

# HALIFAX

P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 14.1.5**  
**Halifax Regional Council**  
**November 28, 2017**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:**

Original Signed by 

\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

**DATE:** November 7, 2017

**SUBJECT:** Request for Permanent Encroachment, 1587 Dresden Row, Halifax

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## **ORIGIN**

Application by Pino Pagnottella on behalf of 3230813 Nova Scotia Limited for a permanent encroachment at 1587 Dresden Row, Halifax.

## **LEGISLATIVE AUTHORITY**

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

## **RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Authorize the Mayor and Municipal Clerk to execute the attached Encroachment Agreement, as provided in Attachment A, to enable the installation of an accessible ramp on the existing sidewalk within the Dresden Row right of way, as discussed in this report; and
2. Waive the annual fees associated with this encroachment.

## **BACKGROUND**

The property owner, Pino Pagnottella on behalf of 3230813 Nova Scotia Limited, has requested permission to construct a ramp to improve accessibility to the commercial space located at 1587 Dresden Row. The currently empty commercial space is accessed from the street by stairs within the building. The ground floor elevation of the store is approximately 0.6 m (2 ft) above the sidewalk.

The sidewalk width in this area is 4.64 m (15.22 ft), with several parking meters and utility poles located within the sidewalk area. The commercial buildings along Dresden Row in this area commonly have seasonal sidewalk cafes extending into the right of way.

As outlined in the Encroachment By-law, permanent encroachments within the HRM street right-of-way, require an encroachment agreement, as well as authorization from Regional Council. The proposed access ramp is a type of encroachment which requires approval from Regional Council, and is also subject to an annual fee as outlined in Administrative Order 15.

## **DISCUSSION**

The applicant proposes to install an accessible ramp along the building frontage, connecting to the existing window at the interior floor level. The proposed accessible ramp is 1.52 m (5.0 ft) wide and 7.31 m (24.0 ft) long. The top platform is 1.52 m x 1.52 m (5.0 ft x 5.0 ft), and the sloped ramp is 1.07 m (3.5 ft) wide x 5.79 m (19.0 ft) long. The sidewalk width at this location is 4.64 m (15.2 ft), with parking meters and a utility pole as nearby obstructions.

In a new development, building accessibility can be easily accommodated in the building design. However, in this case, creating a ramp inside the building to improve accessibility is not feasible, as it would require significant structural changes within the building.

For sidewalk encroachments, such as sidewalk cafes and new construction, 2.10 m (6.9 ft) minimum clear pedestrian space is to be maintained. The proposed accessibility ramp would leave 1.50 m (4.9 ft) of clear space between the ramp and an adjacent utility pole, less than the recommended minimum. This is acceptable, given the pedestrian volumes, configuration, and “local street” classification of Dresden Row.

The proposed ramp would not block access to the neighboring store, however, it would block one basement window associated with 1587 Dresden Row, and two basement windows of the neighboring building at 1589 Dresden Row. Both properties are currently owned by 3230813 Nova Scotia Limited. The windows are not used for deliveries or fire egress. However, the positioning of the accessible ramp would prevent these windows from such uses in the future.

The proposed ramp would block access to the exterior fire hose connection for 1589 Dresden Row. The property owner has been notified that the firehose connection will require relocation prior to issuing the Encroachment Permit.

The area of the encroachment is approximately 8.50 m<sup>2</sup> (91.5 ft<sup>2</sup>). As per Administrative Order 15, an encroachment of this size would require a one-time license fee of \$125.00 and an annual encroachment fee of \$85.00. In accordance with bylaw E-200, Section 10 (b) (ii), Council may waive all or any encroachment fees for an encroachment in respect of a structure located on a street that provides a barrier free path of travel such as a ramp.

The proposed accessible ramp will not significantly impact the municipality’s operational requirements for this portion of the right of way.

### **FINANCIAL IMPLICATIONS**

The annual encroachment fee of \$85.00 can be absorbed within TPW's existing operating budget.

### **RISK CONSIDERATION**

There are no risk considerations associated with the recommendations of this report.

### **COMMUNITY ENGAGEMENT**

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

In keeping with the motion of the Accessibility Advisory Committee, as approved by the Transportation Standing Committee on May 23, 2013, all applications for permanent encroachments on sidewalks are to be brought for review by the Accessibility Advisory Committee, and the Committee's feedback is to be incorporated as a part of the staff report to Council.

This application was presented to the Accessibility Advisory Committee (AAC) on September 18, 2017. The AAC voted to recommend that Council to approve this application. The AAC recommended adding tactile elements and high contrast visual elements to the ramp structure, to increase accessibility. The report was reviewed by members of the Canadian National Institute for the Blind, as well as representatives of Walk & Roll Halifax, who also recommended tactile elements and high contrast visual elements. These elements will be made a requirement of the encroachment license, should Council approve the encroachment request.

### **ENVIRONMENTAL IMPLICATIONS**

No implications identified.

### **ALTERNATIVES**

1. Council could choose not to approve the proposed Encroachment Agreement or waive the annual fee. This is not recommended for the reasons contained within this report.
2. Council may choose to approve the encroachment and include other terms and conditions in the encroachment agreement as it may deem appropriate as per clause 10(a) of By-law E-200. Such modifications may require further discussion with the applicant.

### **ATTACHMENTS**

Attachment A Encroachment Agreement with plan showing encroachment (Schedule A)  
Attachment B Photo showing footprint of proposed encroachment marked on sidewalk  
Attachment C Letter from applicant

A copy of this report can be obtained online at halifax.ca, or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Shannon O'Connell, P.Eng., Program Engineer, 902.476.2917

Report Approved by: Original Signed  
Ashley Blissett, P.Eng., Program Manager, Development Engineering, 902.490.6848

Report Approved by: Original Signed  
Peter Duncan, P.Eng., Manager, Infrastructure Planning, 902.490.5449

Original Signed  
Report Approved by: Kelly Denty, Acting Director, Planning and Development, 902.490.4800

This **Encroachment License Agreement** made this \_\_\_\_ day of \_\_\_\_, 201\_\_.

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**, a body corporate  
(“HRM”)

and

**3230813 NOVA SCOTIA LIMITED:**  
(the “Licensee”)

### **Recitals**

- A. **Whereas** the Licensee owns property at 1587 Dresden Row and wishes to construct an accessible ramp (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 \_\_\_\_\_, 2017, 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, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, under and over that portion of Dresden Row, 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, which may be withheld at the sole discretion 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 and maintenance 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. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(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 temporary or minimal 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 15 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 15 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 be invoiced for, and 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 **8.50** square metres.

15. The Licensee acknowledges that the fee prescribed by Administrative Order 15 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 the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.

(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

3230813 Nova Scotia Limited  
1595 Dresden Row  
Halifax, N.S. B3J 2K4

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.

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

24. 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.

**SIGNED, SEALED AND DELIVERED** in  
The presence of:

**3230813 Nova Scotia Limited**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:  
Title:

**HALIFAX REGIONAL MUNICIPALITY**

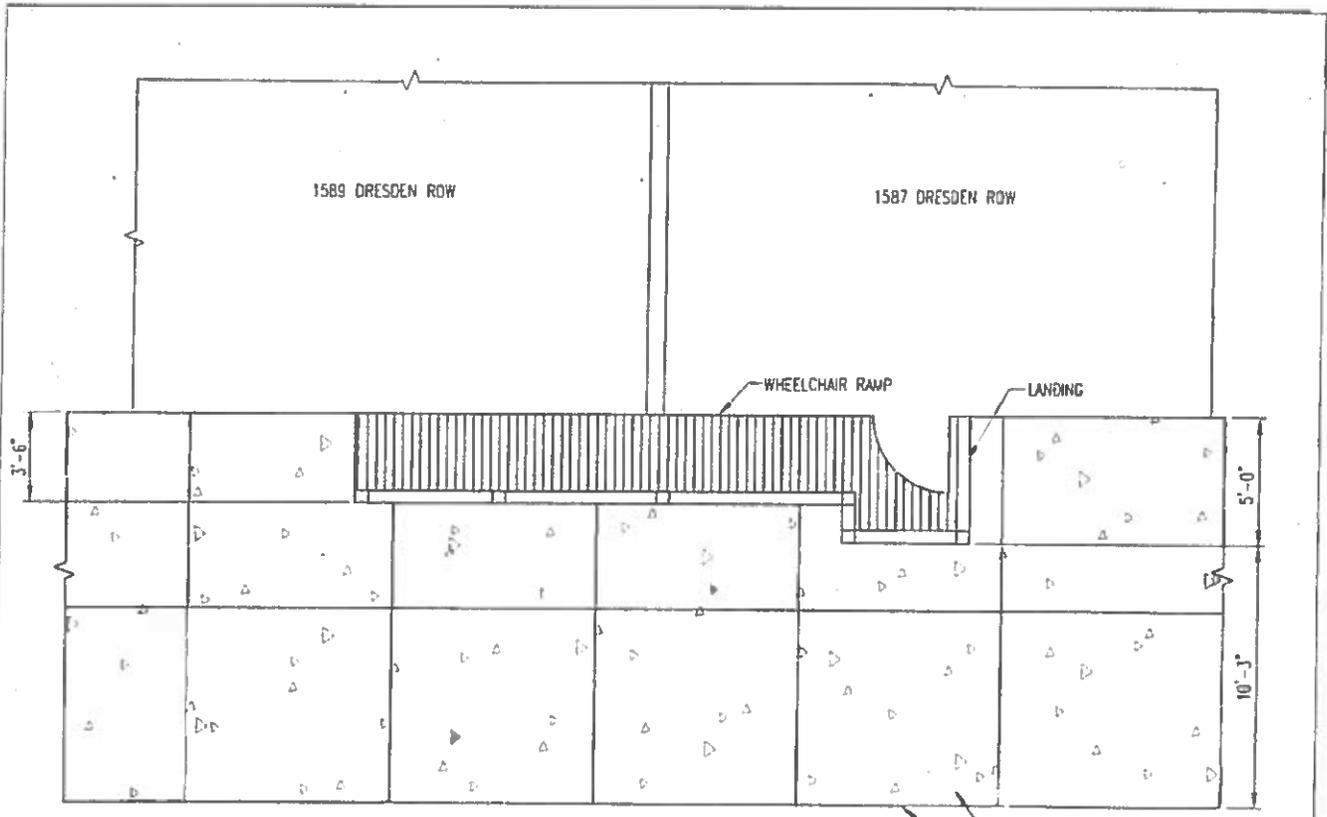
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

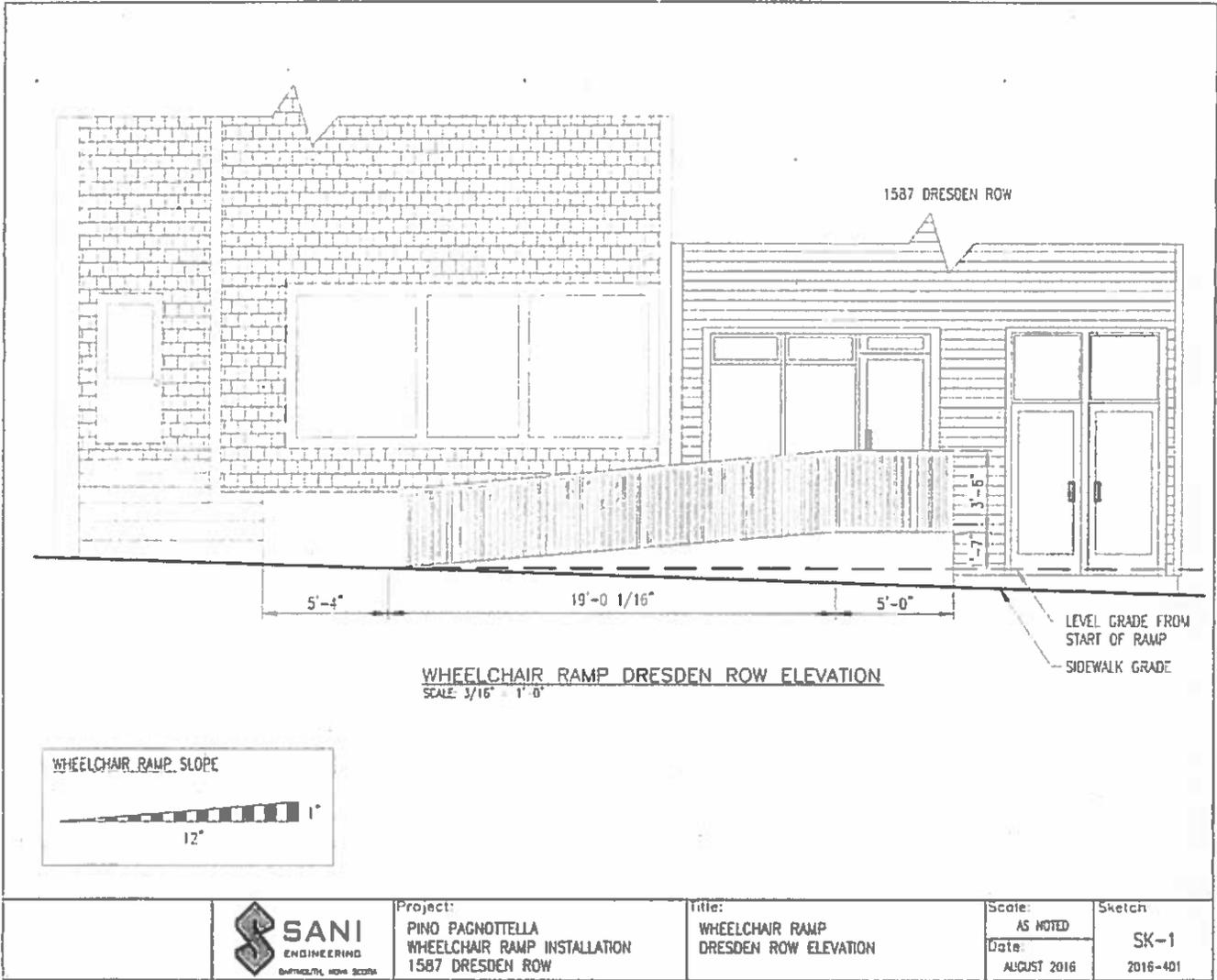
\_\_\_\_\_  
Municipal Clerk

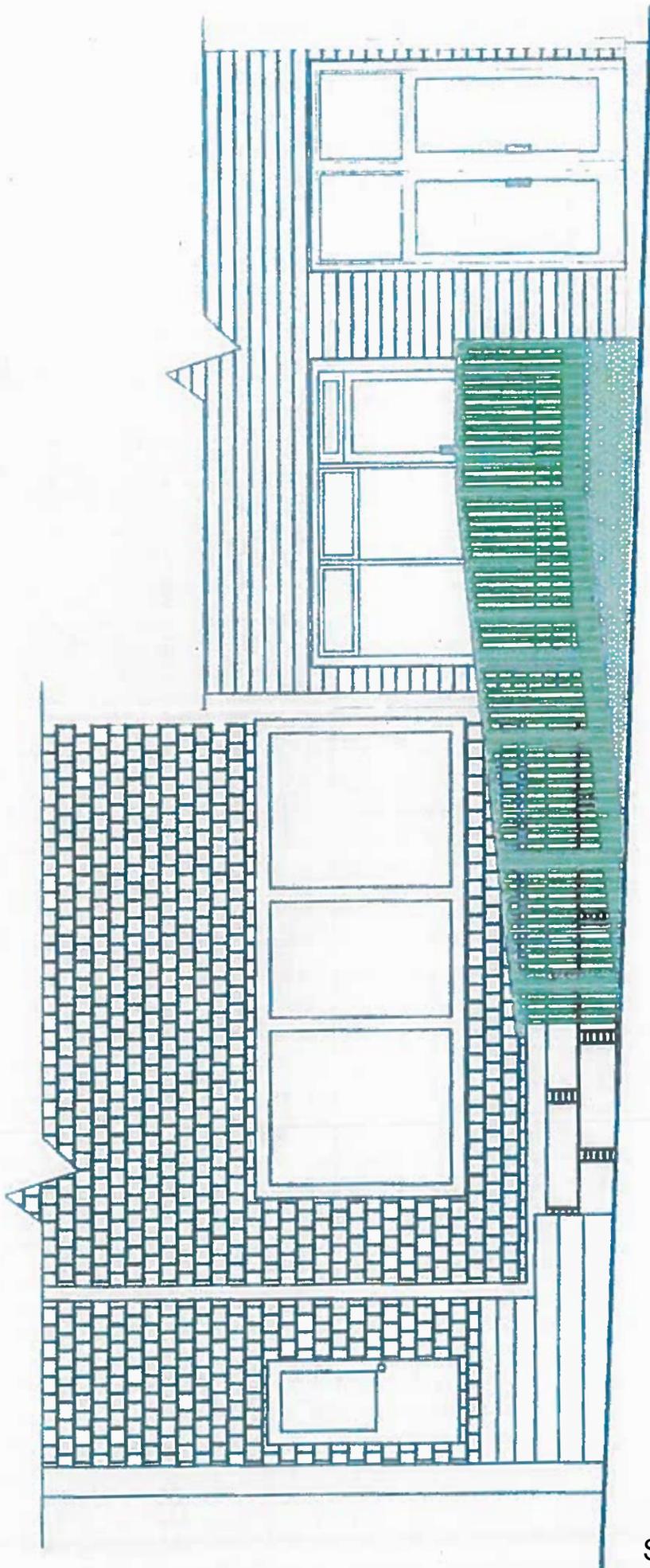
Schedule "A" – Plans Showing and Describing the Proposed Encroachment, including the type of encroachment, the civic address where such encroachment is authorized, and any other terms and conditions as may be necessary in the opinion of Council, the Inspector or the Engineer.



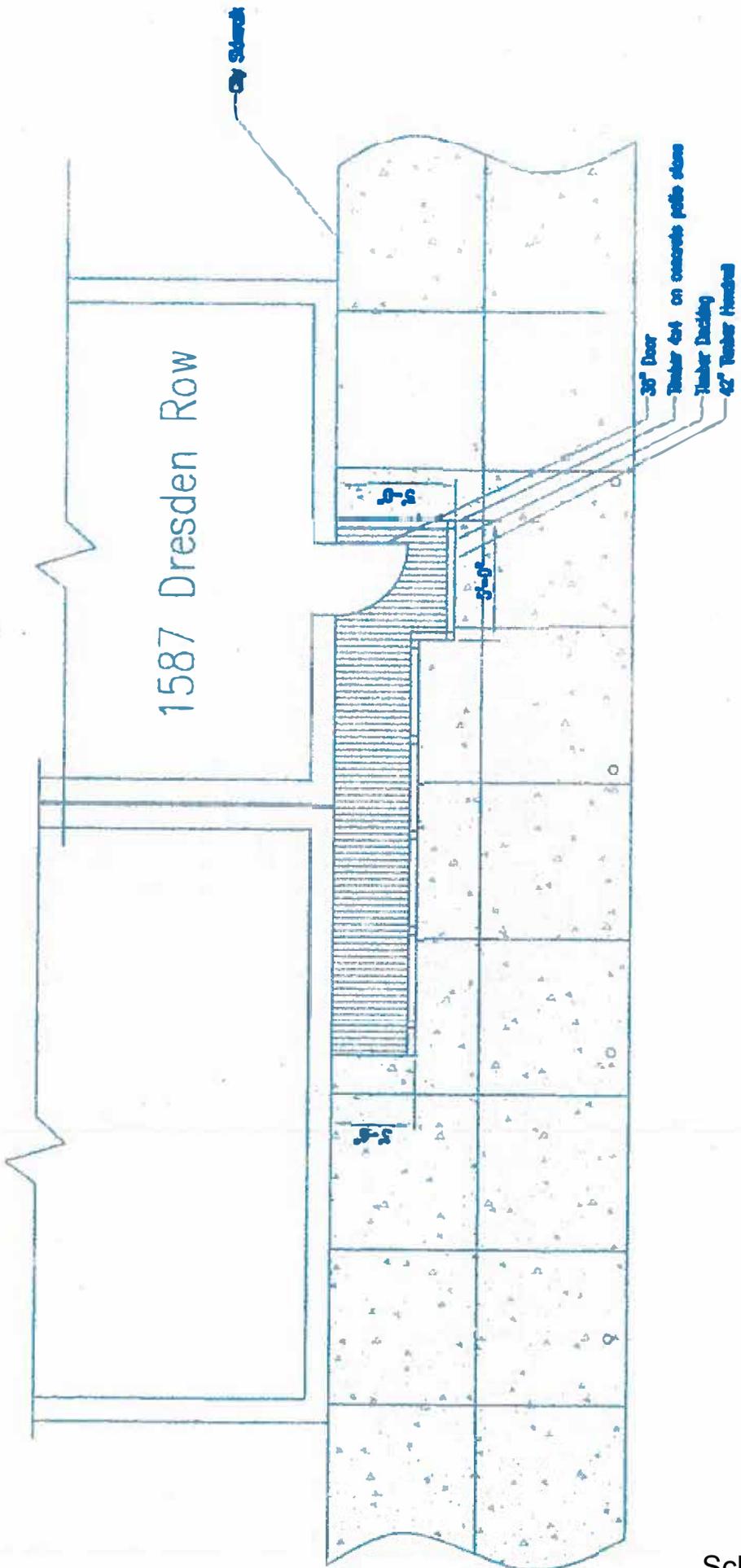
**WHEELCHAIR RAMP PLAN VIEW**  
 SCALE 3/16" = 1'-0"

	<b>Project:</b> PRIO PAGNOTTELLA WHEELCHAIR RAMP INSTALLATION 1587 DRESDEN ROW	<b>Title:</b> WHEELCHAIR RAMP PLAN	<b>Scale:</b> AS NOTED	<b>Sketch:</b> SK-2 2016-401
			<b>Date:</b> AUGUST 2016	





Schedule A



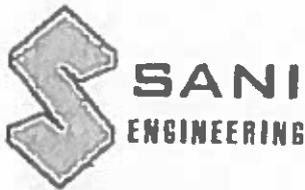
1587 Dresden Row

City Street

- 36" Door
- Timber Deck on concrete joists above
- Timber Decking
- 42" Timber Handrail

天味樓  
a Taste of the East  
(902) 423-5558





79 THORNE AVENUE DARTMOUTH, NS B3B 0A4  
PHONE - (902) 482-1009 FAX- (902) 468 - 6561  
www.sani-engineering.com

[REDACTED]

August 19, 2016

Attention: [REDACTED]

Re: Review of Wheelchair Access Ramp - 1587 Dresden Row, Halifax, Nova Scotia

Sani Engineering Limited was retained by [REDACTED] to quantify the amount of structural modifications necessary to the existing building in order to accommodate the installation of a new accessible wheelchair ramp within the main floor area of the building.

A site visit was carried out on August 17, 2016 by Sani Engineering Limited. The building in question measures approximately 28ft, front to back, and is 21ft wide. The main floor consists of open web steel joists with steel decking and concrete topping. The top of the main floor elevation is approximately 2'-3" above the sidewalk grade.

Based on the dimensions of the building, a straight ramp is not possible as the building only measures 28ft in length. In order to accommodate a ramp within the building, it would have to be a two (2) level ramp.

A two (2) level accessible wheelchair ramp would occupy 115 sq.ft of the main floor area. This would result in a loss of 37% of the commercial space available on this level.

Furthermore, to accommodate a two (2) level wheelchair ramp within the building's main floor area the ramp entrance must be flush with the sidewalk grade. As seen on SK-3 (enclosed), the top of the main floor elevation is approximately 2'-3" above the sidewalk grade. In order to achieve the above, the following structural modifications would be required:

- The foundation wall above the grade of the sidewalk would need to be removed.
- Six (6) open web steel joists would need to be lowered to accommodate the required slope for the ramp entrance.
- Additional steel beams, steel columns, and concrete footings would need to be installed in the basement in order to support the lowered portion of the main floor.

Based on the above, the addition of a wheelchair ramp within the main floor area of the building is not economically feasible as it would require extensive structural modifications. Furthermore, it would result in a significant loss of commercial space on the main floor level.

Please refer to SK-1 and SK-2 (enclosed) for proposed exterior accessible wheelchair ramp.

Regards

Sani Engineering Limited

Signature Redacted

Stelano Sani, P. Eng