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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
December 12, 2005

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: December 7, 2005

SUBJECT: Appeal of the Development Officer's decision to approve an application for a Variance - 5850 University Avenue, Halifax

ORIGIN

Pursuant to Section 236(3) of the Municipal Government Act any person served notice of a variance may appeal the decision of the Development Officer to the Municipal Council.

This is an appeal of the Development Officer's decision to approve a variance for *5850 University Avenue, Halifax*.

RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to approve the variance.

BACKGROUND

The subject property is vacant and was once the site of the Grace Maternity Hospital. The property is presently used as a parking lot. Dalhousie University has a long term lease on the subject property and owns the land containing the Sir Charles Tupper Building immediately abutting this property. The intent is to connect the new Life Sciences Research Institute (LSRI) building with the Tupper Building at the fourth floor level.

The proposed LSRI building is on property zoned P, *Park and Institutional*, in the Peninsula Land Use Bylaw. The use is permitted within the zone subject to the angle control provisions of the R-3, *Multiple Dwelling Zone*. The Tupper Building is on land zoned U-2, *High-Density University*.

On August 8, 2005, the Development Officer approved a Variance of the angle control requirements and the setback provisions to permit construction of the LSRI building wall at zero lot line setback. The variance also relaxes the setback of the connecting walkway to zero feet. We received an Appeal of the Development Officer's approval of the Variance from the owner of 5845 College Street, which is situated immediately across the street from the proposed LSRI building.

This variance appeal hearing has been delayed since September as the appellant and applicant have been in discussion over design.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

"A variance may not be granted where the:

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

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw ?

Angle controls were introduced in the Halifax Peninsula Land Use Bylaw in the late 1960's as a means to address siting and scale issues with multi-unit residential dwellings. At the same time, provisions regulating lot area, population density and open space were adopted. The objectives were to regulate the intensity and form of residential development to strike an acceptable middle point between the desires of developers for maximum use and the desires of residents for good environments.

The LSRI building property is in the P, *Park and Institutional Zone* which does not permit residential uses, however, it does require that all buildings constructed for P uses comply with the angle control provisions the R-3 *Multiple Dwelling Zone*. As there is no residential component to the proposed LSRI building the R-3 provisions respecting density and open space are not applicable.

The building complies with the angle controls on all sides and the street line, but the internal lot line abutting the Tupper Building property, property under ownership of the University. The research use and staff of the LSRI building is closely aligned with the research use and staff in the Tupper Building and a connection between the two structures is practical for access and sharing of building services.

Further; turning and relocating the building to the centre of the lot will result in the loss of the majority of the existing parking spaces. Maintaining as much parking as possible in that area is important.

The Development Officer determined that the intent of the bylaw is not violated by granting the variance to zero lot line setback between the Tupper Building property and the LSRI property.

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

The property is unique in that it is the largest parcel of vacant land with the appropriate zoning in the vicinity of the university. It is the only vacant land in proximity of the Tupper Building.

The Development Officer determined that the difficulty experienced is not general to properties in the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

No work has been initiated and there has been no intentional disregard for the requirements of the bylaw.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to approve the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer.

ATTACHMENTS

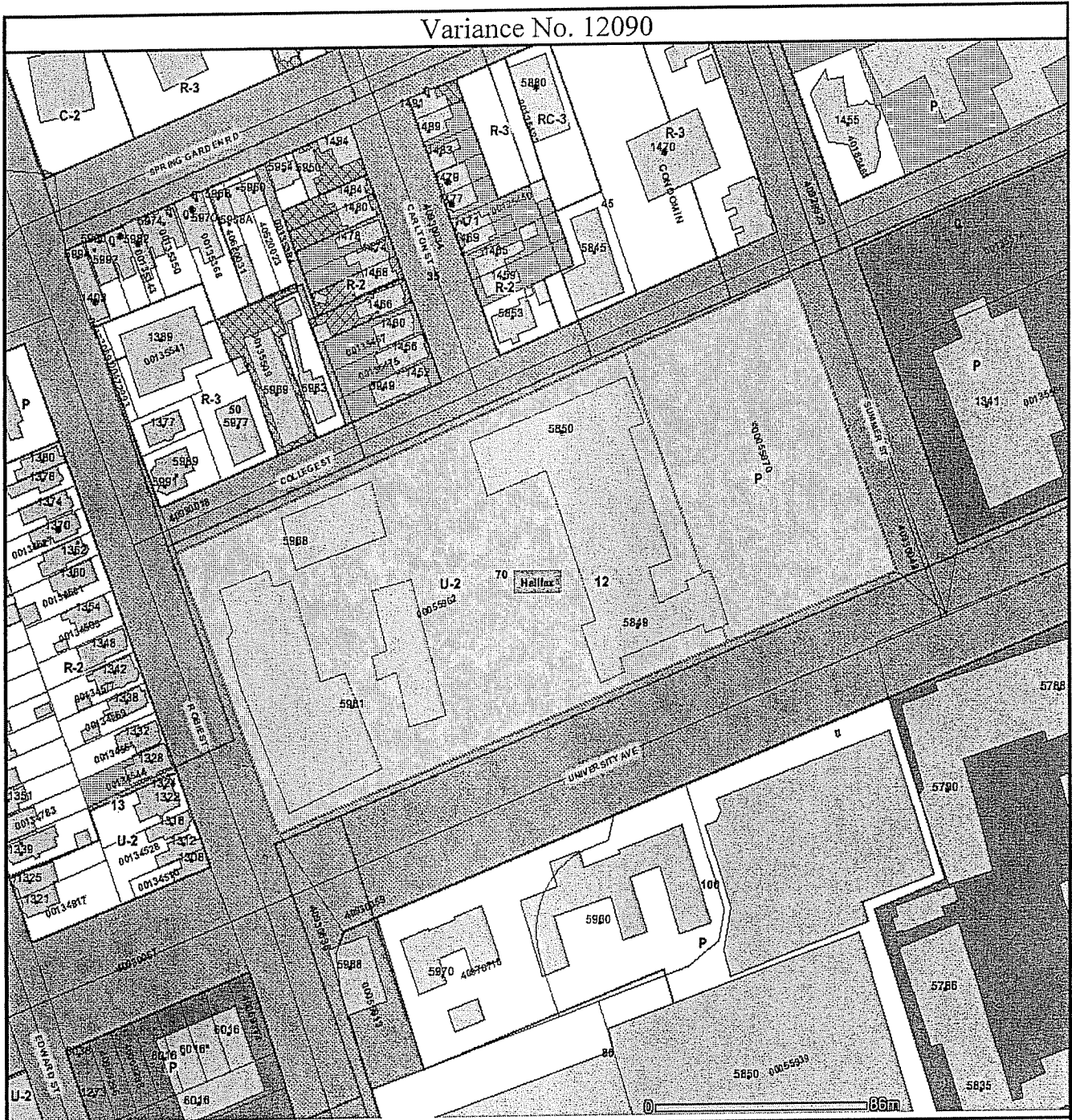
1. Location Map
2. Site Plan
3. Building Elevations
4. Appeal letter dated August 22, 2005, from Mr. Austin Park, President, College-Gardens Ltd.

INFORMATION BLOCK

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andrew Faulkner - Development Officer (490-4402)

Variance No. 12090



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email

AREA OF
PROPOSED
VARIANCE

COLLEGE STREET

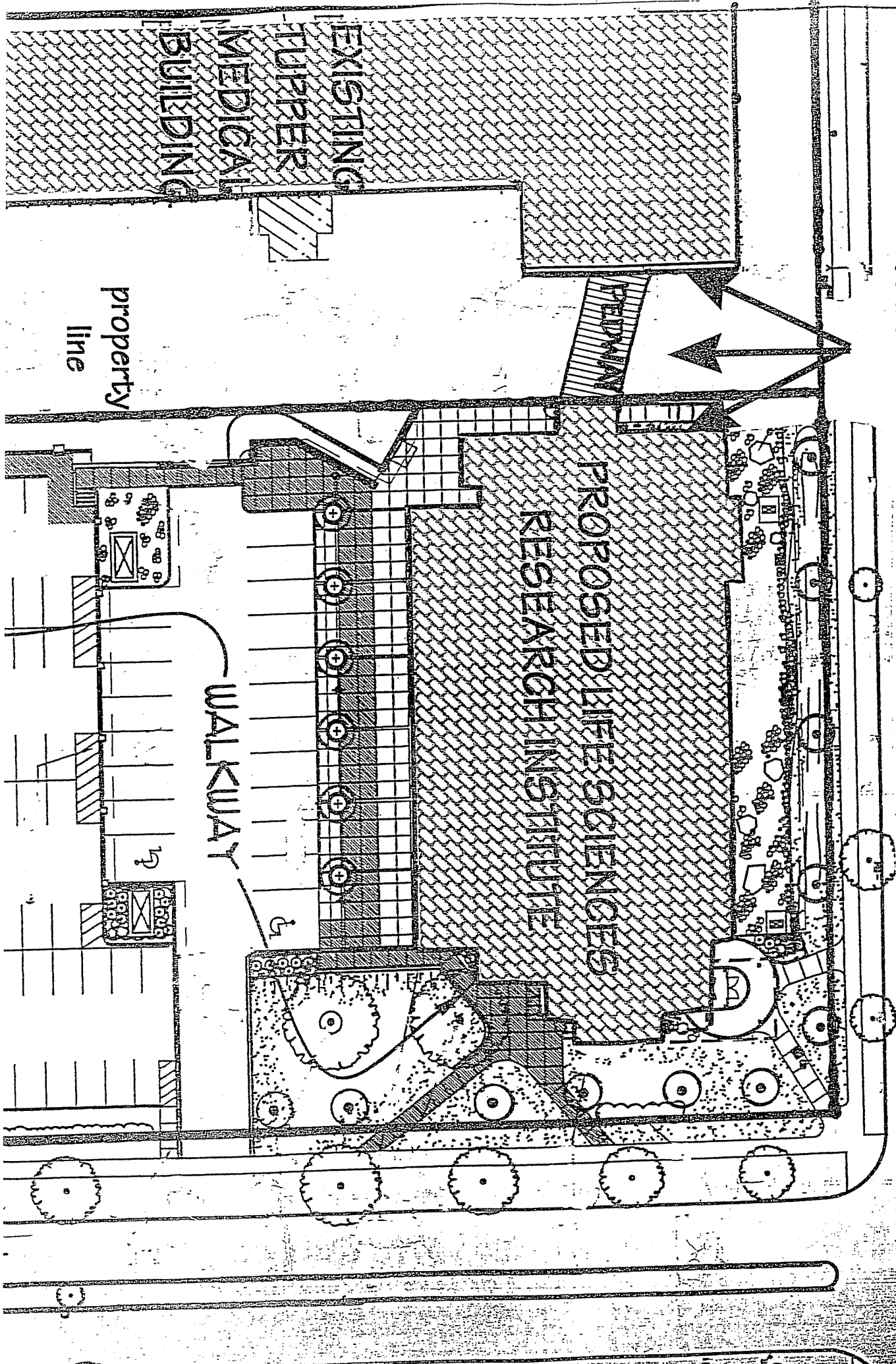
PROPOSED LIFE SCIENCES
RESEARCH INSTITUTE

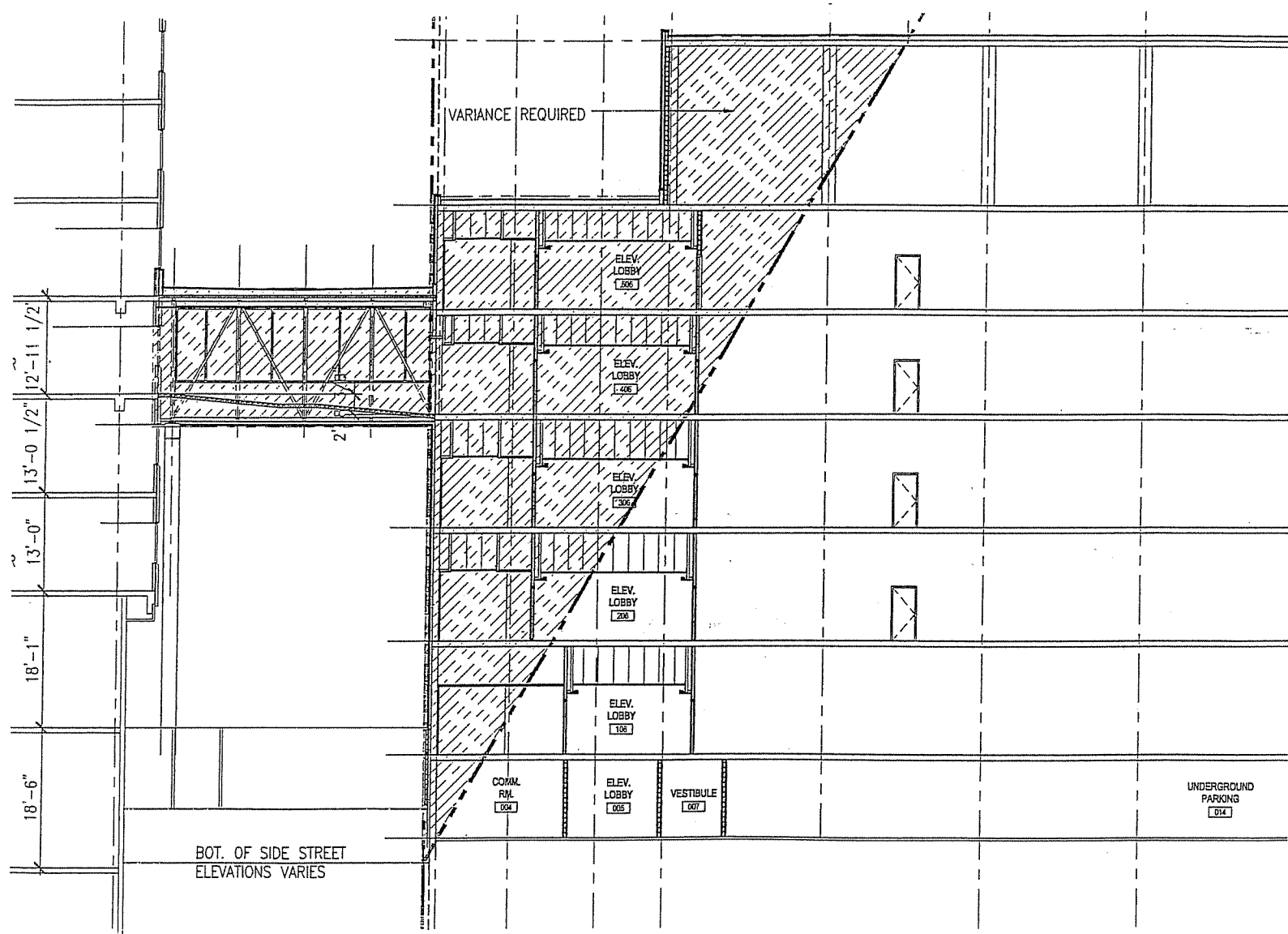
EXISTING
TUPPER
MEDICAL
BUILDING

TRIVIA

WALKWAY

property
line





Austin Park, President
College-Gardens Limited
c/o 6507 Chester Ave.
Halifax, NS
B3L 2P5
497-7788

Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Planning and Development – Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5

August 22, 2005

Dear Sir:

Re: Case Number 12090 –Variance at 5850 University Ave., Halifax, NS

I am President of College Gardens Limited, the owner of 5845 College Street, Halifax, NS, a multi-unit residence.

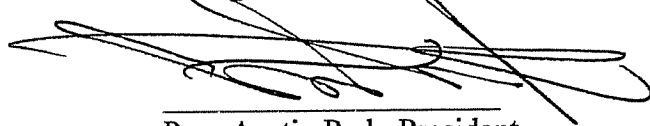
Please accept this letter as notice that we would like to appeal the proposed variance pertaining to the property located at 5850 University Avenue, Halifax, NS.

We have a number of concerns relating to the proposed variance and would be pleased to discuss same with you at your convenience.

Please notify us of any further proceedings with regard to this matter at the address and telephone number noted above.

Yours truly,

College-Gardens Limited



Per: Austin Park, President

RECEIVED AUG 23 2005

