

Item No. 10.1.2
Halifax Regional Council
January 15, 2013

TO: Mayor Savage 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: December 19, 2012

SUBJECT: Encroachment Agreement - 5131 Morris Street, Halifax

ORIGIN

Application by Matt Ramsey and Jim Lawley (Attachment B)

LEGISLATIVE AUTHORITY

- *Encroachment By-law* (E-200); *Administrative Order 15*, Respecting License, Permit and Processing Fees

RECOMMENDATION

It is recommended that Halifax Regional Council not approve the Encroachment Agreement, as provided in Attachment A, to enable the installation of a private stairwell, storage area and retaining wall within the Morris Street right-of-way.

BACKGROUND

The applicant proposes to upgrade the exterior of their property located at 5131 Morris Street (Attachment C) in conjunction with internal renovations currently taking place on the property. The proposal includes installing a stairwell, storage area and associated retaining wall, to obtain a second means of access to the newly renovated basement level. The proposed stairwell, storage area and retaining wall would be within the sidewalk portion of the HRM street right-of-way.

As outlined in the *Encroachment By-Law*, 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 stairwell, storage area and retaining wall 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.

As this property is a municipally registered heritage property, should Council approve the encroachment request, a separate approval by Regional Council for a substantial alteration to carry out work described, in addition to the approval of a site plan as per the requirements of the Downtown Halifax Land Use By-law, would be necessary. To be clear, this report deals only with the proposed right-of-way encroachment and not the substance of the proposed exterior alterations.

5133 Morris Street

In April 2002, Regional Council approved a request for a substantial alteration to the adjacent heritage property at 5133 Morris Street (Attachment D) to allow for similar building modifications to the front façade of that property. The accompanying staff report exclusively addressed the alteration to the heritage property and did not include advice to Council relative to engineering concerns on the proposed encroachment in the street right-of-way. However, Council did approve both the heritage alteration as well as the encroachment. Since that time, through initiatives associated with the Capital District, new guidelines and parameters surrounding sidewalk width, pedestrian mobility and municipal operational requirements within the right-of-way have been established.

DISCUSSION

The applicant proposes to use an area of the existing sidewalk along the northern edge of the Morris Street right-of-way to construct a stairwell, storage area and retaining wall. These features would require an encroachment into the public right-of-way a distance of 1.168 metres (3 feet 10 inches) in width by 7.62 metres (25 feet) in length. The diagram attached to the draft encroachment agreement identifies the stairwell opening as 3 feet 2 inches. An additional 8 inches was added to the opening to account for the retaining wall thickness which is not shown on the diagram. This results in the resulting encroachment within the right-of-way being 3 feet 10 inches or 1.168 metres from the face of the building.

This area is also located within the Capital District where streetscape design guidelines have been developed to assist staff in creating attractive, interesting and functional public spaces.

They are not Council-approved standards but are referenced during capital works projects, development proposals and encroachment requests. An excerpt from the guidelines relative to sidewalks is as follows:

“Sidewalks should provide a straight, barrier-free path, facilitate good pedestrian flow... and meet universal design standards wherever possible.

The pedestrian through zone is for pedestrian movement. No temporary or permanent obstacles shall be placed in this area. The width of the pedestrian through zone shall generally be a minimum of 2.1m and wider wherever space permits. This dimension of 2.13m is based on the following design criteria:

- *Comfortable walking space for two pedestrians moving in opposite directions during peak volumes*
- *Accommodate the passing of two wheel chairs (CAN/CSA-B651-95)*
- *Permits the use of existing HRM snow moving equipment.”*

Installation of the stairwell and retaining wall within the right-of-way is not favorable as the remaining sidewalk width would be reduced to a maximum of 1.83 metres from the retaining wall to the curb face. There is a further restriction at parking meter locations where the available width is reduced to approximately 1.5 metres. The utility poles in this area have been removed and the power lines have been placed underground but light standards have been installed. A reduced sidewalk width will also be encountered at light standard locations.

This entire section of the sidewalk will be below the recommended Capital District sidewalk guidelines and would not accommodate the passing of two wheel chairs or existing snow moving equipment. The sidewalk clearances are further reduced at parking meters, light standards and sign posts which would result in the need for special snow clearing equipment. With the continuous building frontage along the sidewalk there are no driveways to provide opportunities for wheel chairs to pass each other. Given the reduced sidewalk width, staff advise that this type of encroachment may encumber the functionality of the street right-of-way relative to its intended use, operation and maintenance (i.e., to accommodate utilities and for snow removal and storage purposes). Additionally, staff advise that there are properties with similar conditions located adjacent to one another on Morris Street and, while encroachments are reviewed on an individual basis, if these properties were to re-develop in a similar manner, doing so would further impact the sidewalk and right-of-way in this area as mentioned above.

In consideration of the above, staff do not recommend approval of the encroachment request.

FINANCIAL IMPLICATIONS

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

COMMUNITY ENGAGEMENT

Community Engagement as described by HRM's *Community Engagement Strategy* is not applicable to the process.

ENVIRONMENTAL IMPLICATIONS

No implications identified.

ALTERNATIVES

1. Council could choose to allow the encroachment. The attached draft encroachment agreement would apply which includes the following:
 - a. Construction and maintenance of the encroachment must comply with Streets By-law S-300.
 - b. The retaining wall is required to meet current HRM Municipal Design Specifications, including certification by a Geotechnical Engineer and incorporate a safety fence into the design.
 - c. The property owner(s) would be responsible for ownership and maintenance of the approved encroachment.
 - d. If requested by HRM, the encroachment would be removed by the property owner(s) and the area within the right-of-way reinstated at their expense.
 - e. Record information shall be provided in paper and electronic format to HRM.

The area of the proposed encroachment will be a total of 8.90 square metres. In accordance with By-law E-200, the encroachment will be subject to an annual encroachment fee of \$89.00 (\$10.00 per square metre).

The encroachment agreement would be effective concurrently with an approved Streets and Services Permit. Should the encroachment request be approved, heritage staff would then proceed with the process for consideration of the substantial alteration to the heritage property through the Heritage Advisory Committee and Regional Council.

Staff does not recommend this alternative for the reasons outlined in this 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. Should Council choose this option, an additional staff report would be forwarded to Council addressing the required approval for the substantial alteration to the heritage property.

ATTACHMENTS

Attachment A: Draft Encroachment Agreement
Attachment B: Encroachment Request

Attachment C: Photo of Property

Attachment D: Photo of Adjacent Property

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: Steven York, Engineering Technician, 490-6250

Report Prepared by: Mark McGonnell, Development Engineer, 869-4727

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

Financial Approval by: _____
Greg Keefe, Director of Finance and Information Technology/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

Legal Review by: _____
Martin Ward, Q.C., Acting Director, Legal Services & Risk Management, 490-4226

This **Encroachment License Agreement** made this day of , 20__

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
("HRM")

and

INSERT NAME OF ENCROACHER: if it is a body corporate
include, "a body corporate" OR Persons full name if it is a
natural person
(the "Licensee")

Recitals

- A. **Whereas** the Licensee owns property at 5131 Morris Street and wishes to construct a stairwell, storage area and retaining wall (the "Encroachment") within the HRM street right of way as shown and described in Schedule "A";
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20____, the HRM agreed to give the Licensee 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.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Morris Street, identified in Schedule "A" to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, and said relocation shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction of the Encroachment and all subsequent work which involves the excavation of the street.
- (2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer.
- (3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").
- (4) For the purposes of the construction of the Encroachment, the Licensee agrees:
- (a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;
 - (b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;
 - (c) that the Encroachment will be done in accordance with the approved plans; and
 - (d) 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 Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.
- (6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any relocation.

Maintenance

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.
7. HRM may at any time and without notice inspect the Encroachment and, to the

extent required to inspect the Encroachment, enter upon the Licensee's land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 5 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 5 business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

12. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages 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 Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

Insurance

13. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any

renewal of the insurance.

Fees

14. The Licensee shall pay the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is eight point nine (8.9) square metres (95.8 square feet). The current fee is \$89.00 per year, which shall be paid before March 1st every year.

15. The Licensee acknowledges that this fee is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

16. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

17. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed ;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of Council, the Building Inspector for the Municipality, (the "Inspector"), or the Engineer.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully

responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this license agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

18. Any written notice or communication relating to the administration of this license 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 Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Name of ENCROACHER
Address,

19. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

20. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

21. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

22. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

22. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

23. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

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

INSERT NAME OF ENCROACHER HERE

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, 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 _____, one of the parties thereto, signed, sealed and delivered the same in his presence

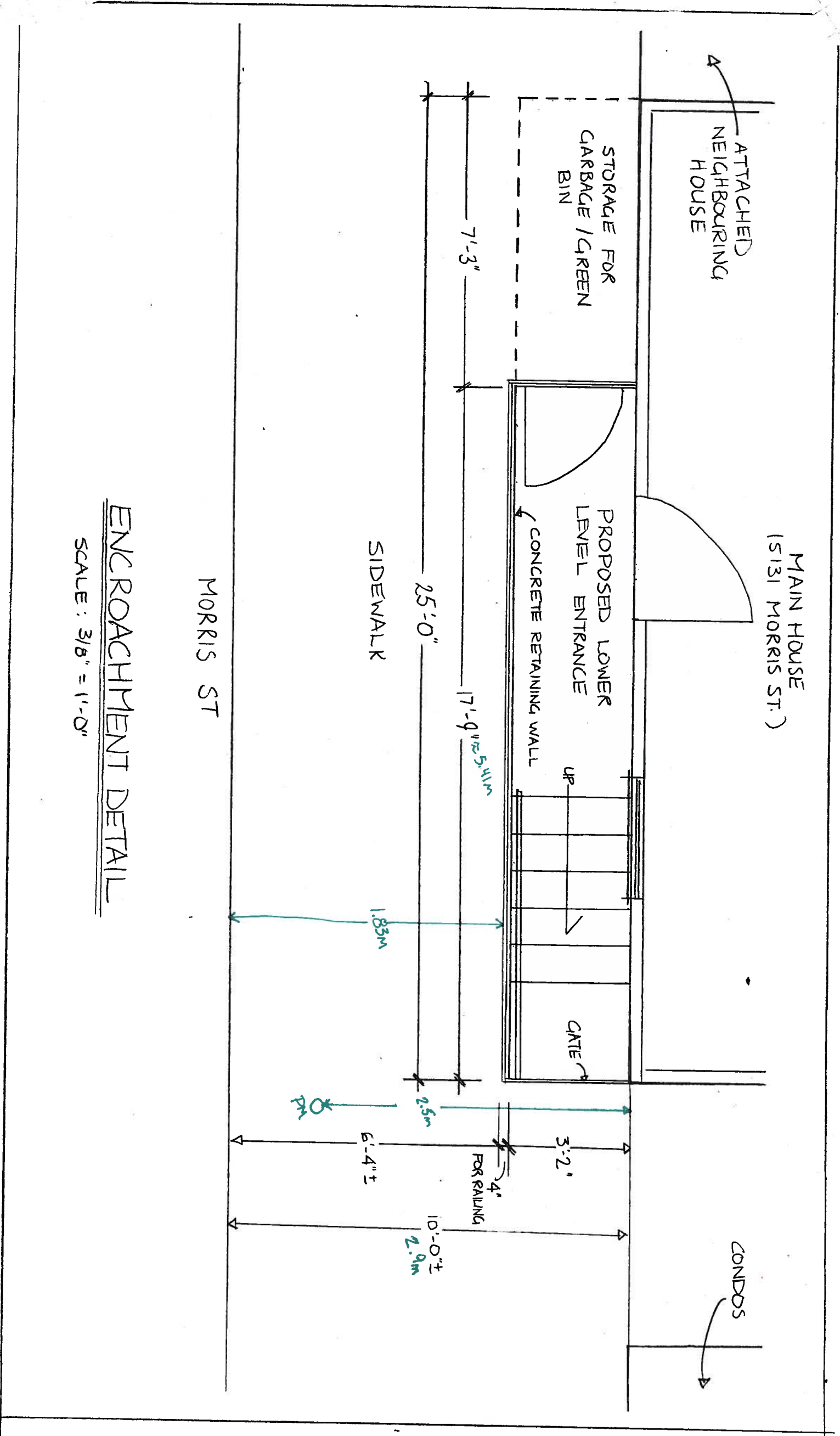
A Commissioner of the Supreme Court of Nova Scotia

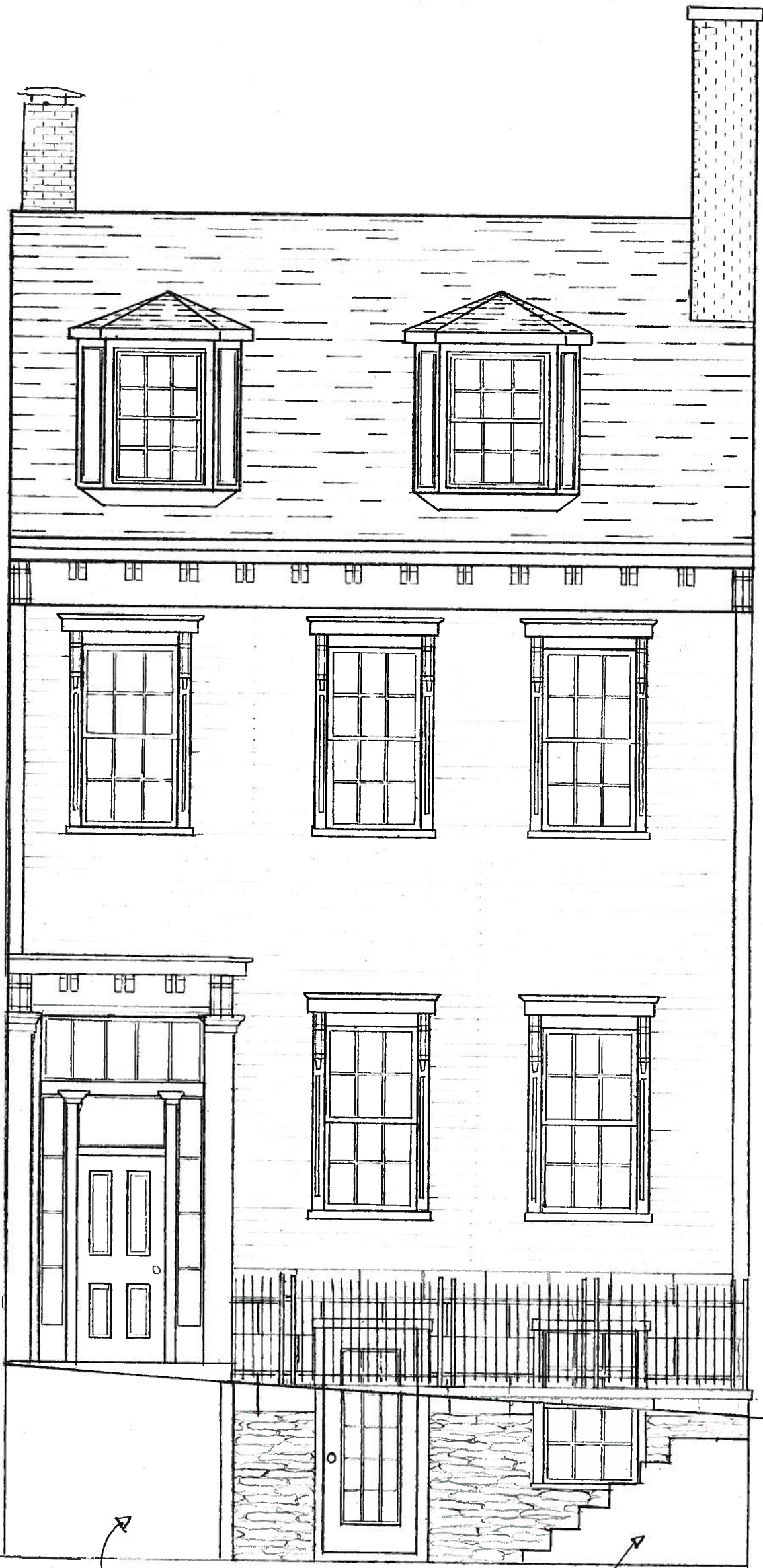
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, 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 _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A"





3RD FLOOR

2ND FLOOR

1ST FLOOR

BASEMENT

FRONT ELEVATION

SCALE: 1/4" = 1'-0"

APPROVED BY:

DATE: JAN 6, 2012

DRAWN BY JAIME
REVISED MAY 25

DESIGNED FOR:
MATT RAMSAY - 5131 MORRIS ST.

THIBAUT DESIGN INC. 902-830-8304

DRAWING NUMBER

5B

GARBAGE STORAGE
BEHIND DOORS

38" WIDE OPENING
FOR ACCESS

Attachment B: Encroachment Request

May 29th, 2012

Matt Ramsay
5131 Morris Street
Halifax, Nova Scotia
B3J 1A9

Halifax Regional Municipality, Community Development
PO Box 1749
Halifax, Nova Scotia
B3J 3A5

c/o Engineering, Building, Planning, Historical

Re: Application for permanent encroachment, permit #124075, 5131 Morris Street

Please find following, our reasons and justifications for the above application.

- 1) Gives access to basement directly from Morris Street.
- 2) Adds visual interest and dimension to street by introducing stairs, railing and stonework.
- 3) Creating an entrance well will allow for a larger window and a door to be placed in the basement giving better curb appeal to the front of the house.
- 4) The exterior retaining wall, for the entrance, will be faced with the original brick that was salvaged from the interior basement walls.
- 5) The exterior retaining wall, for the entrance, will be faced with the original brick that was salvaged from the interior basement walls.
- 6) From the interior of the house, there is an opening in the concrete that goes to the floor, as well as a sill, as if there used to be a door there. The top of this opening is visible from the exterior.
- 7) Allows for hidden storage of garbage and green bin. Because of the design of the attached row houses, there is no storage for these and they end up on the sidewalk. Getting these off the sidewalk and into hidden storage will help give the street a cleaner look.

- 8) Since the attached, neighbouring house has a similar stairwell, railing and entrance in place, it would allow for the two homes to appear more unified.
- 9) Existing sidewalk is approximately 10'-0" wide. After constructing entrance, there will still be approximately 6'-6" in width of sidewalk remaining.
- 10) Existing sidewalk is currently torn up due to an oil spill cleanup as well as underground work being completed by the city. Because of this, disruption will be minimal.

Thank you for your consideration of our application.

Best Regards,

Matt Ramsay

Attachment C: Photo of Property



Attachment D - Photo of Adjacent Property

