi Unit Dwelling
Required Lot Coverage:	40 %
Refused Variance:	50.63 %

Section 250(3) of the *Halifax Regional Charter* states that:

No variance shall be granted if:

- (a) the variance violates the intent of the development agreement or land use bylaw;
- (b) the difficulty experienced is general to properties in the area; or
- (c) the difficulty experienced results from the intentional disregard for the requirements of the development agreement or land use bylaw

It is the opinion of the Development Officer that this violates intent of the land use by-law as the 40% lot coverage is in place to ensure that the neighbourhood retains a certain amount of landscaped and/or open space. The R2A zone is very specific regarding open space. If the lot coverage is exceeded, the amount of open space will decrease.

As well, the difficulty experienced is general to properties in the area. Within the 30 m notification area, there are eight properties out of 23 that are over the 40% allowance for lot coverage. The area contains approximately 18 small lots that are constrained for development in the same manner as this proposed development. Therefore, the difficulty is general to properties in the area.

Pursuant to Section 251(5) of the *Halifax Regional Charter* you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Andrew Faulkner, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5**

Your appeal must be filed on or before **June 5, 2014**.

If you have any questions or require additional information, please contact Connie Sexton at 490-1208.

Sincerely,

Original signed

**Andrew Faulkner
Development Officer**

cc. **Cathy Mellett, Municipal Clerk
Councillor, Waye Mason**

Attachment B - Letter of Appeal

02 June 2014

Mr. Andrew Faulkner
Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
P.O.Box 1749
Halifax, NS B3J 3A5

Dear Mr. Faulkner:

Re.: Application for Variance # 19063 – 5236 Kent Street

This is to appeal the Development Officer’s refusal to our request for a variance from the requirement of Land Use Bylaw for the Halifax Peninsula.

Grounds of Appeal:

- Due to increase in Halifax Peninsula population and subsequently increase in demand for new apartment units, furthermore, an extreme need to renovate old buildings in this area, our client, by submitting a proposal to renovate and build a new addition to existing building, is willing to contribute to meet this need. We believe this renovation brings an attractive look to this street which is in the heart of downtown.
- Based on Explore HRM website the original zoning of 5236 Kent St. Property is R3, however in accordance with Section 44(1)(aa) of Land Use Bylaw for the Halifax Peninsula the South End Area could be fall into R-2A zoning requirements. In accordance with Section 10(3)(b)(i) of R-2A zoning bylaws “the combined lot coverage of the buildings (Existing Building and Proposed Building) shall not exceed 50%” which our proposed development plan is asking for 50% of maximum lot coverage. We believe that the existing and new building with both residential and office uses will fall in to this section of R-2A bylaw requirements.
- Based on our research on maximum lot coverage in the neighbourhood area of above property using Explore HRM website, the following results have been obtained:

<u>Property Civic Address</u>	<u>Existing Lot Coverage</u>
5222 Kent St.	%50
5226 Kent St.	%50
5220 Kent St.	%60
5252 Kent St.	%54

5293 Kent St. %71

It's understood that first two properties are old buildings however the rest of the above mentioned neighbourhoods relatively are newly constructed properties. Please note that the existing structure in 5236 Kent St. Property covers only %28 of the lot area. Which our proposed new building will add another %22 to the lot coverage. In total the lot coverage will not exceed the maximum lot coverage based on Section 10(3)(b)(i) of R-2A zoning bylaws.

We hope HRM grant the proposed development plan to our client, Simor Holdings Ltd. In return, Simor Holdings Ltd will assure to contribute its portion to redevelopment of Halifax Peninsula.

Please do not hesitate to contact us if there is any question(s).

Best,

Mohammad Ranjbarzadeh B.A.Sc. M.A.Sc. P.Eng.

Sr. Structural Engineer, Structural Engineering Dept.

Transportation, Infrastructure & Building Division

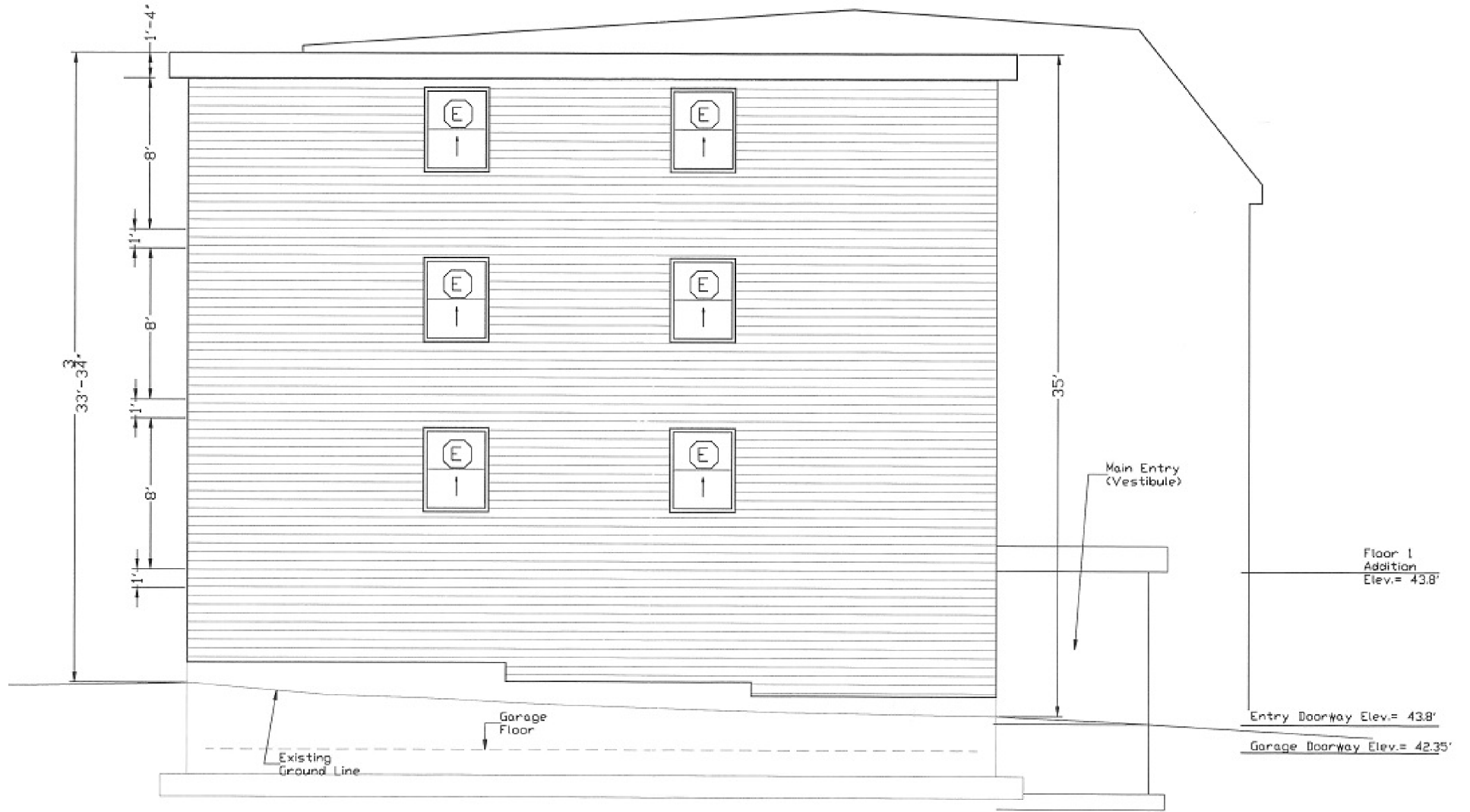
HEXA Engineering & Construction



Attachment C Front Elevation (North)
5236 Kent Street

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

Not to scale



**Attachment C Side Elevation (East)
5236 Kent Street**

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

Not to scale



**Attachment C Rear Elevation (South)
5236 Kent Street**

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

Not to scale