

8.2.2



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
May 10, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner, Development Officer

DATE: April 29, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 5644 Kane Street

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot area, left side yard setback, front yard setback, and lot coverage requirements of the Halifax Peninsula Land Use By-law to permit the construction of a commercial (restaurant) building with two residential units.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

The subject property is located at 5644 Kane Street in Halifax (see location plan - Attachment 1). The property is zoned C-1 under the Halifax Peninsula Land Use By-law. On March 11, 2010, a Development Permit application was received to construct a commercial building with two residential units.

Currently, there is an existing commercial building with one residential unit located at 5644 Kane Street. This building encroaches over the left side property line. The applicant is proposing to demolish the existing building and construct a new commercial building with two residential units. Although there is an existing building there, the left side property line is not grandfathered, as the HRM Charter states that if a non-conforming structure is demolished more than 75% of the market value above the foundation, then it can only be rebuilt in accordance with the applicable land use bylaw provisions. The left side yard setback requirement for the commercial use is 5 feet and the requested reduction is 2-10". Furthermore, the minimum lot size for a commercial use is 4,000 square feet and the lot is only 2,838 square feet (confirmed by a 2005 Location Certificate).

For the residential proposal, the minimum lot size requirement is 5,000 square feet, the minimum front yard setback is 15 feet, the maximum lot coverage is 35% and the minimum left side yard is 5 feet. The lot size is 2,838, the proposed front yard setback is 4.5 feet, the proposed lot coverage is 45.4%, and the proposed left side yard is 2'10".

The Development Permit application did not meet the requirements for the Land Use Bylaw. Subsequently, a Variance application was made on March 11, 2010. On April 12, 2010, the Development Officer refused the Variance application and the developer appealed that refusal.

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 ?

The intent of the bylaw is to have a minimum lot size for particular uses, setbacks to separate more intense uses, and maximum lot coverages to provide open space on a lot for increased safety and improved esthetics. The applicant is proposing to reduce the lot size by almost half of what is required, reduce the front yard setback to less than 1/3 of the requirement, the left side yard setback by nearly 1/2 of the requirement, and increase the lot coverage by over 10%. These combined

requests, especially the request to increase lot coverage on an undersized lot, leads to a proposal that is too large on a small lot with an intense commercial (restaurant) and two residential uses. A variance for replacement of the existing uses (one commercial and one residential) could be supported at that non-conforming use has existed since prior to 1920.

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

The difficulty experienced is general to the properties in the area. Although this property is zoned C-1 and the commercial use cannot be compared to the residential properties in the area, in order to have two residential units, the requirements of the R-2 Zone would apply. Most properties in this area are zoned R-2 and have similar lot sizes. Therefore, most properties may require a variance to have two units and difficulty is general to the properties in the area.

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

There is no intentional disregard for the requirements of the land use bylaw.

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 could uphold the decision of the Development Officer to refuse the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with the construction of a commercial building with two residential units.

ATTACHMENTS

1. Location Plan
2. Zoning Map
3. Letter of Appeal from the Applicant
4. Site Plan
5. Elevations

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.

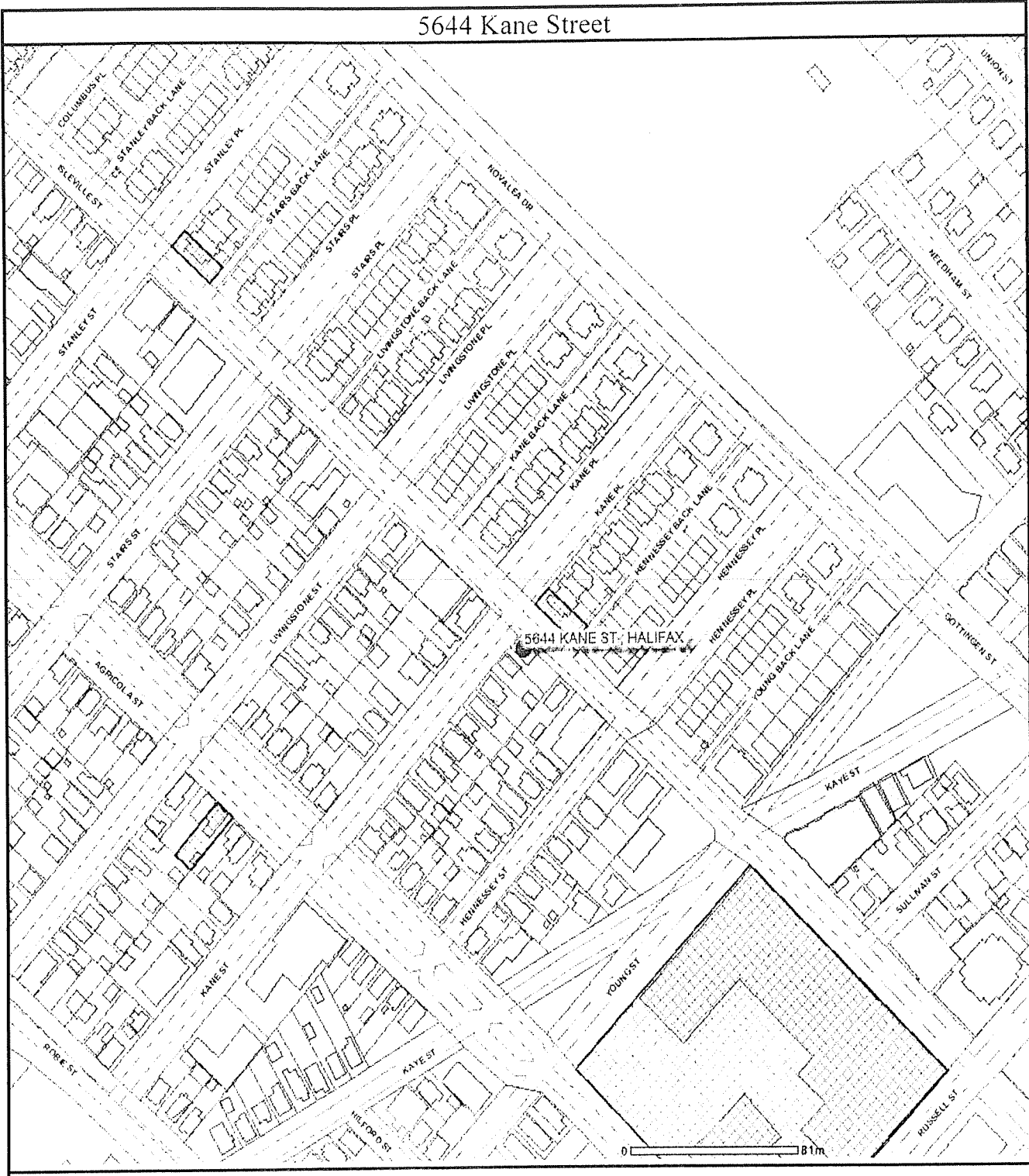
Report Prepared by : Shilo Gempton, Development Technician, 490-6796



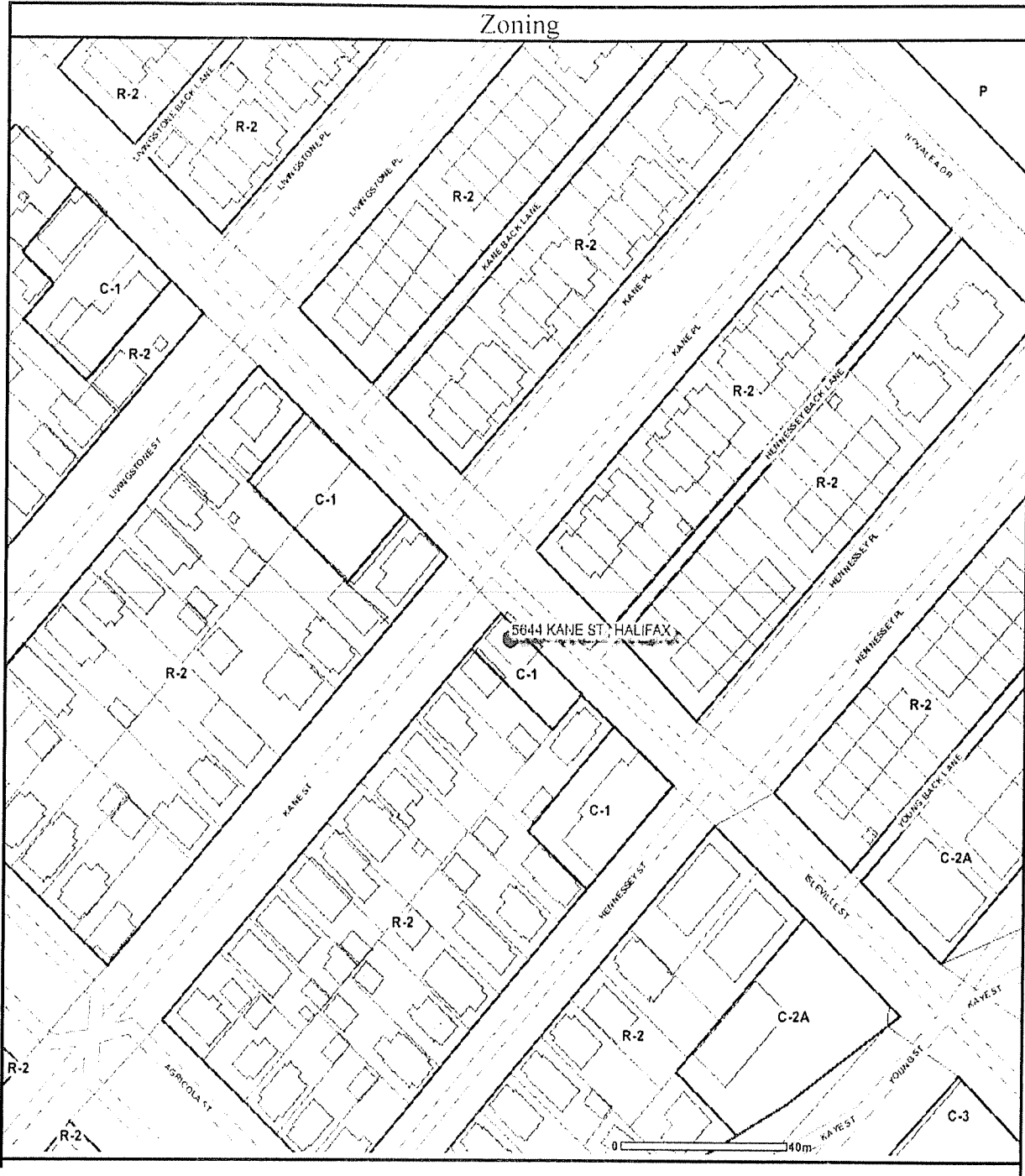
Report Approved by: Andrew Faulkner, Development Officer, 490-4402

ATTACHMENT 1 - LOCATION PLAN

5644 Kane Street



ATTACHMENT 2 - ZONING MAP



ATTACHMENT 3 - LETTER OF APPEAL

Lucien Nehme

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

Re: Case No. 15973 -- Variance at 5644 Kane Street, Halifax, NS

I am appealing the recent decision dated April 12/10 by the HRM, to replace the existing building at civic location 5644 Kane Street with a new building as described in proposed plans prepared by Kassner Goodspeed, Architects (as previously submitted to you) for the following reasons.

The construction of the present building and my business, Willman's Fish and Chips, pre dates the Halifax Explosion and was never built to the high standards of the post explosion Hydrostone development, or to present day national building codes.

Consequently, the building, despite two major maintenance projects in the last 6-8 years (roofing, exterior painting, windows, kitchen equipment, flooring, insulation, drywall, interior doors, bathroom and finish work), the building foundation, some structural framing, the main entrance way and back porch and steps are in need of significant and costly repairs to preserve the building and continue to operate my popular business in north end Halifax.

My proposal to HRM, was to replace this dated structure with something more modern, energy efficient, and attractive in the neighbourhood so I can offer better services and products to the public who have supported this long established and well known eatery (c. 1946) since it has operated in this location for over the last 60 years.

If approved, I believe this project would represent a Win, Win, Win redevelopment [project as further described.

- 1) If the building were newly constructed as proposed, I would be getting a much needed modern building with new kitchen, improved dinning, an added public washroom, required storage areas, along with an apartment on the upper level for my new family, and one other rental property to help offset the cost of the new construction.

- 2) For the neighbourhood and adjacent home owners, they would benefit from a modern and sensitively designed building to this residential area, and that would improve their property values and encourage other residents to do the same.
- 3) And, for the HRM, the city would benefit from not only a new more efficient and much improved looking structure in this north end community, but when completed, would generate higher property tax revenues for the HRM as a result of the overall site improvement.

I feel the architect's design proposal (with the minor variances proposed) is a conscientious one and would accomplish all the benefits described above.

On a separate attached sheet, I am providing a list of the names of my surrounding neighbours (within an approximate 30 meter radius) who I have met with, and described my development proposal as illustrated in the plans before your department. As you can see, the support for what I have submitted to the HTM has been received with *major support* from the surrounding community residents, and this has convinced me to seek an appeal to your decision, so I can be granted the opportunity to proceed with further steps in attempts to be granted approval for the project submitted.

In order to proceed further in this venture, I need HRM to relax the proposed building constraints as respectfully presented in the redevelopment proposal by grandfathering some setback requirements, similar to that which presently exists, and permitting the gross floor area to remain as proposed.

I thank you for the opportunity to present this appeal submission for your consideration

Signed

A handwritten signature in black ink, appearing to read "C. Blumenthal", written over a faint horizontal line.

cc. Councillor Jerry Blumenthal, District 11

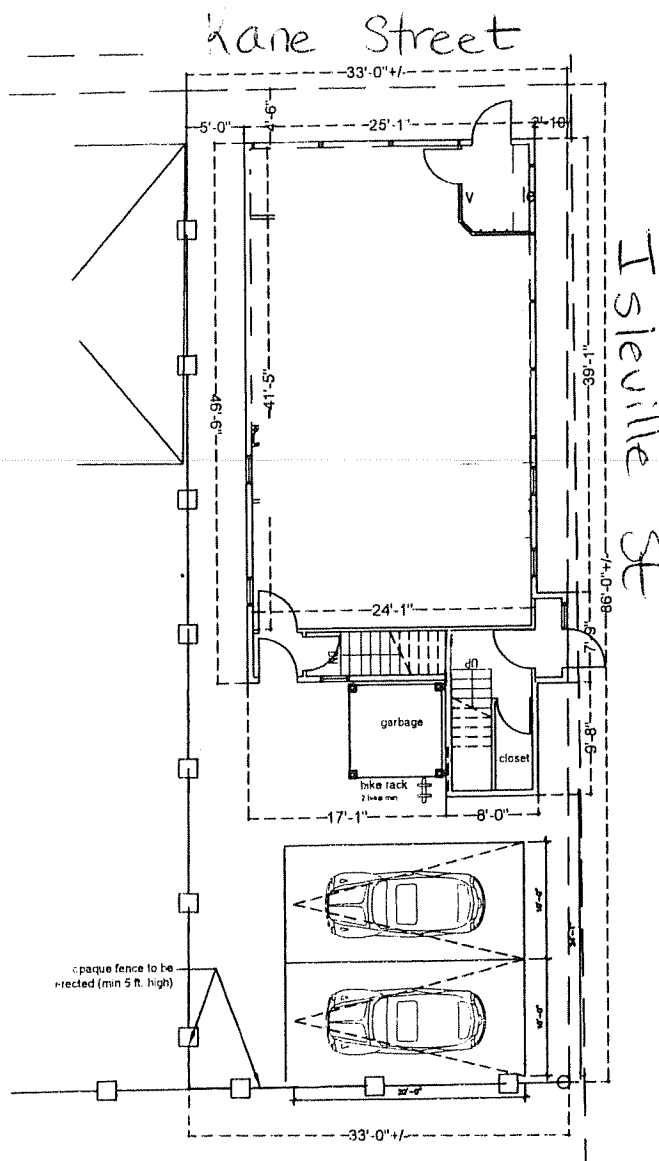
Willman's Fish & Chips, Case No. 15973 - Variance at 5644 Kane Street, Halifax, NS

To Construct a Restaurant and 2 Residential Units in place of the existing building by varying the lot area, setbacks and lot coverage as per attached letter from HRM dated April 12, 2010 along with proposed redevelopment plans.

Resident Name(s)	Civic Address	YES In Favour	NOT In Favour	Date Reviewed
W. J. Williams	5541 Kennebec St	✓		April 13, 2010
Barbara Wood	5552 Kane Place	✓		April 13, 2010
WARREN PESKETT	3144 ISLEVILLE ST.	✓		APR 13, 2010
Barbara Wood	3138 ISLEVILLE ST	✓		APR 13, 2010
K. D. Poiry	5576 KANE PL	✓		" " "
Alan Curtis	5535 Kane Pl	✓		April 13, 2010
Heather Sturgeon	5535 Kane Pl	✓		APR 13, 2010
Glenn & Nancy	5534 Kane Pl	✓		April 2010
W. J. Poiry	5551 Kennebec St	✓		April 13, 2010
KEVIN COLLINS	5545 HENNESSY PL	✓		APRIL 13, 2010
Elizabeth Fair	5652 Kane Street	✓		April 13, 2010
JUNG GOODMAN	5661 Kane St	✓		APR 13, 2010
Pauline Schuch	5676 Kane St	✓		" " "
Camie Miller	5680 Isleville St #104	✓		April 13, 2010
BENJIE HERNE	3150 Isleville St #106	✓		APRIL 14/10
Conny Lantieri	5545 Kane Pl	✓		April 14, 2010
Judith McWalt	5547 Kane Pl	✓		April 14, 2010
THE FOXWELL	3130 ISLEVILLE ST	✓		APRIL 14/10
W. J. Poiry	5533 Kane Pl	✓		April 14/10
Rob ROUER NEWMAN	3147 Agriola St	✓		April 14/10
Katherine McQueen	3147 Agriola St	✓		April 14/10
W. J. Poiry	5544A Kane Pl	✓		April 14/10
W. J. Poiry	5557 Kane Pl	✓		April 14/10
W. J. Poiry	5543 Kane Pl	✓		April 16/10
W. J. Poiry	5554 Kane Pl	✓		April 16/10
James McCallister	5527 Kane Place	✓		April 16/2010
Jennifer W. King	5527 Kane Place	✓		April 16/2010
Georgina Scott	5650 KANE ST	✓		April 16/2010
Michelle Scott	5650 KANE ST	✓		April 16/2010
MIKE HANSEN	5055 KANE ST	✓		APRIL 16/2010
W. J. Poiry	5676 Kane St	✓		APRIL 16/2010
W. J. Poiry	5555 Kane St	✓		April 16, 2010
W. J. Poiry	5555 Kane St	✓		April 16, 2010

Owner / Operator: Lucien Nehme

ATTACHMENT 4 - SITE PLAN



ATTACHMENT 5 - ELEVATIONS

ELEVATIONS

