



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 8.2.1
Halifax and West Community Council
September 15, 2015

TO: Chair and Members of Halifax West Community Council
Original Signed

SUBMITTED BY: Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: August 20, 2015

SUBJECT: Case 19213: Appeal of Variance Approval - 7171 Clinton Avenue, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (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 7171 Clinton Avenue, Halifax to permit the construction of a 77 unit apartment building as an addition to the rear of the existing building on the property (Map 1 and Attachment A). In order to facilitate this project, a variance has been requested to relax the angle control requirements along the northwest property boundary. The remainder of the proposed addition meets all other requirements of the Halifax Peninsula Land Use By-law (LUB). The property is an irregularly shaped lot developed with a mixed use building composed of a church facing Joseph Howe Drive and a community centre facing Clinton Avenue.

Site Details:

Zoning: C-2 (General Business Zone) Zone¹, Halifax Peninsula Land Use By-law

	Zone Requirements	Variance Requested
Minimum Left Side Yard Setbacks	68 feet, between storeys 2-11 73 feet, for storey no. 12	11 feet, between storeys 2-11 25 feet, for storey no. 12

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). A property owner within the 30 metre notification area has filed an appeal (Attachment C) and the matter is now before Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *HRM Charter*. As such, the *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?

The Halifax Peninsula Land Use By-law requires that angle control provisions be applied to multiple unit buildings to control such elements as building setbacks, massing and separation distances between external building walls. For this proposal, two angle control requirements are applicable; a 60 degree vertical angular plane and an 80 degree horizontal angular plane. The 60 degree vertical angle control is used in elevation to control building height while the 80 degree horizontal angle is used to control mass. The application of both angular planes to a building affects its setback from property lines. An illustration of the angle control requirements is contained in Attachment A.

¹ The C-2 Zone permits the development of R-3 (Multiple Dwelling) Zone uses subject to the requirements of the R-3 Zone

In addition to allowing residential uses, the General Business (C-2) Zone applicable to the property allows the placement and expansion of commercial buildings with minimal building setback requirements. Additionally, the property is subject to a number of restrictive easements which limit the existing building from being enlarged. There is a large easement at the rear with Nova Scotia Power, a long narrow easement along the northwester boundary with Maritime Life, and a large easement in the front along Joseph Howe Drive with the Halifax Water Commission (see Attachment C). If the easements were ever to become extinguished and the existing building removed, an apartment building could be constructed on the lot meeting all zoning requirements, including the angle controls (see Attachment E).

With the exception of the angle control along the northwest property boundary, the proposal meets all other land use by-law requirements including setbacks, angle controls, density, off-street parking and open space. Given the commercial development potential of the site and the constraints brought to bear by the existence of the various easements, there is merit in considering this variance request. It is the Development Officer's opinion that this proposal meets the intent of the land use by-law in providing an appropriate building setback from the abutting property.

2. Is the difficulty experienced general to 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 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.

There are nine properties within the 30 metre notification area which are primarily developed with commercial uses, and zoned C-2. The C-2 Zone allows for R-3 (multi-unit dwelling) uses. The buildings on the neighbouring property to north sit on a 7.5 acre lot, and the closest main building on that lot is approximately 170 feet away from the subject property. There are three properties to the south of the subject property, but none of them would be eligible to be developed with R-3 uses as they are deficient in lot area and would not be capable of meeting the standards applied by the R-3 Zone. The remaining properties in the area are zoned C-2, with the properties on the opposite side of Joseph Howe Drive zoned R-1. The subject property has an irregular shape and is unique to the area as it has an existing building which is intended to be retained, and has large easements surrounding it on three sides as mentioned previously. For these reasons it has been determined that the difficulty experienced is not general to the area.

3. Is the difficulty experienced the result of an 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 Development Permit in good faith and requested the variance prior to commencing any work on the property. Intentional disregard was not a consideration in approving this variance request.

Appellant's Appeal:

While the criteria of the *HRM Charter* limit Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment D) for Council's consideration. The following table summarizes these points and provides a corresponding staff comment:

Appellant's Appeal Comments	Staff Response
<i>The variance is too great and should require a development agreement if that is the objective to build a large high rise.</i>	The existing zoning allows the proposed use. If the easements on the property were eliminated and the existing structure demolished, then a new multi-unit building could be approved as-of-right (see Attachment E).
<i>Halifax appears to be spending time "planning" for areas in the city. I am not sure why we bother spending tax payer dollars on these "plans" if they are not followed or applied. Large variances defeat the purpose of these "plan" (existing bylaw).</i>	The Halifax Peninsula Land Use By-law has been followed and applied with the exception of the variance requested. The <i>HRM Charter</i> entitles a property owner to seek relief from the land use by-law through a variance request.
<i>Street parking and public parking is limited in this area given the recent scope of developments (ie. Craigmore). As a small business owner, I need my customers to be able to park and it is limited to non-existent now without the addition of more residents that would also require "visitor" street parking.</i>	The parking requirements for the proposal meet the requirements of the Halifax Peninsula Land Use By-law.
<i>There are several apartment buildings in the immediate vicinity- all along Quinpool Road by the roundabout up the Bay Road; and to the west beside the Manulife parkade, and now with Craigmore, the number is high. With increasing vacancies I do not feel a variance of this magnitude should be issued given there is no public benefit or obvious need to more apartments, requiring an exception.</i>	The criteria in considering a variance under the <i>HRM Charter</i> relate to the property which is being requested. The zoning permits the use and a public benefit is not a requirement under current zoning standards.
<i>Does the development proposed meet open space requirements? It looks like most of the lot is leased as commercial parking and would not be considered open space.</i>	The proposed development meets the open space requirements as laid out by the Halifax Peninsula Land Use By-law.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict with the statutory criteria for refusal provided by the *HRM Charter*. The matter is now before Halifax and West Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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 approval is appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellant(s) to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

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

ATTACHMENTS

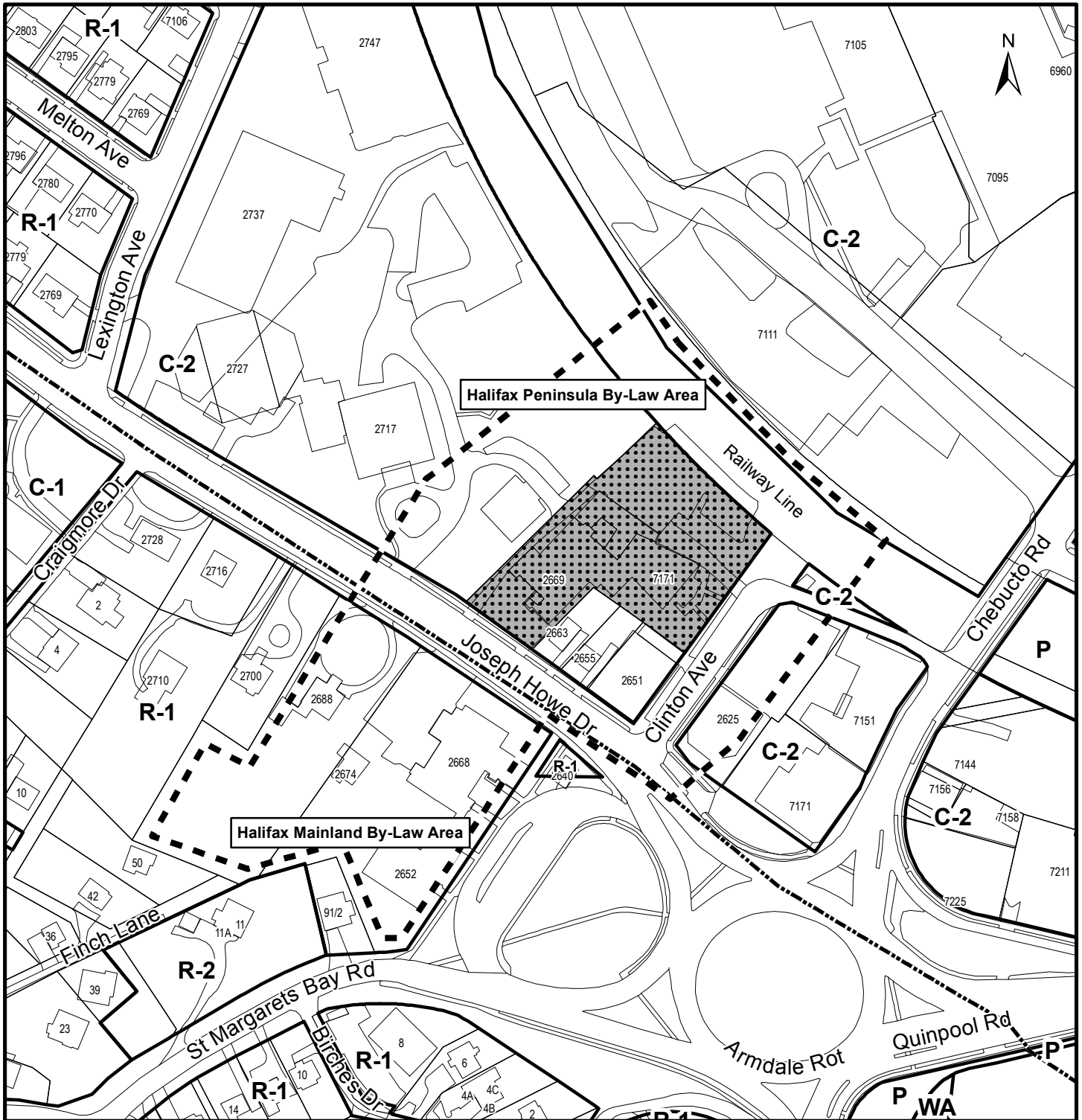
Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	West Elevation (Joseph Howe Drive)
Attachment B:	Letter – Variance Approval
Attachment C:	Site Plan - Easements
Attachment D:	Letter of Appeal
Attachment E:	Concept Design - Development Study

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 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Stephanie A. Norman, Development Technician, 902.490.7455

Original Signed

Report Approved by: Kelly Denty, Manager, Development Approvals, 902.490.4800



Map 1 - Zoning and Notification

HALIFAX

7171 Clinton Avenue
Halifax

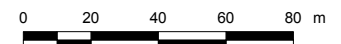
Halifax Peninsula Zones


- R-1 Single Family Dwelling
- C-2 General Business
- P Park and Institutional

Halifax Mainland Zones

- R-1 Single Family Dwelling
- R-2 Two Family Dwelling
- C-1 Local Business
- P Park and Institutional
- WA Water Access

 Subject Property

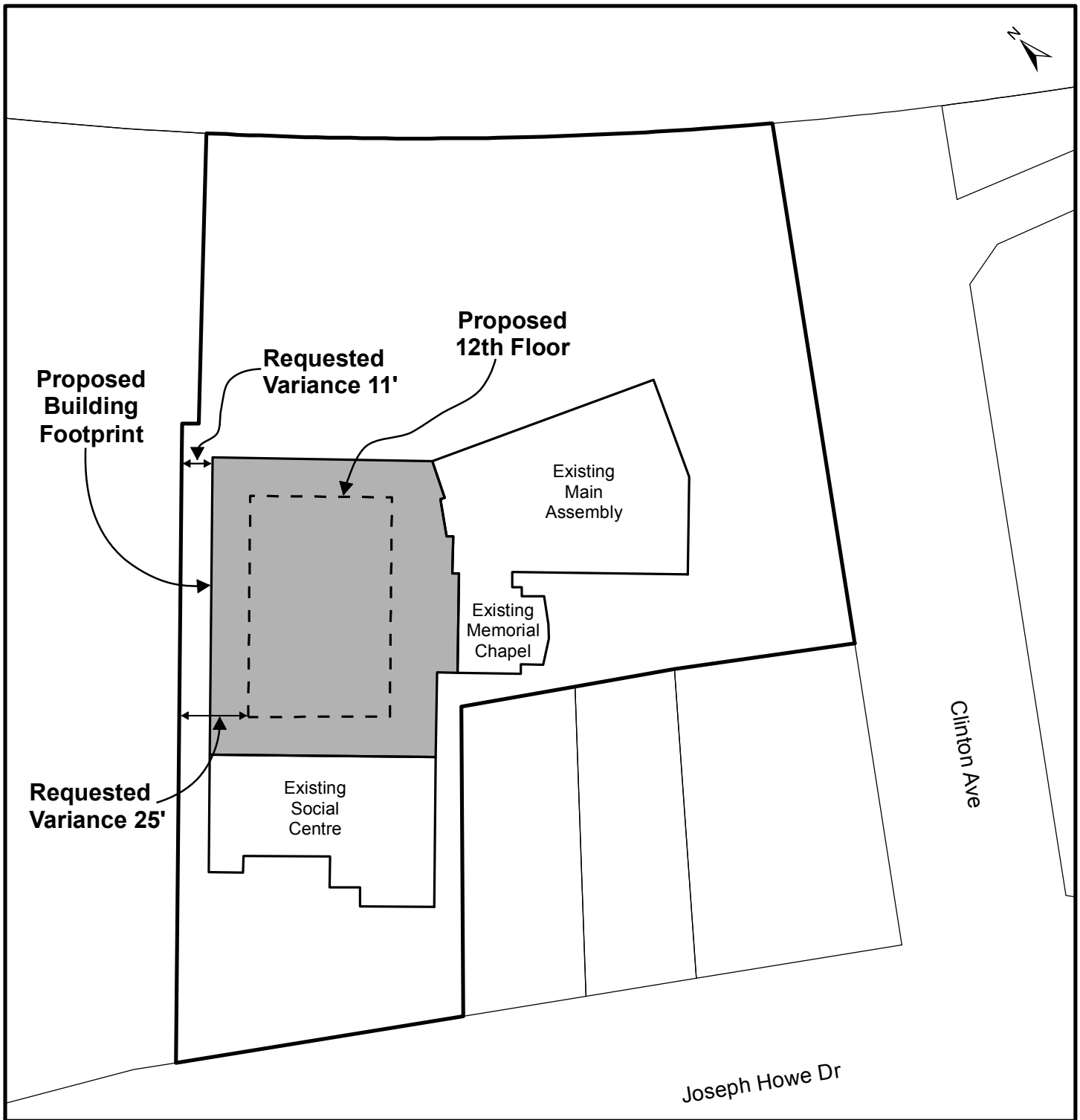


 Area of notification

This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

Halifax
Plan Area


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

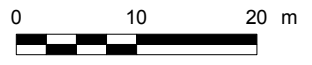


Map 2 - Site Plan

7171 Clinton Avenue
Halifax

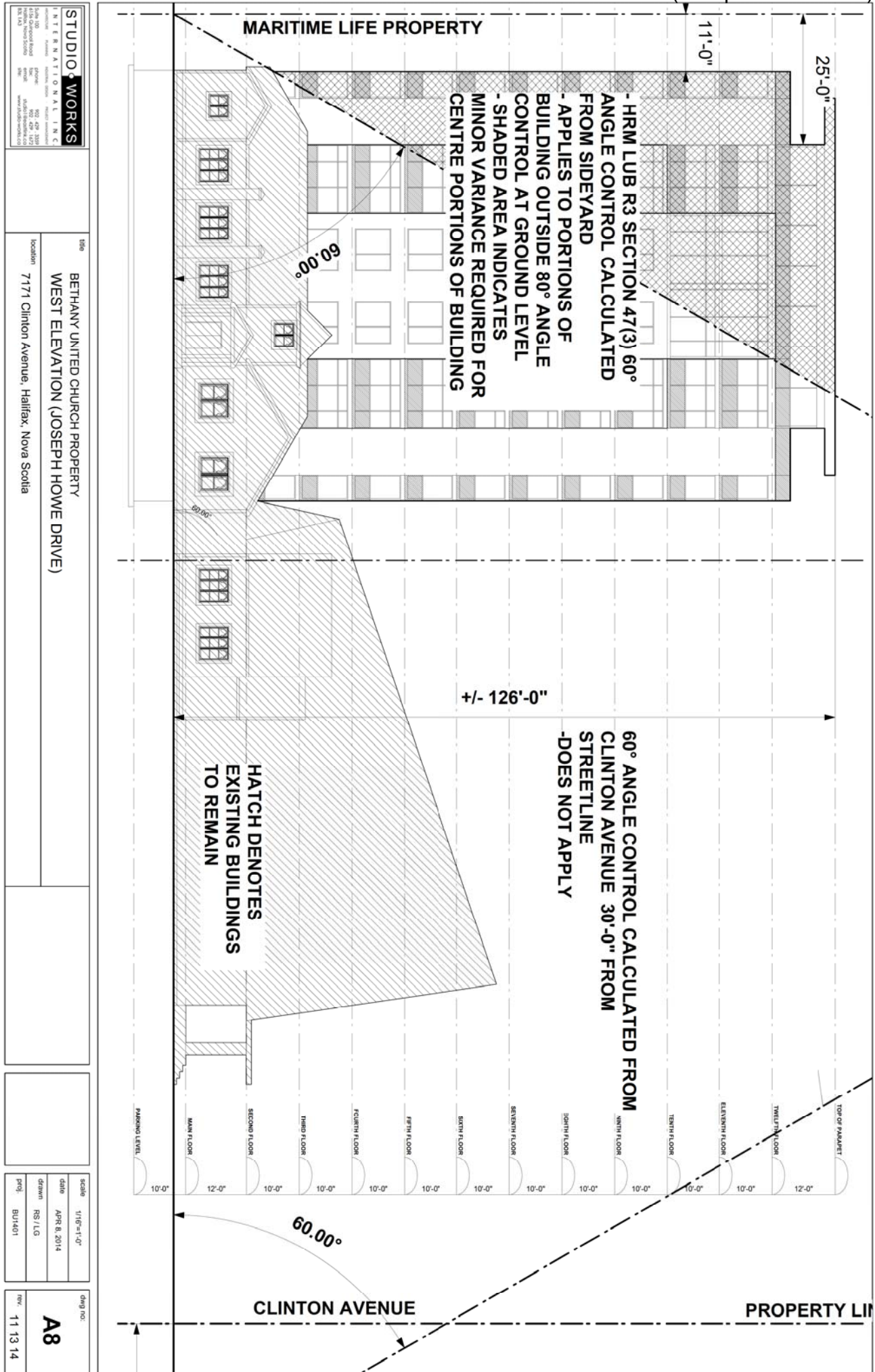
HALIFAX

 Proposed Building Footprint



Halifax
Plan Area

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



November 14th, 2014

Ron Smith, Studioworks

Halifax, NS, [REDACTED]

Dear Mr. Smith,

Variance Application #19213, 7171 Clinton Avenue, (PID 00174565) Halifax, N.S.

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

Location: 7171 Clinton Avenue, Halifax

Project Proposal: Angle control for setbacks with respect to mass and siting of an apartment building

	Requirements	Proposal
Left Side Yard Setback	68 Feet (storeys 2-11) 73 Feet (12th storey)	11 Feet (storeys 2-11) 25 Feet (12th storey)

Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before November 30th, 2014.

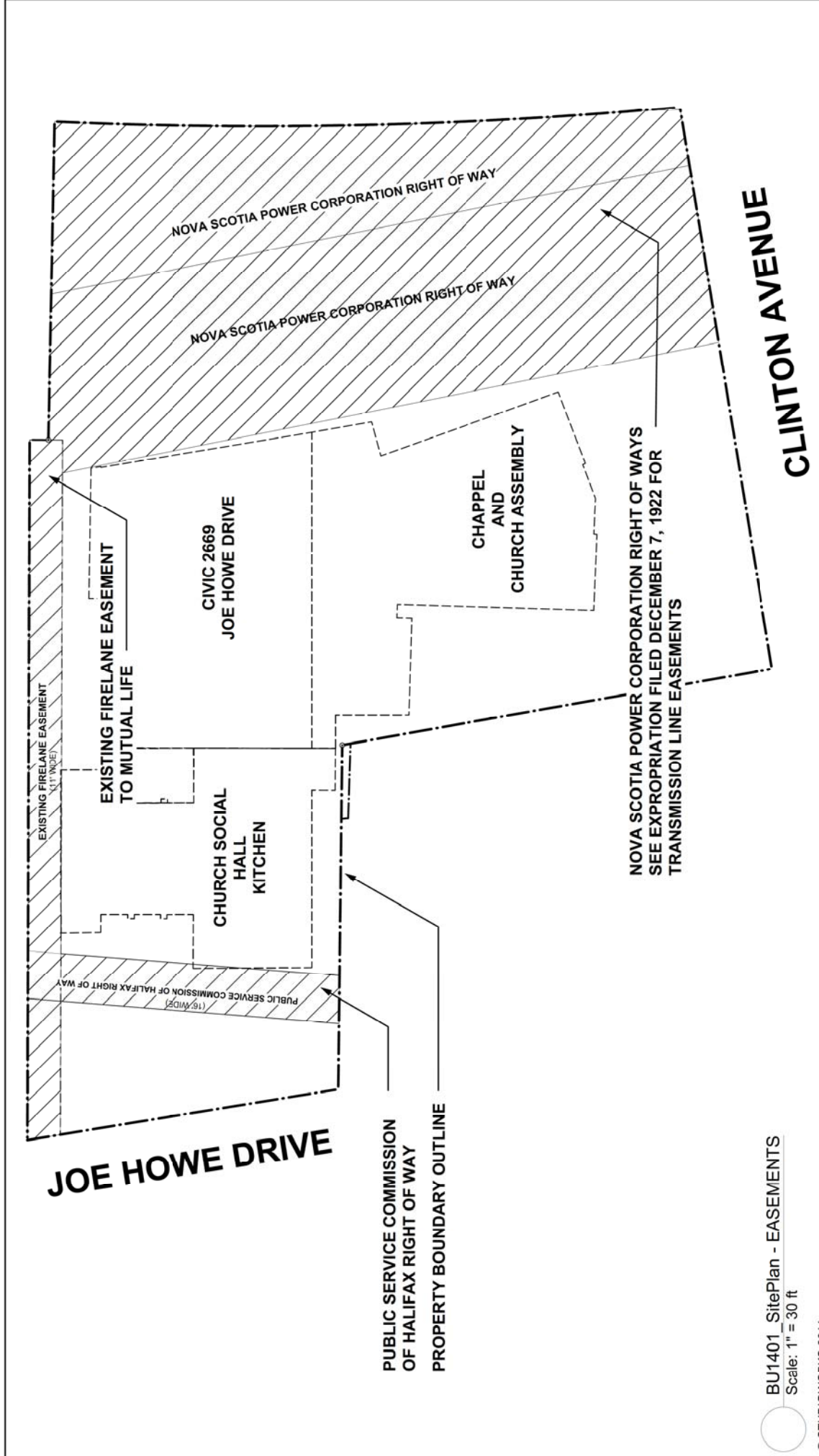
No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Stephanie Norman at 490-7455

Yours truly,

Sean Audas
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Linda Mosher

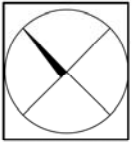


BU1401 SitePlan - EASEMENTS
 Scale: 1" = 30 ft

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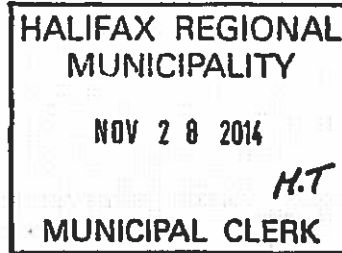
STUDIOWORKS
 INTERNATIONAL INC.
 1510 Oxbow Road
 Halifax, Nova Scotia
 B3H 2Y9
 www.studioworks.ca

site: **BETHANY UNITED CHURCH PROPERTY**
CONCEPT DESIGN / DEVELOPMENT STUDY
 location: **7171 Clinton Avenue, Halifax, Nova Scotia**



scale	NOTED
date	FEB 10, 2014
drawn	RVS/AM
proj.	BU1401

dwg no: **S-3**
 REV. 04 APRIL 06/15



hand delivered

November 28, 2014

Sean Audas, Development Officer
c/o Municipal Clerk
HRM Planning & Development
Western Region
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Dear Mr. Audas:

Re: Application for Variance File No. 19213 - 7171 Clinton Avenue, Halifax

Please find this letter as my formal appeal of the granting of the variance as set out in your letter of November 14, 2014.

The variance issued is significant, allowing a much larger mass on site. My understanding is that the intent of the angle controls is to control the mass of the building and to move that mass further from the property line as the mass gets taller and wider.

- An "as of right" development would require a setback of 68 feet for up to the 11 storey. This variance reduces the requirement by 57 feet – almost the width of two typical home lots in the west end of Halifax. This is extreme in my opinion.

I purchased my property knowing the height restriction for commercial was 80 feet, or higher if setback. And knowing the by-laws limited the size of a development next door – the property in question.

1. I feel the variance is too great and should require a development agreement if that is the objective to build a large highrise.
2. Halifax appears to be spending time "planning" for areas in the city. I am not sure why we bother spending tax payer dollars on these "plans" if they are not followed or applied. Large variances defeat the purpose of these "plans" (existing By-Laws).
3. Street parking and public parking is limited in this area given the recent scope of developments (ie, Craigmere). As a small business owner, I need my customers to be able to park and it is limited to non-existent now without the addition of more residents that would also require "visitor" street parking.
4. There are several apartment buildings in the immediate vicinity – all along Quinpool Road by the roundabout; up the Bay Road; and to the west beside the Manulife parkade, and now with Craigmere, the number is high. With increasing vacancies I do not feel a variance of this magnitude should be issued given there is no public benefit or obvious need for more apartments, requiring an exception.

November 28, 2014

Page 2

5. Does the development proposed meet open space requirements? It looks like most of the lot is leased as commercial parking and would not be considered open space.

Other Options

I sympathize with the Bethanny United Church but encourage them to respect the intent of the publically developed bylaws. A few feet variance would be reasonable and perhaps allow them to build a lower scale apartment building by using a larger foot print, as the lot size is quite large. Look at the development on Springvale with lo-rise condos. Very nice addition to the area without crowding with height.

They may also generate income by possibly developing a parking garage over the existing parking lot as there are businesses in the area that may benefit from that. Right now, many workers in the area use the street parking that is not intended for day use – but parking tickets are rarely issued.

I think there is good opportunity for mixed use on the site but this variance is not in keeping with the existing bylaw or intent of the bylaw.

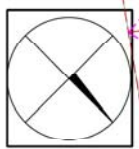
Yours truly,

Helen L. Anderson
STAND SURE INVESTMENTS INC

Halifax, Nova Scotia

STUDIO WORKS
INTERNATIONAL INC.
1150 Commercial Road
Halifax, Nova Scotia
B3H 2P9
Tel: 902.420.1234

BETHANY UNITED CHURCH PROPERTY
CONCEPT DESIGN / DEVELOPMENT STUDY
7171 Clinton Avenue, Halifax, Nova Scotia

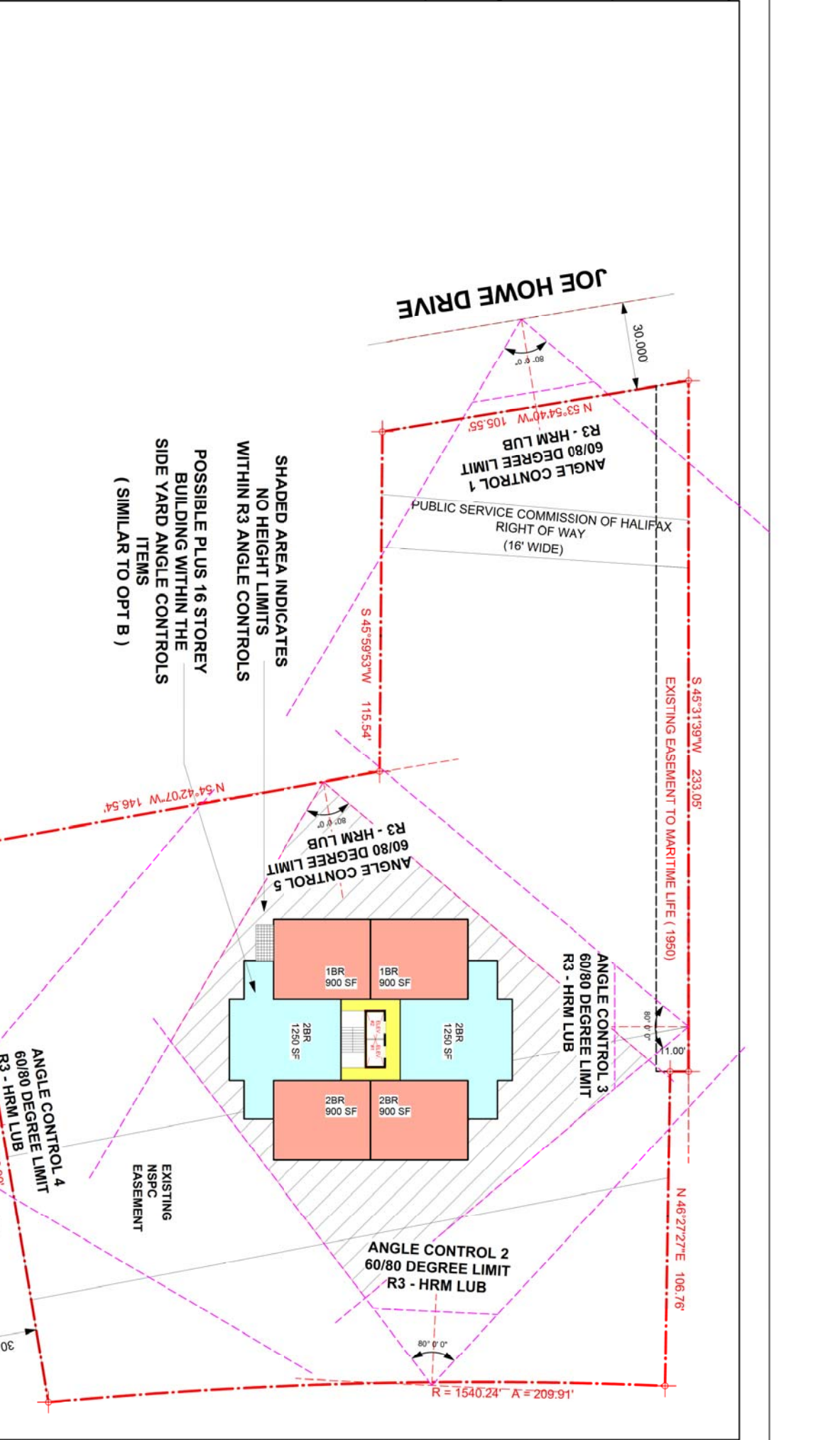


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date	FEB 10, 2014
drawn	RSP/LG/AM
proj.	BUI401

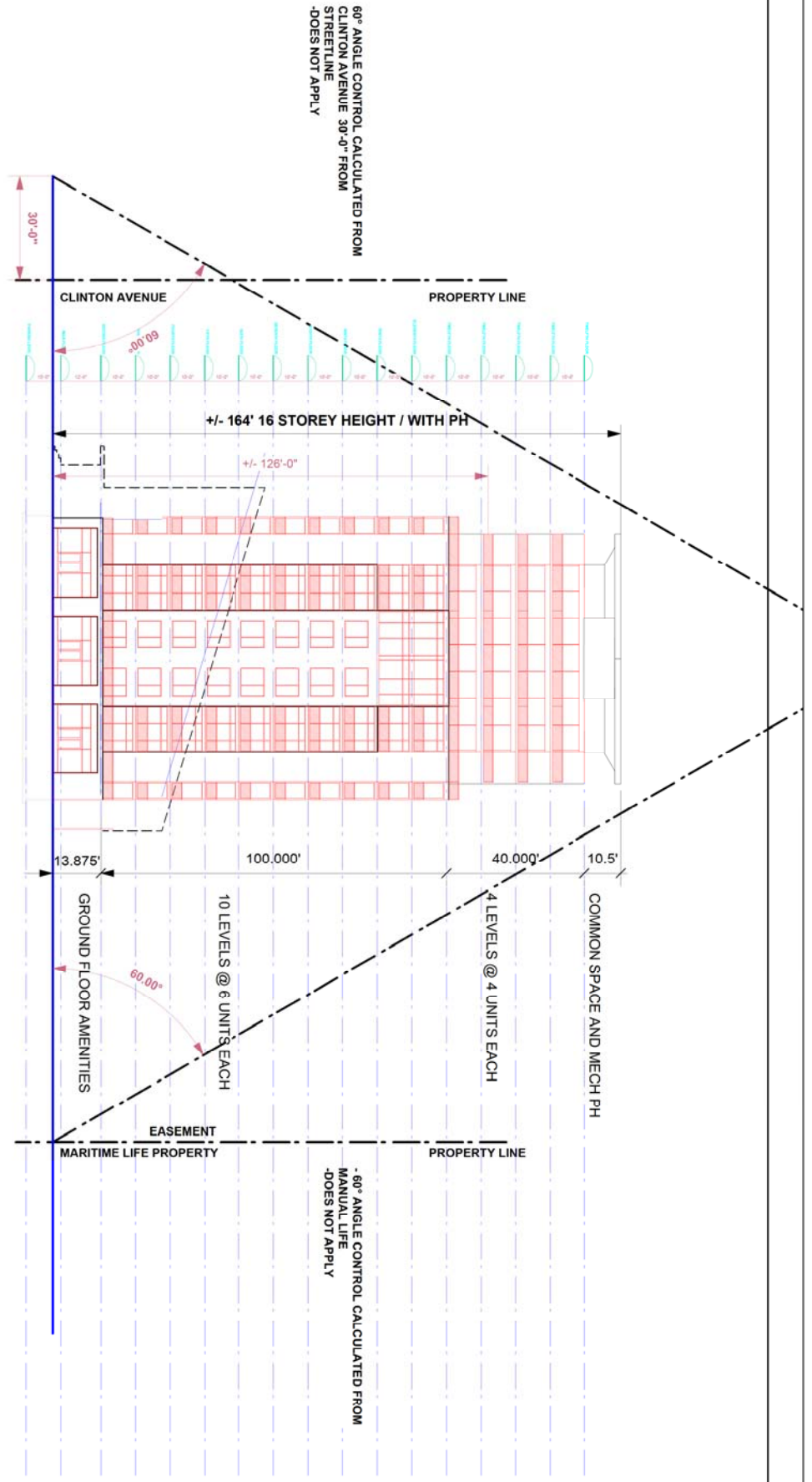
drawing no: **A1C**
REV. 4 JUNE 08/2014

1 EXAMPLE: 16 STOREY HEIGHT APARTMENT BLDG WITHOUT EASEMENTS APPLIED
A1C Scale: 1" = 30 ft

SHADED AREA INDICATES NO HEIGHT LIMITS WITHIN R3 ANGLE CONTROLS POSSIBLE PLUS 16 STOREY BUILDING WITHIN THE SIDE YARD ANGLE CONTROLS ITEMS (SIMILAR TO OPT B)



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60° ANGLE CONTROL CALCULATED FROM CLINTON AVENUE 30'-0" FROM STREETLINE -DOES NOT APPLY

60° ANGLE CONTROL CALCULATED FROM MARITIME LIFE MANUAL LIFE -DOES NOT APPLY

60 UNITS TYPICAL UPPER LVLS 2-11 FLOORS
 12 UNITS PENTHOUSE FLOOR LVLS 12-15
 MAXIMUM HEIGHT BASED ON DENSITY
 = 60 UNITS / 10 FLOORS
 = 16 UNITS / 4 FLOORS
 = 76 UNITS TOTAL

1 EXAMPLE: ELEVATION 16 FLOOR APARTMENT BLDG WITHOUT EASEMENTS APPLIED
 A1CC Scale: 1" = 30 ft

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BETHANY UNITED CHURCH PROPERTY
 CONCEPT DESIGN / DEVELOPMENT STUDY
 7171 Clinton Avenue, Halifax, Nova Scotia



scale	NOTED
date	FEB 10, 2014
drawn	RVS/LG/AM
proj	BV1401

drawing no: **A1CC**
 REV. 4 JUNE 08/2014