



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

Item No. 13.1.5
Harbour East- Marine Drive Community Council
June 30th, 2016

TO: Chair and Members of Harbour East- Marine Drive Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Director of Planning and Development

DATE: June 17, 2016

SUBJECT: **Case 19536: Development Agreement to expand an existing industrial use at 422 & 424 Caldwell Road, Cole Harbour**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Metro Premier Properties Inc.
- May 19, 2016 Public Hearing by Harbour East- Marine Drive Community Council
- May 19, 2016, Motion of Harbour East- Marine Drive Community Council requesting Supplementary Report

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East - Marine Drive Community Council:

1. Approve the proposed Development Agreement, which shall be of substantially the same form as set out in Attachment A of this report, to permit an expansion to an existing industrial use at 422 & 424 Caldwell Road, Cole Harbour; and
2. Require the Development Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On May 19, 2016, Harbour East-Marine Drive Community Council held a public hearing to consider a development agreement to expand an existing industrial use at 422 & 424 Caldwell Road, Cole Harbour. Community Council deferred consideration of the proposed development and requested a supplementary report regarding the following matters:

- (a) to provide information with regard to the specific types of uses that fall under the scope of general contracting;
- (b) explain how the general contracting uses could be mitigated so as not to conflict with adjacent residential properties; and
- (c) provide information of how this property became identified as an industrial use.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement is detailed in the staff report dated February 16, 2016 and included information sharing, achieved through a public information meeting that was held on March 26, 2015, and a Public Hearing on May 19th, 2016.

DISCUSSION

Staff has reviewed these matters identified by Community Council and offer the following discussion on each:

(a) Scope of General Contracting

Community Council requested information on the types of land uses that would fall under the scope of general contracting given that the proposed development agreement identifies general contracting as a permitted component of the defined "service industry" use for the property,

Staff advise that general contracting is intended to permit the types of work that a person could expect when they are looking to have repairs or renovations done to a structure and would include, among others: painting services, dry walling services, construction services for small-medium sized projects, brick laying, services related to siding or roofing, plumbing, electrical work, storage of construction equipment (ladders, staging, lumber etc.), windows and doors services etc.

(b) Mitigating General Contracting

The proposed development agreement intends to limit the scope of the service industry use that may occur on the property to help minimize its impact on the residential neighbourhood. This is achieved by defining "service industry" within the proposed development agreement and further modifying that definition from that which was included in the February 16th staff report to remove the function of "limited processing" from the definition. This will help provide further clarity around what is permitted on the site and respond to Community Council's concerns about previous outdoor storage and light bulb processing occurring on the property. The definition of "service industry" included in Attachment A now reads as follows: *"a building or part of a building in which the primary function is to provide services such as maintenance, general contracting and storage, and which may include, as a minor or accessory function, the provision of supplies, merchandise or wares directly related to the services provided, and does not include a public garage including an engine and body repair shop, a printing establishment, a laundry or cleaning establishment, a wholesale bakery, a paint shop, sheet metal shop, a truck depot and similar uses."* This modification to the agreement has been discussed with the developer and he is amenable to the change.

Other land use mitigating measures such as building placement, fencing and landscaping have been proposed under the development agreement. The appropriate placement of the proposed building from neighbouring residential properties is outlined in Section 3.4.2 of the agreement. The Developer has agreed to provide a 1.83 m (6 ft.) high wooden opaque fence along the entire east and north property lines to help buffer between the existing residential properties on adjacent properties. Landscaping and outdoor storage are also considered in the agreement to help mitigate the light industrial use with adjacent properties.

(c) History of Property

The subject property is listed on Appendix B of the Cole Harbour/Westphal Land Use By-law (LUB) which identifies specific light industrial uses that are to be considered as permitted uses. Policy U-20 of the Cole Harbour/Westphal Municipal Planning Strategy provides for the continuation of these light industrial uses as well as their expansion by development agreement.

Staff reviewed the history of the property and found that the site has been zoned R-1 since the early 1980's. The property was identified as an existing industrial use at the time of the initial MPS and LUB adoption for the area in 1982 and this recognition was carried forward during the general MPS review in 1992. It is unclear as to exactly how the property came to be identified as an existing industrial use through these planning processes, however, staff suggest that it was likely determined through a land use survey or by specific request by the property owner. In either case, in 1992 Council adopted Policy UR-20 to provide for the continuation and expansion of the certain light industrial uses identified on Appendix B of the Cole Harbour/Westphal LUB by development agreement.

Conclusion

Staff advise that the proposed development agreement is consistent with the policies of the MPS. And therefore recommend that Community Council approve the proposed development agreement as contained in Attachment A.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved 2016/2017 budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Harbour East - Marine Drive Community Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the Developer, a supplementary staff report and may require a Public Hearing. A decision of Council to approve the development agreement is appealable to the NS Utility & Review Board as per Section. 262 of the *HRM Charter*.
2. Harbour East - Marine Drive Community Council may choose to refuse the proposed development agreement as set out in Attachment A of this report and, in doing so, must provide reasons why the development agreement does not reasonably carry out the intent of the SPS. A decision of Council to reject the Development Agreement is appealable to the N.S Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Attachment A Proposed Development Agreement

The original staff reports and development agreement can be found at:
<http://www.halifax.ca/Commcoun/east/documents/160407hemdcc1311.pdf>

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> 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, Planner, Policy & Strategic Initiatives, 902-490-4843

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Current Planning, 902-490-4800

**ATTACHMENT A
PROPOSED DEVELOPMENT AGREEMENT**

THIS AGREEMENT made this day of **[Insert Month]**, 2016,

BETWEEN:

[INSERT REGISTERED OWNER NAME],
body corporate, in the Halifax Regional Municipality,
in the Province of Nova Scotia, (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 422 & 424 Caldwell Road, Cole Harbour, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for an expansion to an existing industrial use, on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy U-20 of the Cole Harbour/Westphal Municipal Planning Strategy and Section 3.6 of the Cole Harbour/ Westphal Land Use By-law;

AND WHEREAS the Harbour East- Marine Drive Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 19536;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Cole Harbour/ Westphal Land Use By-law, and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

- 2.1.1 Service Industry use means a building a building or part of a building in which the primary function is to provide services such as maintenance, general contracting and storage, and which may include, as a minor or accessory function, the provision of supplies, merchandise or wares directly related to the services provided, and does not include a public garage including an engine and body repair shop, a printing establishment, a laundry or cleaning establishment, a wholesale bakery, a paint shop, sheet metal shop, a truck depot and similar uses.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 19536:

Schedule A	Legal Description of the Lands(s)
Schedule B	Site Plan
Schedule C	Elevation Drawings

3.2 Requirements Prior to Approval

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

- 3.3.1 The use(s) of the Lands permitted by this Agreement are as shown on Schedule B and as described as follows:
- a) the existing single unit dwelling; and
 - b) a Service Industry use.

3.4 Detailed Provisions for Land Use

- 3.4.1 The Developer's use of the Lands shall be as illustrated on Schedule B including (a) an existing single unit dwelling and (b) a Service Industry Use within the proposed Building A and the existing Building B.

3.4.2 Building A shall:

- a) be located in the south east corner of the property as illustrated on Schedule B;
- b) not exceed a footprint of 278.70 sq.m (3,000 sq.ft);
- c) be setback a minimum of 6.096 metres (20 ft) from the east property line
- d) be setback a minimum of 4.572 metres (15 ft) from the south property line;
- e) not exceed the height of 9.14 metre (30 ft); and
- f) generally conform with the elevations shown on Schedule C.

3.4.3 The Developer shall provide and maintain wooden opaque fencing, a minimum of 1.8 m (6 ft.) in height, along the entire east and north property lines as shown on Schedule B.

3.4.4 No outdoor mechanical equipment shall be used except that which is reasonably permitted and which does not create nuisance by virtue of noise, vibration, glare, odour or dust which is obnoxious.

3.4.5 Additions or accessory buildings for the single unit dwelling may be located on the Lands subject to the provisions contained within the Land Use By-law for Cole Harbour/Westphal as amended from time to time.

3.5 Signs

3.5.1 One non-illuminated ground sign depicting the name of the business at the entrance of the driveway with a maximum height of 0.91 metres (4 feet) and maximum face area of 1.82 square metres (6 square feet) per side may be permitted.

3.6 Landscaping

3.6.1 All existing and proposed trees shall be in consistent with Schedule B of this agreement.

3.7 Outdoor Storage

3.7.1 Any outdoor storage associated with the Service Industry use on the subject property shall be permitted between Building A and Building B provided the required parking is not reduced, the required setbacks are maintained and it is not located within the required landscaping as illustrated on Schedule B.

3.8 Subdivision

3.8.1 No subdivision of the Lands shall be permitted.

3.9 Maintenance

3.9.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control.

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- a) The granting of an extension to the date of commencement of construction as identified in this Agreement; and
- b) The length of time for the completion of the development as identified in this Agreement.
- c) Changes to the signage provisions of Section 3.5

4.2 Substantive Amendments

Amendments to any matters not identified under this Section shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

5.2 Subsequent Owners

- 5.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 5.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

5.3 Commencement of Development

- 5.3.1 In the event that development on the Lands has not commenced within two year from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 5.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Development Permit.
- 5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

5.4 Completion of Development

- 5.4.1 Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:
 - a) retain the Agreement in its present form;
 - b) negotiate a new Agreement;
 - c) discharge this Agreement; or

- d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Cole Harbour/Westphal, as may be amended from time to time.

5.5 Discharge of Agreement

5.5.1 If the Developer fails to complete the development after two years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- a) retain the Agreement in its present form;
- b) negotiate a new Agreement; or
- c) discharge this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

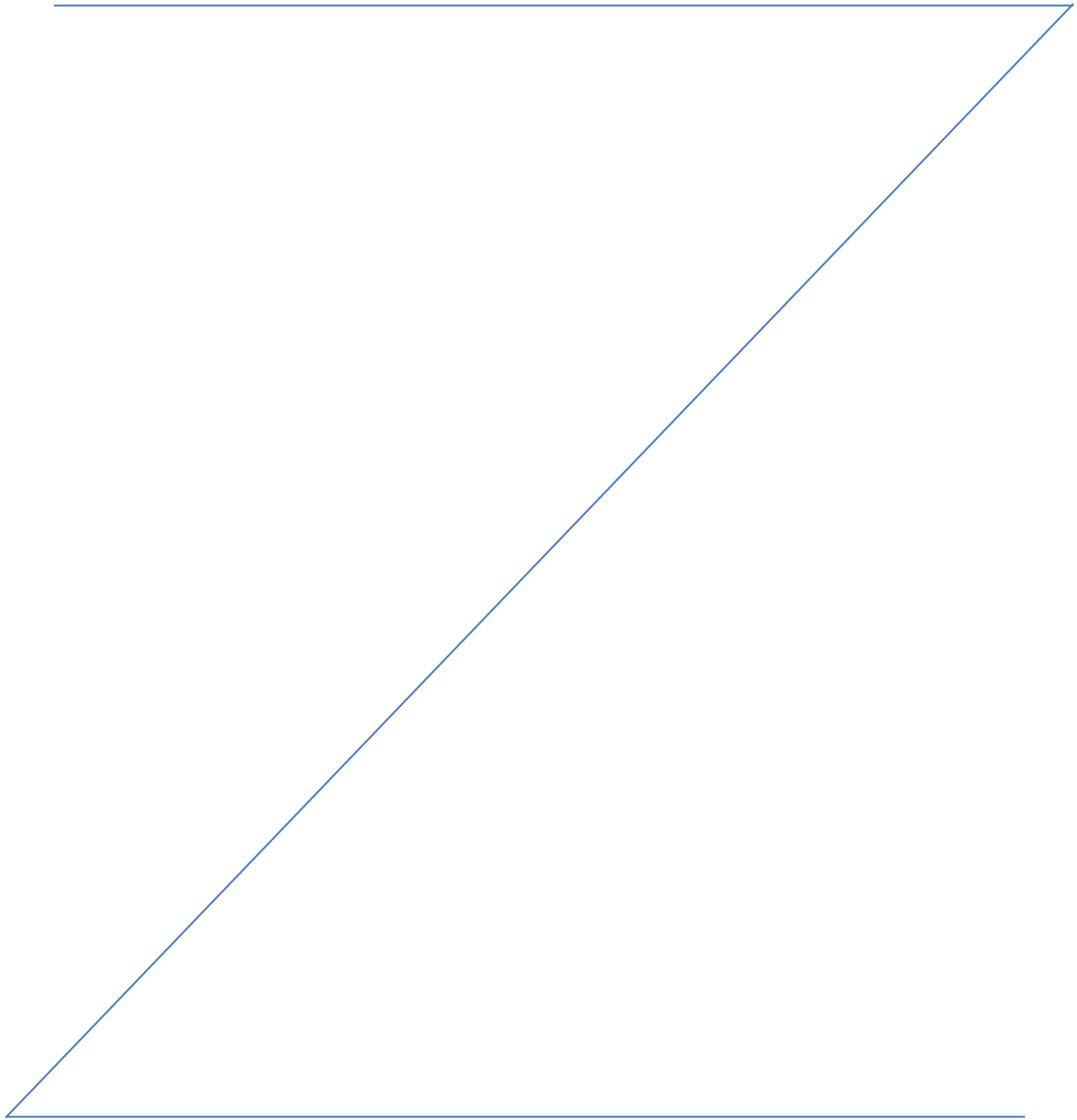
6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:

- a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.



IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Witness

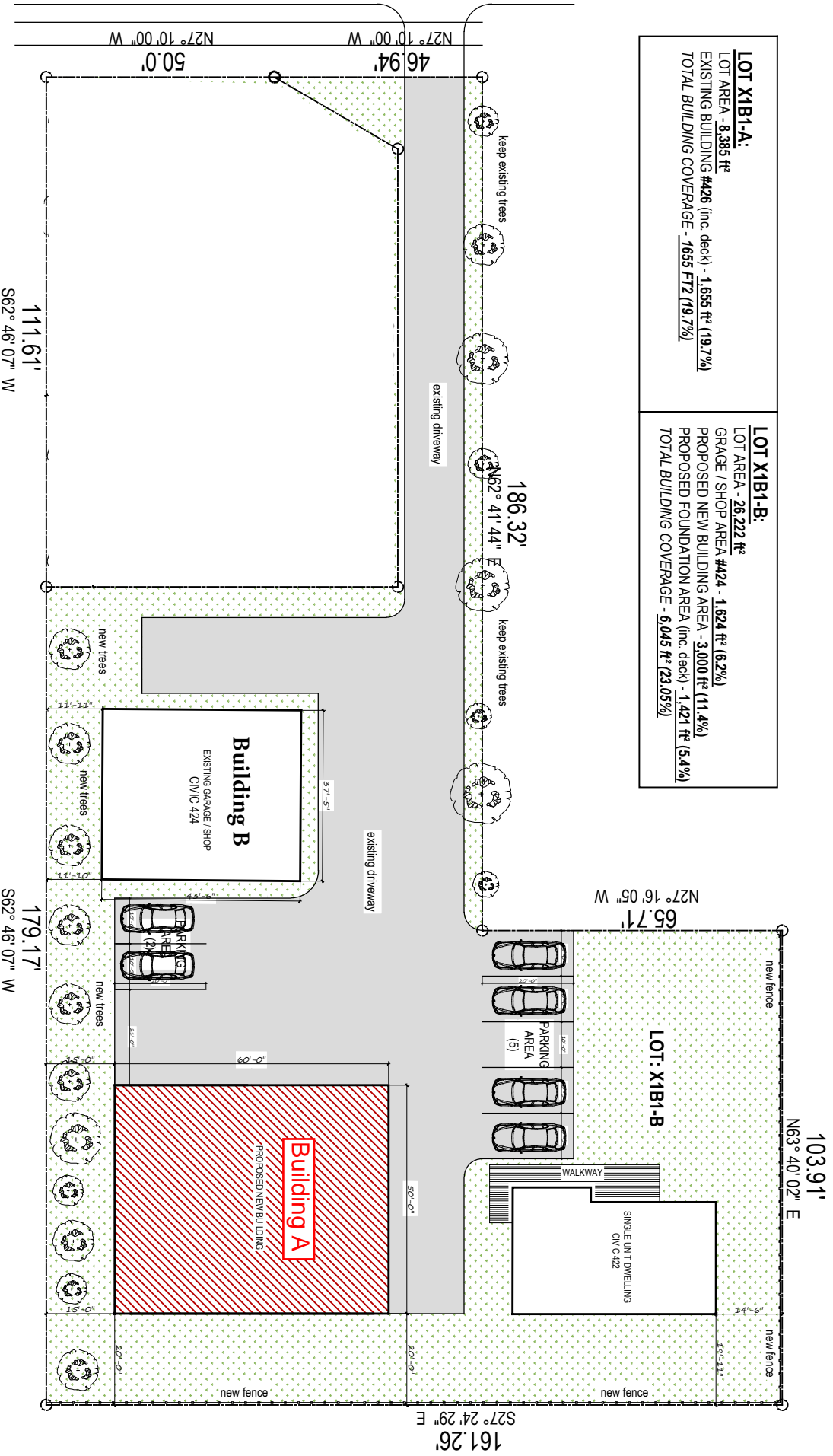
Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

Case 19536 - Schedule B - Site Plan

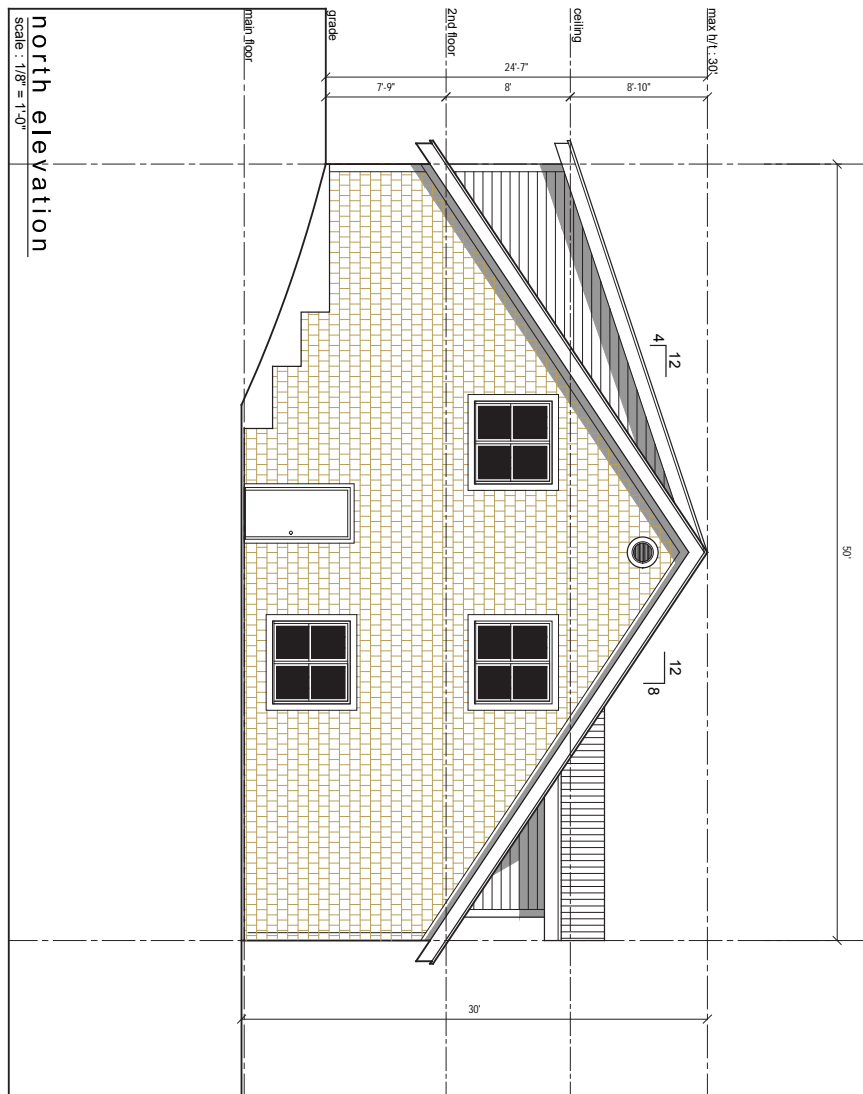
LOT X1B1-A: LOT AREA - 8,385 ft ² EXISTING BUILDING #426 (inc. deck) - 1,655 ft ² (19.7%) TOTAL BUILDING COVERAGE - 1,655 FT ² (19.7%)	LOT X1B1-B: LOT AREA - 26,222 ft ² GARAGE / SHOP AREA #424 - 1,624 ft ² (6.2%) PROPOSED NEW BUILDING AREA - 3,000 ft ² (11.4%) PROPOSED FOUNDATION AREA (inc. deck) - 1,421 ft ² (5.4%) TOTAL BUILDING COVERAGE - 6,045 ft ² (23.05%)
---	--



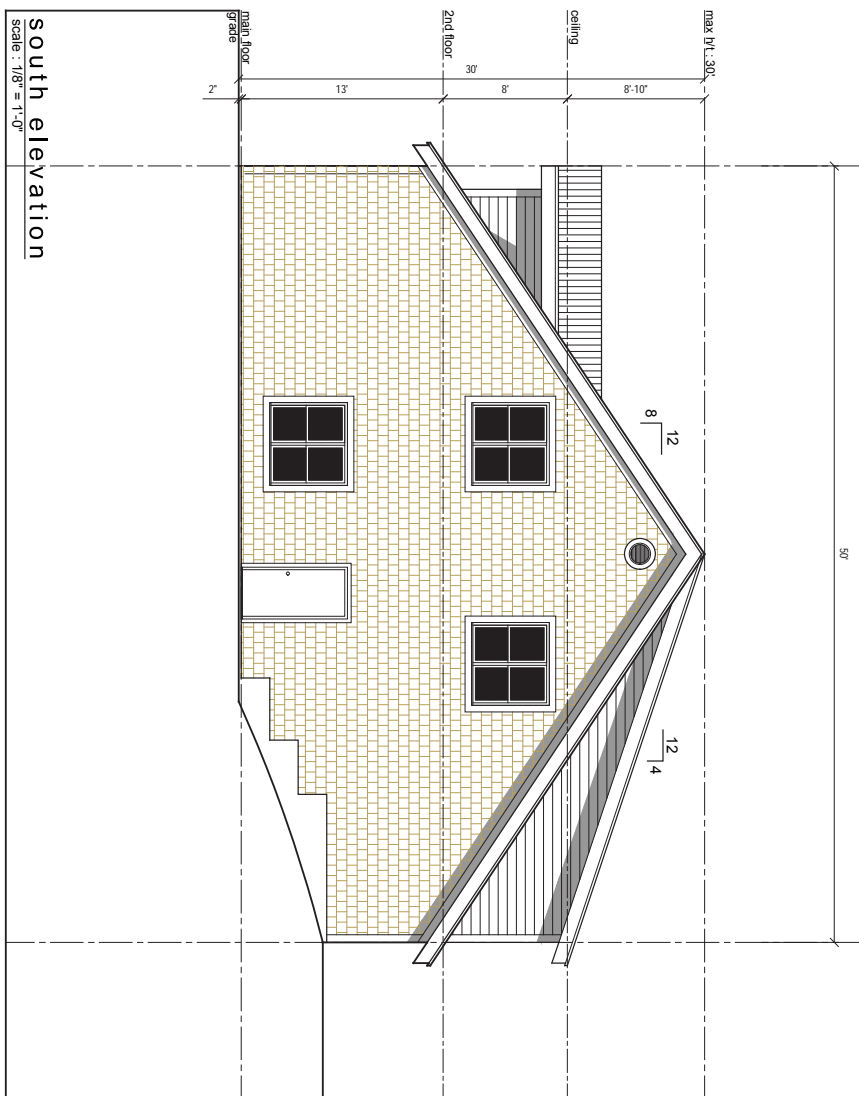
Site Plan 424 Caldwell Road
SCALE : 1/32" = 1'-0"



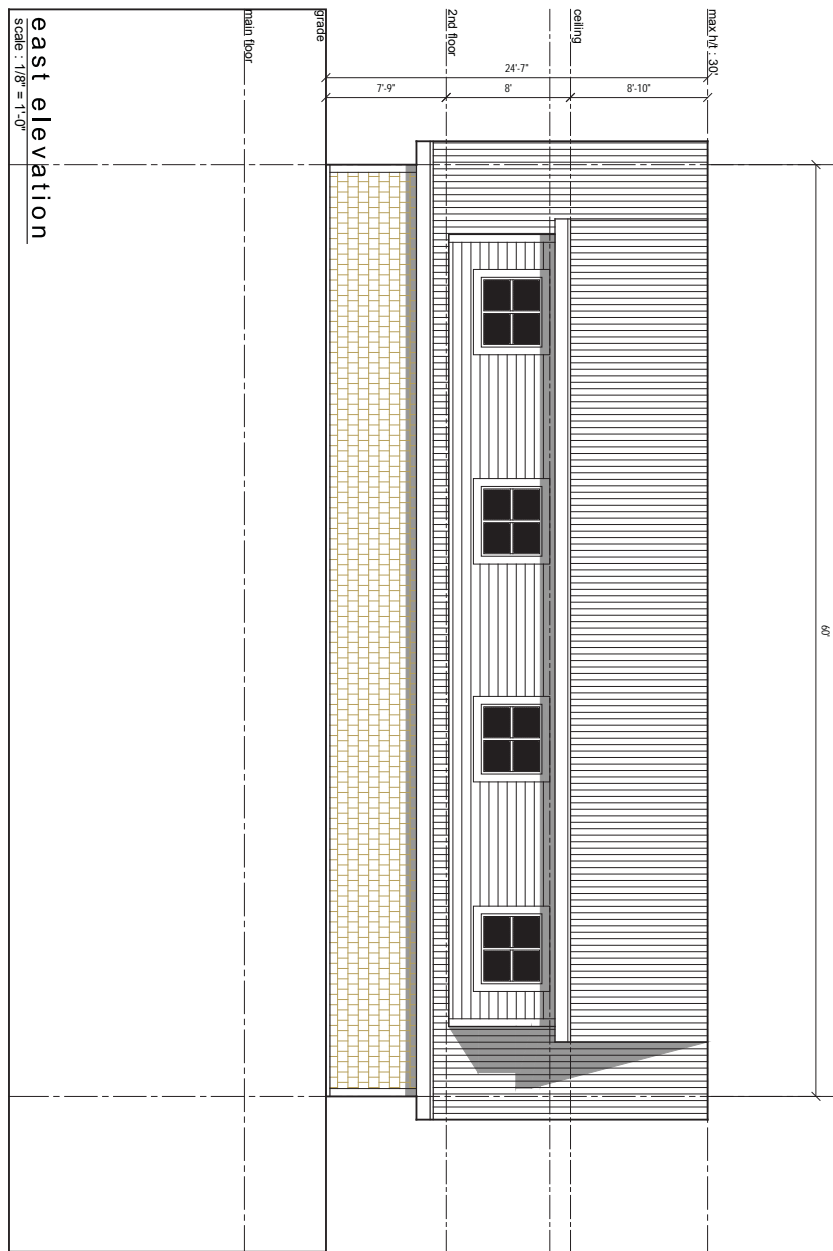
Case 19536 - Schedule C - Elevation Drawings



Case 19536 - Schedule C - Elevation Drawings



Case 19536 - Schedule C - Elevation Drawings



Case 19536 - Schedule C - Elevation Drawings

