

Item No. 11.1.3
Halifax Regional Council
August 2, 2011

TO: Mayor Kelly and Members of Halifax Regional Council
Original signed by 

SUBMITTED BY: _____
Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer, Operations

DATE: June 22, 2011

SUBJECT: **Encroachment Agreement – City Centre Atlantic**

ORIGIN

Application by Dixel Developments Limited on behalf of City Centre Atlantic.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement to allow two separate building features to project into the HRM right-of-way; one on Birmingham Street and the other on Dresden Row.

BACKGROUND

Dexel Developments Limited has proposed two right-of-way encroachments; one over Birmingham Street and another over Dresden Row, in Halifax.

On March 30, 2010, Regional Council approved the development agreement for a five storey addition to the City Centre Atlantic building. The plans for the addition include two separate building features that project from the walls of the building and over the Birmingham Street and Dresden Row sidewalks. The projections are both 0.6 metres into the street right-of-ways and 4 metres above the sidewalks. They extend to the full height of the addition. At the time in which the development agreement was considered by Regional Council, it was identified that any encroachments would be the subject of a separate approval and an encroachment agreement.

As outlined in the Encroachment By-Law E-200, encroachments located over the HRM street right-of-way, such as the projections proposed by Dexel Developments, will require an encroachment agreement and approval from Regional Council.

DISCUSSION

The purpose of the building features that are to encroach into the right-of-ways is largely decorative, serving to break up the mass of the building. However, they also help to identify the building entrances and provide weather protection over part of the sidewalk. The proposed projections are not viewed as substantial encroachments and it is not expected that they will interfere with pedestrians or conflict with any street infrastructure.

The projections will consist of separate areas of 0.9 metres by 9 metres each, for a total of 16 square metres. In accordance with By-Law E-200, the projections will be subject to an annual encroachment fee of \$81 each (\$10.00 per square metres), for a total fee of \$162.

If Council chooses to allow the encroachment, the attached draft encroachment agreement would apply which includes the following:

1. Construction and maintenance of the building encroachments must comply with Streets By-Law S-300.
2. If requested by HRM, the building encroachments would be removed by City Centre Atlantic at their expense.
3. Record information will be provided in paper and electronic format.

The encroachment agreement would be effective concurrently with an approved Building Permit for City Centre Atlantic.

BUDGET IMPLICATIONS

Cost Centre R112-4912 – Right of Way Approval - Signs and Encroachments, will be used to record this new annual revenue.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council could approve the encroachment agreement as proposed. Staff recommends this option for the reasons outlined in the report.
2. Council could choose not to approve the proposed encroachment agreement. The implication of this is that the developer would need to revise the building plans and depending upon the magnitude of the changes, there may need to be an amendment to the drawing schedules of the development agreement. This alternative is not recommended as the encroachments are seen as being minor in scope and are consistent with the approved development agreement.

ATTACHMENTS

Attachment A: Draft Encroachment Agreement

Attachment B: Site Plan

Attachment C: Elevations

Attachment D: Encroachment Request by Dixel Developments Limited

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Ashley Blissett, Development Engineer, 490-6848

Report Approved by:

Denise Schofield, Manager, Development Engineering, 490-6252

Report Approved by:

Taso Koutroulakis, Acting Manager, Traffic & Right of Way, 490-4816

Financial Approval by:

Bruce Fisher, MPA, CMA, A/ Director of Finance/CFO, 490-6308

Report Approved by:

Ken Roach, P.Eng., Director, Transportation and Public Works, 490-4855

Attachment A: Draft Encroachment Agreement

This **Encroachment License Agreement** made this day of , 2011

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

Dexel Developments Limited

Of the Other Part

Recitals

(1) Whereas Dexel Developments Limited wishes to install building features that project into the public right-of-way over Birmingham Street and Dresden Row, Halifax for private use;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2011, the Halifax Regional Municipality agreed to give Dexel Developments Limited an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-Law E-200, being the Encroachment By-law, and as contained in this license agreement.

Definitions

1. In this agreement, unless the context otherwise requires:

- (a) “HRM” means the Halifax Regional Municipality
- (b) “Engineer” means the Engineer as defined by the Halifax Regional Municipality Charter; and
- (c) “Dexel” means Dexel Developments Limited

License

2. Subject to the terms of this encroachment license agreement, HRM hereby grants to Dixel the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Birmingham Street and Dresden Row, Halifax identified on Schedule "A" to install and maintain the projections.

Relocation

3. If necessary for the municipal purposes, the projections must be relocated within the street if requested by HRM, and such relocation will be at the expense of Dixel. Should Dixel wish to relocate the projections, such shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the expense of Dixel.

Permits

4. (1) Dixel agrees to comply with all municipal by-laws including the Streets By-Law, S-300, as amended from time to time, for the original construction of the works and all subsequent work which involves the use of the HRM right-of-way.

(2) The application for a Streets & Services permit shall include an engineering plan and profile stamped by a professional engineer of the proposed projections.

(3) The final location of the projections shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the original works, Dixel agrees to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia, and to file with the Engineer a written undertaking stating that the professional engineer had been engaged by Dixel to supervise and set out the work, that the work will be done in accordance with the approved plans, and that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the original works, Dixel agrees to arrange a preconstruction meeting with HRM Staff.

(6) In addition to meeting the requirements of Streets By-Law S-300, for the purposes of the construction of the original works, Dixel agrees to deposit with HRM performance security, acceptable to the Engineer, in the estimated amount of the cost of restoring the municipal infrastructure affected by the project, or in the minimum amount of \$1000.00, to be valid for a period for two years from the date of the acceptance of said works.

(7) For the purposes of the construction of original works Dexel shall provide HRM with a certificate from a professional engineer certifying that all works are completed according to the approved drawings, any applicable municipal services specifications, standard drawings and approved changes.

Record Drawings

5. Dexel shall provide a copy of the record drawings immediately upon completion of the work, and immediately upon completion of any relocation, both in hard copy and electronic format compatible with the HRM Geographic Information System (GIS).

Indemnity

6. Dexel agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the projections however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

7. Dexel, agrees to pay the fees set out in Encroachment By-Law E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the projections is 162 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$162.00 to be paid by March 1st annually.

Occupational Health & Safety Act

8. Dexel agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Dexel agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

9. (1) Either party may terminate this license agreement at any time.
- (2) Upon termination of the license agreement, Dexel shall remove the projections from the building.

Notices

10. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Public Works and Transportation
PO Box 1749
Halifax, NS B3J 3A5

and

The Dixel Developments Limited
1245 Barrington Street
Halifax, NS B3J 1Y4

Legal notices in respect of HRM must be given in compliance with the Halifax Regional Municipality Charter.

11. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

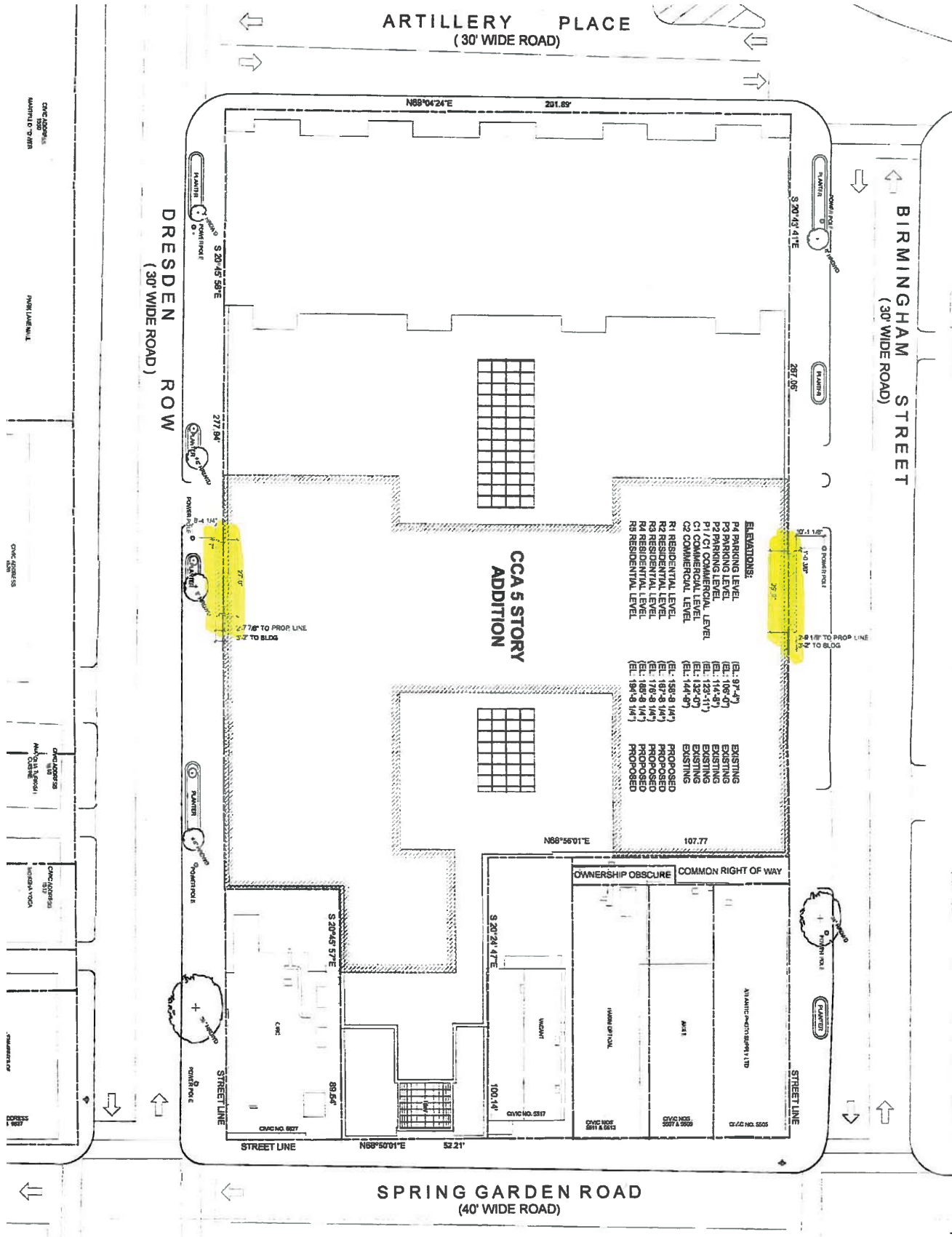
HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

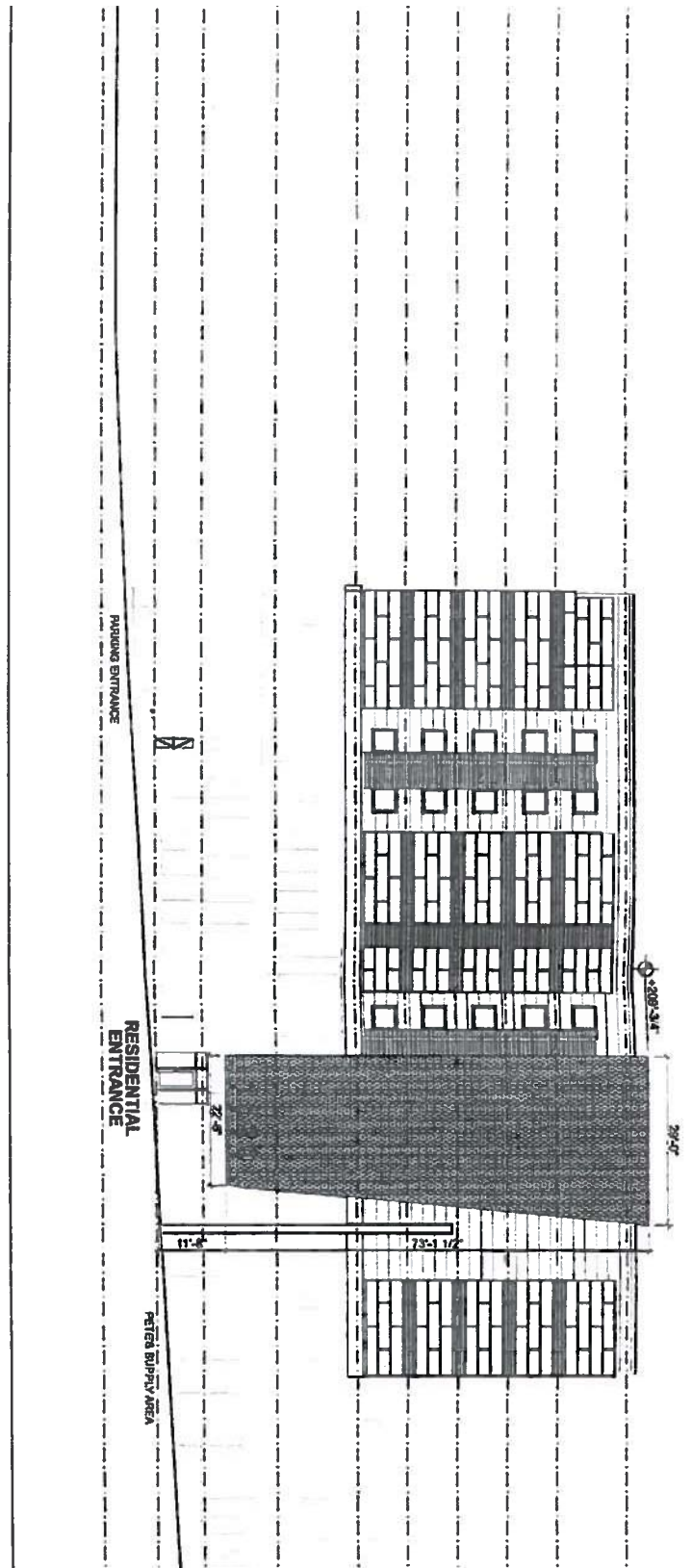
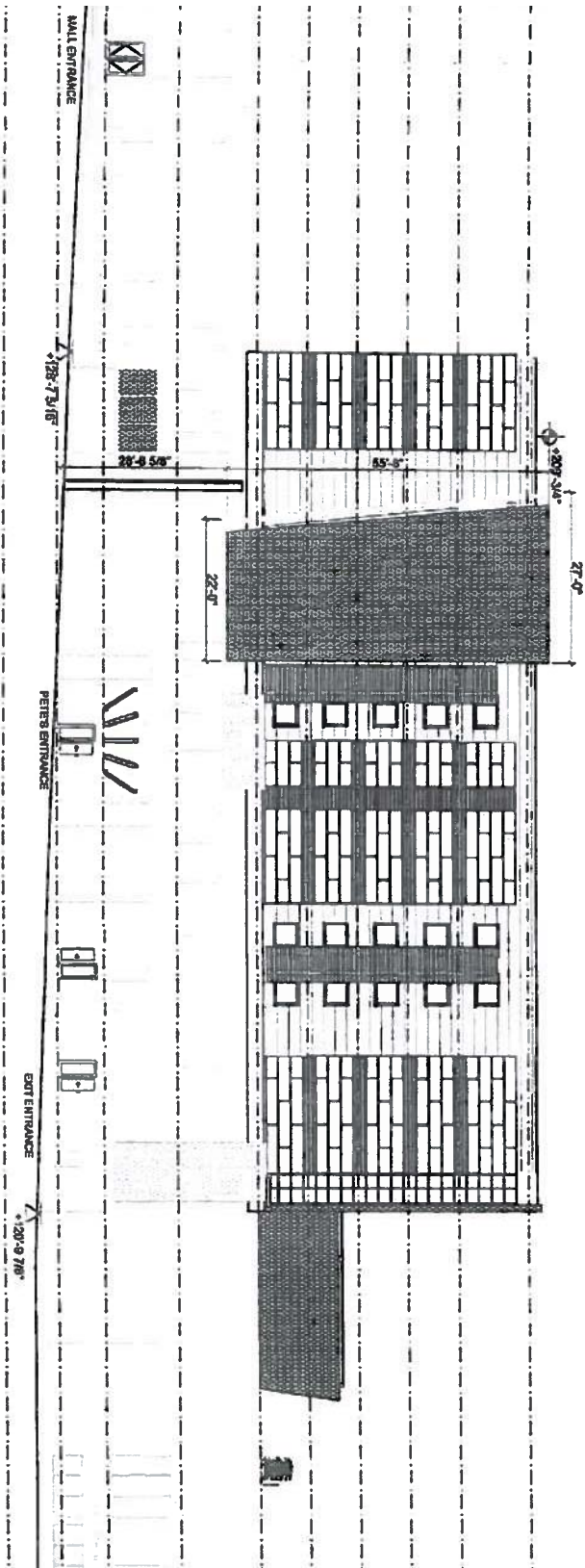
Municipal Clerk

The Dixel Developments Limited

Encroachment Agreement
City Centre Atlantic
Attachment B



Encroachment Agreement
City Centre Atlantic
Attachment C





www.dexel.ca

DEXEL Developments Limited

1245 Barrington St. Halifax N.S.

B3J 1T6, Canada

Tel: (902) 446-9916

Fax: (902) 444-6609

E-mail: Dixel@eastlink.ca

HRM Development Engineering & Traffic
7071 Bayers Rd
2nd Floor

Encroachment Agreement
City Centre Atlantic
Attachment D

March 7, 2011

**Re: Proposed Encroachments for City Center Atlantic Development
1520 Birmingham Street**

Dear Ashley Blissett

Dexel Developments wishes to make application for Municipal approval of proposed encroachments; illustrated in the City Center Atlantic Development Agreement in schedules C E, F, G, H, I and J; as per item 4.3.1 of the agreement.

4.3.1 Any proposed building encroachments into the street right-of-way, illustrated on the attached schedules or otherwise, shall be subject to separate Municipal approval pursuant to 1.3.1

Proposal

The proposed encroachments are located on Birmingham St, and Dresden Row and total two in number. The proposed encroachments are illustrated in detail in the attached Drawings and Renderings:

Site Plan detailing encroachments
Birmingham St. elevation detailing encroachment
Dresden Row elevation detailing encroachment
Building renderings Highlighting encroachments

Rational

Dexel is seeking approval of the proposed encroachments as they represent significant character defining features of the building, already approved by council through the development agreement process.

Michael Napier, of Michael Napier Architecture, has provided a detailed explanation of the architectural rational and premises for the proposed encroachments in an attached letter.



www.dexel.ca

DEXEL Developments Limited
1245 Barrington St. Halifax N.S.
B3J 1T6, Canada
Tel: (902) 446-9916
Fax: (902) 444-6609
E-mail: Dixel@eastlink.ca

Maintenance Concerns:

- Nova Scotia Power has provided a letter verifying the proposed encroachments do not impede safe operation or maintenance of their services (See attached letter from John Watts)
- Traffic - The encroachments are located in the air space above the right of way and therefore do not infringe on the flow of traffic or the maintenance of the right-of-way
- Trees – The proposed encroachments are not located over or within the umbrella of existing Municipal trees (See attached photo's of trees)

Dexel Developments requests that you review this application and submit to council accompanied by your recommendation as expediently as possible.

Regards,

Kris Skiba
Project Construction Manager

March 7, 2011

Development Services
Bayers Road Centre
7071 Bayers Road, Suite 2005
Halifax, Nova Scotia

Attn: Ashley Blissett

Re: Development Application Case# 01227; City Centre Atlantic Phase 3.

Although the original Master Plan for City Centre Atlantic (CCA) included, as a future phase, the provision for a rooftop building, no appreciable design considerations were undertaken at the time. Hence, twenty years later we find ourselves attempting to create a strong urban gesture that responds to the neighbourhood while residing on the top of an uninspiring edifice which, in effect, has turned its back on its surroundings. What it presents to its neighbours and this vital area of Halifax are long flat expanses of masonry, punctuated randomly by glazing, with little street interaction, as the majority of its ground floor occupancies face interior volumes.

As designers we were faced with a further myriad of limitations. The existing building fronts the streetlines with no setbacks. The structural grid of the building dictates the position and dimensions of the new building above. This means that the placement of this unique-to-Halifax rooftop 'infill building' must bridge the gap between an existing commercial base and a proposed residential 'tower' above. If originally these had been part of an integrated design project the finished product would have, in all probability, reached a different outcome. However, this final programmed element is 'out of phase' regarding proceeding style, period taste, construction materials, and usage due to the excessive amount of time separating construction phases.

The decision was made to create a building more in keeping with our times and to 'place' a lighter more transparent structure on the existing heavy base. While this approach worked well for the massing and appearance, it did little to address the issue of place, relationship to grade and entrance identification. While over the years the base has adopted projections in various forms – such as canopies and signage – no one strong element has interrupted its lengthy horizontal expanses. This is especially true on Birmingham Street where the new entrance for the residences is to be located. A unifying feature – to bridge new and old, base and tower - was sought that would also identify the entrance for those passing by or approaching from Spring Garden Road and Armory Square. To achieve these goals a vertical element, which not only drapes over the base but protrudes horizontally from it, was

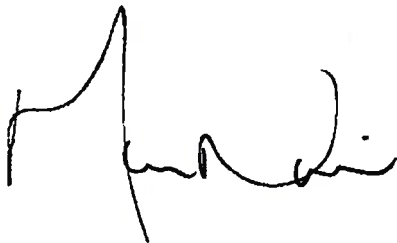
integrated into the Birmingham elevation. This element extends to just above street level where it culminates in a horizontal protective canopy above the residential entrance.

This extension beyond the building face provides a vertical glazed feature that allows daylight to reach the five stories of interior corridor behind and creates an illuminated beacon at nighttime giving the building element the appearance of floating off the wall behind. The interior corridor continues to the Dresden Row elevation where this unifying element is repeated offering, again, natural daylighting and a visual cue for building identification. The element on this elevation differs by terminating much further from grade as it does not signify an entrance below and any further extension would contribute to the clutter of the existing 'add-ons' below - such as the Pete's signage.

The encroachment of these design elements is not unique and permanent examples are available in HRM. Many of these are at street level and have a major effect on pedestrian traffic (*The Palace* on Brunswick Street, the *Residence Inn Marriott* on Grafton Street, *La Perla* on Alderney Drive). The proposed features on the CCA are 'air' oriented, interfering with little of the daily activities of the city. Any possible conflict on Birmingham with Nova Scotia Power transmission lines would occur during construction even if there were no encroachments and will be addressed with a service rerouting during the construction phase. Future maintenance requirements of this portion of the building will be minimal as the perforated metal screen over the exterior wall face is maintenance free for its' approximately thirty year life span. Windows behind this screen will be designed to open inward for maintenance and cleaning. Hopefully the HRM underground electrical program will be introduced to this area long before façade replacement will be required.

HRMbyDesign has highlighted Pedestrian Experience and Streetwall Character as important considerations in the design of new urban forms. Even though we are faced with the unique challenge of addressing these ideals in a building that does not meet the street in a traditional manner we have striven to achieve the principles of each and to add design interest to this area of Halifax.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Napier', with a stylized, flowing script.

Michael Napier NSAA



1520 BIRMINGHAM STREET DEVELOPMENT - VIEW OF DRESDEN ROW ENCROACHMENT



1520 BIRMINGHAM STREET DEVELOPMENT - VIEW OF BIRMINGHAM ENCROACHMENT