

Item No. 10.1.2
Halifax Regional Council
January 31, 2012

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: January 3, 2012

SUBJECT: **Encroachment Agreement – Cumbria Investments Ltd., 2589
Windsor Street, Halifax**

ORIGIN

Application by Cumbria Investments Limited

RECOMMENDATION

It is recommended that Halifax Regional Council approve the Encroachment Agreement as provided in Attachment A to allow Cumbria Investments Limited to install landscaping planters and entrance steps within the sidewalk area of Windsor Street and North Street.

BACKGROUND

Cumbria Investments Limited (CIL) proposes to upgrade the exterior of their property located at 2589 Windsor Street in conjunction with the construction of a new building on the property. The proposal includes constructing planter boxes along the perimeter of the building fronting on Windsor Street and North Street, along with entrance steps into the building. This proposed work would be within the sidewalk area of the HRM right-of-way and consist of an area of approximately 21.0 square metres, one planter box extending 0.9 metres into the right-of-way (North Street) and the second extending 0.6 metres (Windsor Street).

As outlined in the Encroachment By-Law E-200, permanent encroachments located upon and under the HRM street right-of-way, require an encroachment agreement, as well as authorization from Regional Council. The proposed Planter Boxes and Stairs within the right-of-way is a type of encroachment which requires approval from Regional Council, and are also subject to an annual fee as outlined in Administrative Order 15.

DISCUSSION

The applicant is proposing to utilize planter boxes to provide a buffer between the new building (currently under construction) and pedestrian traffic. This proposal was reviewed for CPTED purposes and recommended by staff from Halifax Regional Police during an onsite meeting with the principals of Cumbria Investments/Turner Drake. The former building was a frequent target for vandalism in addition to graffiti. Cambria Investments Limited believes constructing planters will provide a physical deterrent and discourage new incidents, as well as enhance the visual appeal of the property while improving the streetscaping along Windsor Street and North Street.

Cumbria Investments Limited has sought advice from CNIB (formerly known as the Canadian National Institute for the Blind) relative to the effect of the encroaching structures on the visually impaired pedestrians who use the sidewalk. A review of the exterior of the property was undertaken by representatives from the CNIB and it was determined that the proposed planter boxes would not be an impediment for the visually impaired community.

HRM's criterion for sidewalk width in the downtown is a minimum of 2.1 metres which ensures that an acceptable pedestrian travel zone is achieved and snow and ice maintenance in the area is not impacted. The proposed planter boxes on North Street and Windsor Street will encroach into the sidewalk area 0.9 metres and 0.6 metres from the property lines, respectively. The remaining sidewalk area available will be approximately 3 metres on North Street and 2.7 metres on Windsor Street.

Therefore, recognizing that the proposed encroachment will (i) discourage vandalism and graffiti, (ii) ensure a minimum clear sidewalk width of 2.1 metres for safe pedestrian movement is maintained, and (iii) provide sufficient area for the maintenance of snow and ice in the area, staff recommends that the proposed encroachment be approved as requested.

The area of the proposed encroachment will be a total of 22.0 square metres. In accordance with By-law E-200, the encroachment will be subject to an annual encroachment fee of \$220.00 (\$10.00 per square metre).

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

1. Construction and maintenance of the encroachment must comply with Streets By-law S-300.
2. If requested by HRM, the encroachment would be removed by CIL at their expense.
3. Record information shall be provided in paper and electronic format to HRM.

The encroachment agreement would be effective concurrently with an approved Streets and Services Permit.

The applicant has requested that Council waive the encroachment application fee and annual encroachment fee(s). The present Encroachment By-law E-200, does not provide the authority to enable Regional Council to waive encroachment fees of this type. As per Section 10 of the By-law, Council may only waive fees for overhead pedways or underground pedestrian tunnels if public benefit is provided.

BUDGET IMPLICATIONS

Should Regional Council chooses to approve the encroachment, cost centre R112-4912, Right-of-Way Approval – Signs and Encroachments will be used to record this new annual revenue of \$220.00.

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 may choose to approve the encroachment agreement as proposed. Staff recommends this option for the reasons outlined in the report.
2. Council may choose to approve the encroachment and include other terms and conditions in the encroachment agreement as it deems appropriate as per clause 10(a) of By-law E-200. Such modifications may require further discussion with the applicant.
3. Council may choose to not approve the encroachment agreement. Staff does not recommend this option as the encroachment would improve the streetscaping of the area and deter the incidence of graffiti and vandalism on the new building.

ATTACHMENTS

Attachment A: Draft Encroachment Agreement

Attachment B: Encroachment Request by Cumbria Investments Limited

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.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: Steven York, Engineering Technician & Ashley Blissett, Development Engineer, 490-6848

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

Report Approved by: _____
Taso Koutoulakis, Acting Manager Traffic & Right-of-Way, 490-4816

Financial Approval by: _____
James Cooke, CGA, Director of Finance/CFO, 490-6308

Report Approved by: _____
Brad Anguish, Director, Community & Recreation Services, 490-4933

Report Approved by: _____
Ken Reashor, P.Eng., Director Transportation and Public Works, 490-4855

Attachment A: Draft Encroachment Agreement

This **Encroachment License Agreement** made this day of , 2012

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

(hereinafter referred to as "HRM")

Of the One Part

and

CUMBRIA INVESTMENTS LIMITED

(hereinafter referred to as "CIL")

Of the Other Part

Recitals

(1) Whereas Cumbria Investments Limited wishes to construct planter boxes and stairs that project into the public right-of-way at 2589 Windsor Street, Halifax for private use;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2012, the Halifax Regional Municipality agreed to give Cumbria Investments 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.

NOW THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

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) “CIL” means Cumbria Investments Limited.

License

2. Subject to the terms of this encroachment license agreement, HRM hereby grants to CIL the non-exclusive right by its officers, servants, agents and contractors at all times to construct on or over that portion of Windsor Street and North Street, Halifax identified on Schedule “A” to construct and maintain planter boxes and stairs, within the street right-of-way.

Relocation

3. If necessary for municipal purposes, the planter boxes and stairs must be relocated within the street right-of-way if requested by HRM, such relocation will be at the expense of CIL. Should CIL wish to relocate the stairs, 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 CIL.

Permits

4. (1) CIL and its contractors and agents agree to comply with all municipal by-laws including the Streets By-Law S-300, as amended from time to time, for the construction of the planter boxes, stairs 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 planter boxes and stairs to be constructed.

(3) The final location of the planter boxes and stairs shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the planter boxes and stairs, CIL 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 is engaged by CIL 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 planter boxes and stairs, CIL agrees to arrange a preconstruction meeting with HRM Staff.

(6) For the purposes of the construction of the planter boxes and stairs, CIL 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. CIL shall provide a copy of the record drawings immediately upon completion of the work, and immediately upon completion of any relocation.

Indemnity

6. CIL 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 planter boxes and stairs however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

7. CIL shall 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 planter boxes and stairs is 22.0 square metres and said fees to be paid by March 1st annually.

Occupational Health & Safety Act

8. CIL agrees to comply with the requirements of the *Occupational Health & Safety Act* and all regulations enacted pursuant thereto. Specifically CIL agrees to exercise the due diligence required by *the Act* in ensuring that 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, CIL shall remove the planter boxes and stairs from the right-of-way.

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

Cumbria Investments Limited
6182 North Street
Halifax, NS B3K 1P5

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

Assignment

11. This agreement may not be assigned without the prior written approval of HRM.

12. This agreement shall enure to the benefit of and be binding upon the parties hereto, their agents, 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

Witness

Mayor Peter Kelly

Witness

Municipal Clerk

Cumbria Investments Limited

Witness

Witness

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 2012, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that **Cumbria Investments Limited**, one of the parties thereto, signed, sealed and delivered the same in his presence.

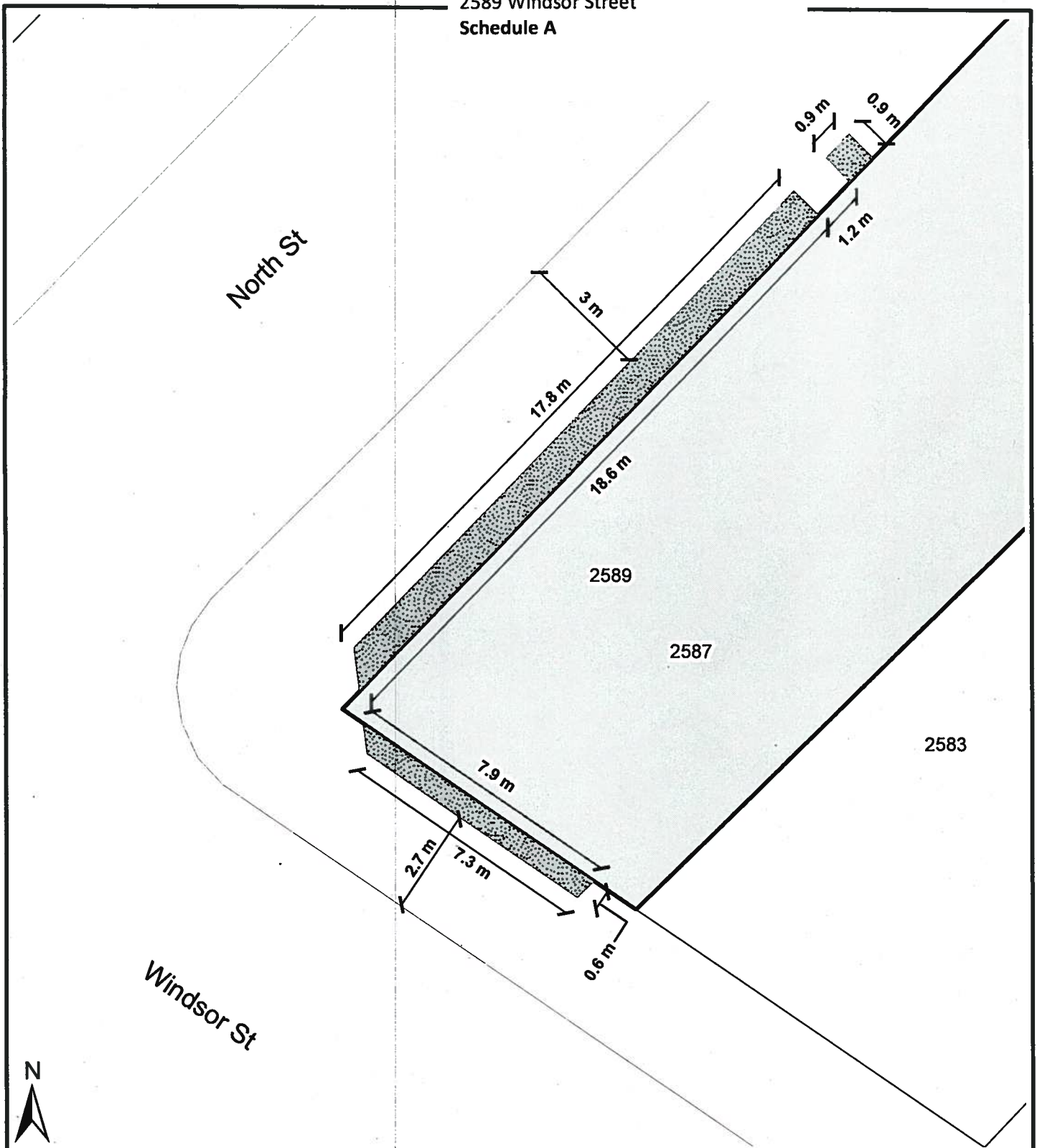
A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 2012, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of Peter Kelly, its Mayor and Cathy Mellett, its Municipal clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Encroachment Agreement
2589 Windsor Street
Schedule A



Schedule A - Encroachment Location

2589 Windsor Street
Halifax

 Subject property

 Area of encroachment

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

HRM does not guarantee the accuracy
of any representation on this plan.

**TURNER DRAKE
& PARTNERS**

Real Estate Counsellors, Brokers & Valuers

Registration to ISO 9001:2008

M S Turner, M Sc, M B A, FRICS,
MAI, CRE, AACI

R.J. Escott, BES, MRICS, AACI

I Weatherby, FRICS, AACI

V.J. Turner, FRI

G P. Kakamousias, B Comm,
MRICS, AACI

A C. Pouliot, B Comm, MRICS, AACI

R V Allen

M B Turner, B Comm, BBRE,
MRICS, AACI

N G Turner, B Comm, BBRE, AACI

D.A. Baird Allen, B.A.

M.J. Whittleton, B Comm

D E Slipp, B Comm

A P Urquhart, B.B.A.

A.L. Montena, B.B.A.

M.W.C. Farrow, B Comm.

J.R. MacIsaac, B Sc.

Z J Skebo, B Comm

M A Smith, B Comm

R G Kerry, B Comm

Mail to:

Turner Drake & Partners Ltd

6182 North Street,

Halifax, N S

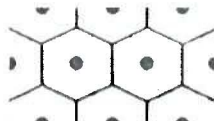
B3K 1P5

Tel: (902) 429-1811

Fax: (902) 429-1891

E-Mail: tdp@turnerdrake.com

Internet: www.turnerdrake.com



Our Ref:1101082:SMM/MST

23 August 2011

VIA EMAIL: blissea@halifax.ca

Ms. A. Blissett P.Eng.
Western Region
Halifax Regional Municipality
PO Box 1749
Halifax NS B3J 3A5

Dear Ms. Blissett:

Re: Building Permit #117020, 2589 Windsor Street, Halifax

As requested, we are submitting this application for a Permanent Encroachment for the planters shown edged red, together with a small section of the entrance steps shown edged blue, on the attached plan. The Permanent Encroachment is requested in connection with Building Permit #117020 for the redevelopment of #2589 Windsor Street, but is not a condition precedent to the issuance of the Permit per se: it is proceeding without the Encroachment.

Background

The present two storey commercial building at 2589 Windsor Street has been repeatedly vandalised, both prior to and after, its acquisition in February 2011 by Cumbria Investments Limited (the majority shareholder of Turner Drake & Partners Ltd.) The prior occupants, Century 21 Team One Real Estate, repeatedly had their plate glass windows smashed and eventually boarded them up. Since the building was also a target for graffiti, Century 21 used the boarded up windows as an "Urban Graffiti Wall" in an effort to discourage gratuitous graffiti, but were only partially successful. (Photo #1). Vandalism is a bi-weekly event.

Discussion

The adjacent building at 6182 North Street has been occupied by Turner Drake & Partners Ltd. a real estate consulting firm, as its offices since 1980. They have utilised planters to buffer their building from the travelled sidewalk (Photo #2) and have reduced the incidents of vandalism and graffiti to three or four occurrences per annum. Under Building Permit #117020, Cumbria Investments Limited (Turner Drake) intend to demolish the existing building at 2589 Windsor Street (Photo #1) and replace it with a similar sized structure (Photo #3) linked to, and constructed of similar materials as their present building (Photo #2), to be utilised as an expansion of their offices.

At Councillor Jennifer Watts' suggestion and instigation the principals of Cumbria Investments/Turner Drake met on site with HRM Regional Police Community Response Officer, Constable Larry Roberge to discuss security. Constable Roberge confirmed that the building at 2589 Windsor Street had been fingered by the graffiti community as a "target", expressed satisfaction that the present structure would be demolished and endorsed the planters as a preventative measure to discourage vandalism and graffiti.

Cumbria Investments Limited (Turner Drake) also sought the advice of CNIB's Associate Director, Pamela Gow-Boyd, to determine whether the planters would be a hazard to the visually impaired. Ms. Gow-Boyd conducted a site visit and confirmed to Councillor Watts that the proposed planters would not constitute a hazard to the visually impaired.

The North Street travelled sidewalk will be 10 ft. wide, and the Windsor Street travelled sidewalk will be 8 ft. 9 ins. wide, **after** the planters have been installed. The planters will not therefore impede pedestrian travel or snow removal. The present building, which will be demolished, already encroaches into the street right of way by 6" to 12" on North Street, and 1ft. 8 ½" on Windsor Street. The proposed, new building, will be relocated back to the property line.

The planters will visually enhance a prominent corner on one of the major approaches to the McDonald Bridge.

Budget Implications

If approved the applicant is required to pay a one time licence fee of \$125.00 and an annual encroachment fee of \$223 (based on a calculated encroachment of 22.30 square metres) as prescribed by Administrative Order 15. The applicant feels very strongly that these fees, while nominal, should be waived in this instance to send a strong message of encouragement in favour of this community minded endeavour to promote security and visually enhance the urban environment. The applicant points out that no revenue earning portions of the proposed building will fall in the encroachment, and that the encroachment by the existing building will be eliminated by the redevelopment. The planters will not impede snow clearing operations and in any event the applicant's company, Turner Drake & Partners Ltd., has a policy of conducting its own sidewalk snow clearing at all seven properties it owns, or manages for its principal shareholders, in order to eliminate the damage it has experienced in the past from HRM's own snow clearing operations.

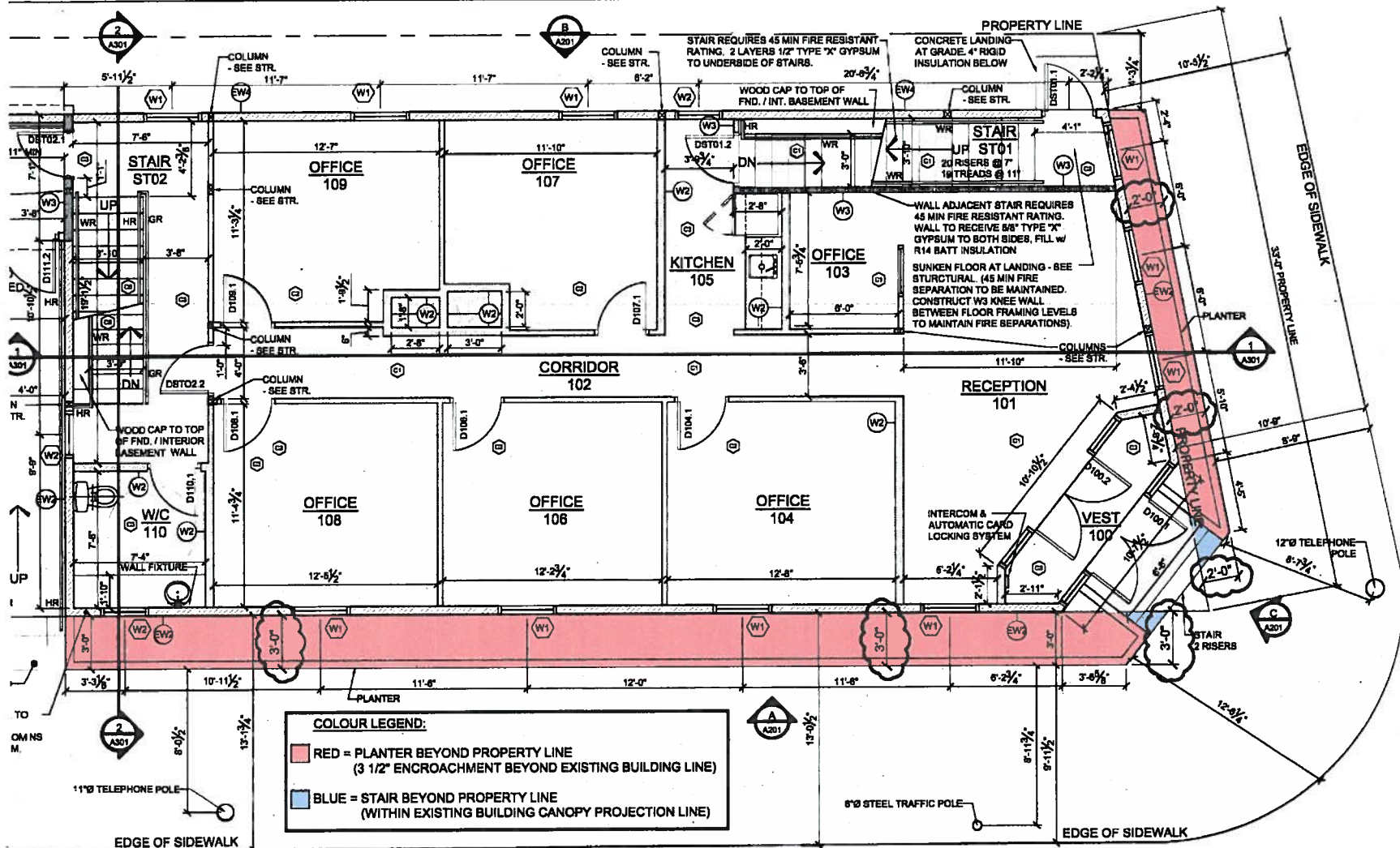
Yours truly,

Original signed

MICHAEL S. TURNER
President
Cumbria Investments Limited

c.c. Councillor Jennifer Watts

Enclosures



PROJECT NO.	2405
DRAWING NO.	ASK-3
DRAWN BY:	MPC
SCALE	3/16" = 1'-0"
DATE	08/19/11

PROJECT DESCRIPTION	CUMBRIA INVESTMENTS
DRAWING DESCRIPTION	PLANTER / STAIR ENCROACHMENT PLAN

SEAL	DRAWING APPROVED BY: FLM
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MacKenzie & MacKenzie architects

14. 800/463-6288
1000 University Ave.
Ottawa, ON K1N 6N5





 **TURNER DRAKE
& PARTNERS LTD.**

 **Harvey & MacKenzie**
ARCHITECTS



CHURCH PLACE
FARMINGTON CT

NAI

THE BETH SHAM
FARMINGTON CT