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**Item No. 5.1.1**  
**Halifax and West Community Council**  
**June 17, 2020 First Reading**  
**August 11, 2020 Public Hearing**

**TO:** Chair and Members of Halifax and West Community Council

Original Signed

**SUBMITTED BY:** \_\_\_\_\_  
Kelly Denty, Director, Planning and Development

**DATE:** April 16, 2020

**SUBJECT:** **Case 22503: Amendment to the Land Use By-law for Halifax Mainland for properties on Percy Street and Joseph Howe Drive, Halifax**

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**ORIGIN**

Application by Fathom Studio, on behalf of property owner Tony Maskine Trustees.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that Halifax and West Community Council:

1. Give First Reading to consider approval of the proposed amendments to the Land Use By-law for Halifax Mainland, as set out in Attachment A, to allow changes to the method of calculating the maximum building height and clarification of street frontage for properties on Percy Street and Joseph Howe Drive, Halifax and schedule a public hearing.
2. Adopt the amendments to the Land Use By-law for Halifax Mainland, as set out in Attachment A.

## **BACKGROUND**

Fathom Studio has applied to amend the Land Use By-law for Halifax Mainland (LUB) for properties on Percy Street and Joseph Howe Drive, Halifax. The applicant represents the property owner, Tony Maskine Trustees, who would like to construct an 8-storey mixed-use building on the site. The proposed amendments would allow for changes to the method of calculating the maximum building height and clarification of the street frontage requirement for the subject properties.

<b>Subject Site</b>	Civic 3575 - 3587 Percy Street (Property ID 00180703, 00180729 & 40757429) and PIDs 41317306 & 41317744 Joseph Howe Drive, Halifax
<b>Location</b>	West side of Joseph Howe Drive, across from Atlantic Superstore
<b>Regional Plan Designation</b>	Urban Settlement (US)
<b>Community Plan Designation (Map 1)</b>	Commercial (Com), Fairview Secondary Planning Strategy (Section VII), Halifax MPS
<b>Zoning (Map 2)</b>	C-2C (Dutch Village Road Mixed Use Zone), LUB for Halifax Mainland
<b>Size of Site</b>	0.42 hectares (1.04 acres) total
<b>Street Frontage</b>	142 m (466 ft.) on Joseph Howe, 57.5 m (188 ft.) on Percy Street
<b>Current Land Use(s)</b>	Existing commercial building (OK Tire automotive service use)
<b>Surrounding Use(s)</b>	A mix of commercial and residential uses, including: <ul style="list-style-type: none"><li>- Harris &amp; Roome/ Graybar distributors to the north;</li><li>- Mix of commercial and residential uses to the south;</li><li>- Atlantic Superstore across Joseph Howe Drive to the east; and</li><li>- Mixed residential uses and NS Power site to the west.</li></ul>

### **Proposal Details**

The applicant proposes to amend the building height requirements of the LUB to allow for a new 8-storey mixed-use building on the Joseph Howe Drive portion of the subject site. The building proposed by the applicant would be 8 storeys for the portion fronting Joseph Howe Drive, while transitioning to 4 storeys in height for portions of the building facing Percy Street. The proposal includes the following:

- residential apartments;
- a small, ground-floor commercial component facing Joseph Howe Drive;
- a combination of surface and underground parking; and
- driveway access from both Joseph Howe Drive and Percy Street.

The applicant has previously obtained a development permit for an 8-storey building (Attachment C). However, the current LUB regulations pose some difficulties in reaching a full 8-storeys, taking into account LUB requirements with regard to minimum ground floor height (4.5 metres), differences in grade levels between the two streets and a lack of allowance for any rooftop mechanical or penthouse features. Further complicating the development site, the property abuts the Chain of Lakes trail along Joseph Howe Drive which eliminates the site from having direct street frontage on this side of the property. As such, there may be a need to subdivide the site to facilitate a desirable development which complies with applicable municipal regulations.

The applicant proposes to amend Section 38BE(3) of the Land Use By-law for Halifax Mainland. This section of the by-law prescribes the method of building height calculation for properties which front both Percy Street and Joseph Howe Drive. The key elements of the LUB amendment proposal (Attachment A) are as follows:

- Provision of a second option for measuring the grade at the base of the building, this being along the streetline grade of Joseph Howe Drive, in addition to the average grade adjoining the building;

- Clarification that the Chain of Lakes trail property line may be substituted for the street line along Joseph Howe Drive, since some properties do not currently have street “frontage”; and
- Clarification that the highest part of a roof excludes rooftop architectural features, landscape elements, and non-habitable penthouses (for mechanical equipment and amenity space) provided they do not exceed 30 percent of the area of the roof.

The applicant’s proposed site plan and building sections are presented in Attachment C. The illustrations are included for information purposes and will likely be subject to future changes. If Council were to approve the proposed amendments to the Land Use By-law as included in Attachment A of this report, the applicant would not be limited to developing their site in the manner shown in Attachment C. Instead, a Development Permit would be issued for any development which meets the updated rules as adopted by Council.

The proposed LUB amendment would also apply to two properties to the north of the subject site (Harris & Roome/ Graybar Canada - refer to Discussion section below). Also, the subject property owner has acquired adjacent properties fronting on Percy Street that are zoned R-4A (Dutch Village Road Multi Unit Zone). These R-4A properties are not being considered as part of this application but may be included within the consolidated site or in a separate planning application in the future.

### **Enabling Policy and LUB Context**

The subject site is located within the Fairview Area Secondary Planning Strategy (Section VII) of the Halifax MPS and is designated Commercial (COM) within Area B of the Plan Dutch Village Road area (Map 1). This designation encourages a commercial node that services the larger Fairview community, addresses land use, and regulates the external appearance of structures and urban design in a comprehensive manner.

The site is zoned C-2C (Dutch Village Road Mixed Use) pursuant to the Halifax Mainland Land Use By-law (Map 2). The C-2C Zone permits a wide range of commercial and residential uses. Height limits were established to maintain and promote a medium rise form of residential and commercial development within Area B.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site and approximately 125 postcards mailed to residents and property owners within the notification area in February of 2020. The public comments received (1 phone call) was limited to a clarification of the proposal details.

A public hearing must be held by Halifax and West Community Council before it can consider approval of the proposed LUB amendments. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, residents and property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail. The HRM website will also be updated to indicate notice of the public hearing.

The proposal will potentially impact neighbouring property owners and residents.

## **DISCUSSION**

Staff have reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Halifax Municipal Planning Strategy. Attachment A includes the proposed LUB amendments that would enable the proposed building height (Attachment C).

### **LUB Amendment Review**

Attachment B provides an evaluation of the proposed LUB amendments in relation to relevant MPS policies. Of the matters reviewed to satisfy the MPS criteria, the following have been identified for more detailed discussion:

#### **Building Height Calculations**

The proposed LUB amendment is intended to allow impacted sites to develop to the number of storeys originally intended within the Dutch Village Road policies and to provide clarification of the street frontage in relation to those properties fronting on the Chain of Lakes Trail.

At the time of adoption of amendments for the Plan Dutch Village Road area, a height limit of 25.5 metres was put in place for Area B, with the expectation that an 8-storey building was achievable. This height limit took into account a ground floor height suitable for commercial uses and adequate room for rooftop mechanical and penthouse features. However, following subsequent permit applications and analysis, the 25.5 metre height was inadequate to allow for these ground floor along with rooftop elements within the expected 8-storey envelope. In addition, differences in site and street grades as well as the presence of the Chain of Lakes Trail, which abuts some sites on Joseph Howe Drive, have resulted in issues with technical lot frontage and height requirements. Therefore, the proposed amendments allow for a reasonable solution to these issues.

As a result of staff's review, the potential community impacts of the proposed LUB amendments are expected to be minimal. The proposed minor increase to the height allowance is limited to the grade-level calculations and rooftop features, which helps to ensure compatibility with the surrounding area. The result of the proposed by-law amendments would be buildings containing the same number of storeys as was originally envisioned in both the Plan Dutch Village Road public engagement meetings as well as what was presented to Council at the public hearing for those original MPS amendments.

#### **Limited Impact on Other Properties**

The proposed amendments will only apply to those sites which abut both Percy Street and Joseph Howe Drive. This includes the subject properties and the site to the immediate north, comprised of two properties (Harris & Roome/ Graybar Canada). The proposed amendments will not negatively affect the existing building on the Harris & Roome site and may assist in any future redevelopment of that site, as the amendment would provide greater flexibility in determining building height and allowances for rooftop features in a manner similar to the subject site and proposal.

#### **Zoning**

The proposal does not change the permitted uses of the underlying C-2C (Dutch Village Road Mixed Use) zoning, which allows for a variety of commercial and residential uses. A mix of uses already exists throughout the surrounding area and is encouraged by the commercial polices related to the Plan Dutch Village Road area, Fairview Secondary Planning Strategy.

#### **Traffic and Servicing**

No concerns have been raised pursuant to the technical review of this application regarding traffic and site servicing. The applicant will be required to confirm any technical requirements are met prior to the issuance of construction permits.

## **Conclusion**

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The proposed LUB amendments will only apply to the subject properties and the site to the immediate north and will provide an opportunity for a building height of 8 storeys (25.5 metres) facing Joseph Howe Drive that is in keeping with that which was intended through the Plan Dutch Village Road process. Therefore, staff recommend that the Halifax and West Community Council approve the proposed LUB amendments.

## **FINANCIAL IMPLICATIONS**

The HRM cost associated with processing this planning application can be accommodated with the proposed 2020-2021 operating budget for C310 Urban and Rural Planning Applications.

## **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. Information concerning risks and other implications of adopting the proposed LUB amendments are contained within the Discussion section of this report.

## **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

## **ALTERNATIVES**

1. Halifax and West Community Council may choose to refuse the proposed LUB amendments, and in doing so, must provide reasons why the proposed amendments do not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to approve the proposed LUB amendments subject to modifications, and such modifications may require a supplementary report. A decision of Council to approve this proposed LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

## **ATTACHMENTS**

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification Area
Attachment A	Proposed Amendments to the Land Use By-law for Halifax Mainland
Attachment B	Review of Relevant Sections of the Halifax Municipal Planning Strategy
Attachment C	Conceptual Site Plan and Building Sections

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A copy of this report can be obtained online at [www.halifax.ca](http://www.halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Paul Sampson, Planner II, Urban Enabled Applications, 902.490.6259




Report Approved by: Steven Higgins, Manager, Current Planning, 902.490.4382



**Map 1 - Generalized Future Land Use**

3575 - 3587 Percy Street,  
Halifax

**HALIFAX**

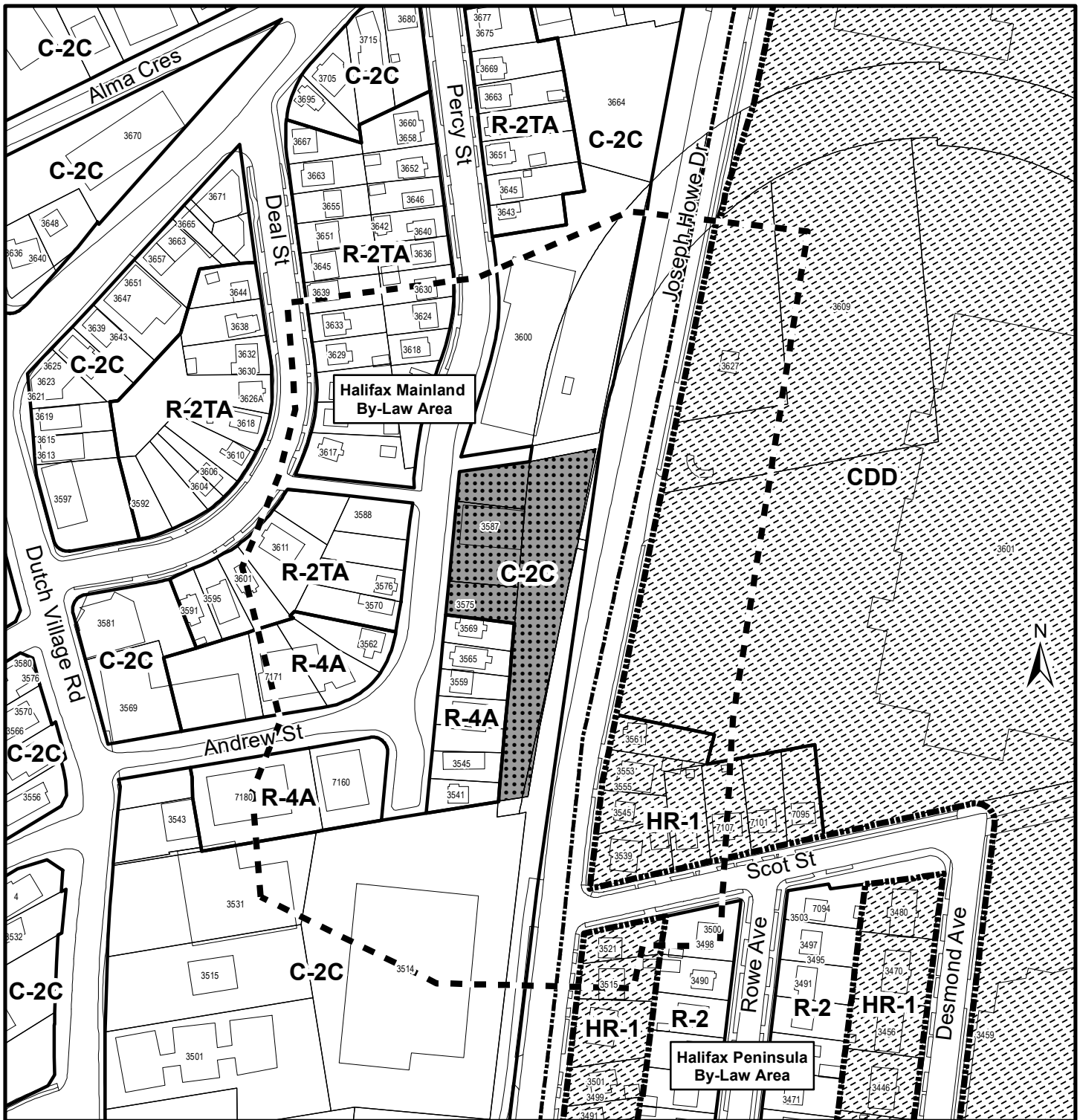
-  Subject Property
-  Regional Centre Package A Plan Area
-  Fairview Secondary Plan Area
- Halifax Plan Area
- Fairview Secondary Plan Area
- Regional Centre Package A Plan Area

Designation	
HFXFV	COM Commercial
	DVR RES Dutch Village Road Residential
	LDR Low Density Residential
HFX	RES Residential Environments
RC	FGN Future Growth Node
	HR High-Order Residential






This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.



### Map 2 - Zoning and Notification

3575 - 3587 Percy Street,  
Halifax

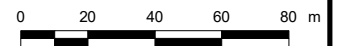
-  Subject Property
-  Area of Notification
-  Regional Centre Package A Bylaw Area

Halifax Mainland Bylaw Area  
Halifax Peninsula Bylaw Area  
Regional Centre Package A Bylaw Area

#### Zone

HMAIN	C-2C	Dutch Village Road Mixed Use
	R-2TA	Dutch Village Road Townhouse
	R-4A	Dutch Village Road Multi Unit Zone
HPEN	R-2	General Residential
RCPA	CDD	Comprehensive Development District
	HR-1	Higher-Order Residential 1

# HALIFAX



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

## ATTACHMENT A

### Proposed Amendment to the Land Use By-law for Halifax Mainland

BE IT ENACTED by the Halifax and West Community Council of the Halifax Regional Municipality that the Land Use By-law for Halifax Mainland is hereby further amended as follows:

1. Subsection 38BE(3) shall be amended by inserting the following text shown in bold, as follows:

38BE(3) Notwithstanding the definition of height in Section 2 of this by-law, for lands that have frontage on both Percy Street and Joseph Howe Drive **or that have frontage on Percy Street and abut the Chain of Lakes Trail**, height shall mean the vertical distance between **either** the average grade adjoining the building **or the Streetline Grade along Joseph Howe Drive (whichever provides the greater height)**, and the highest part of the roof. **For the purpose of determining height, the highest part of the roof excludes any rooftop architectural features, landscape elements and non-habitable penthouses (including residential amenity space). Rooftop architectural features, landscape elements and non-habitable penthouses shall not exceed 30 percent of the area of the roof on which they are located. On properties which abut the Chain of Lakes Trail, the Joseph Howe Drive Street Line may be substituted with the Chain of Lakes Trail property line for the purpose of determining the Streetline Grade along Joseph Howe Drive.**

I, Sherryl Murphy, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above -noted by-law was passed at a meeting of the Halifax and West Community Council on the **\*\*\* day of \*\*\*\*\*, 20\*\***.

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Sherryl Murphy  
Municipal Clerk



**Attachment B**  
**Review of Relevant Sections of the Halifax Municipal Planning Strategy**

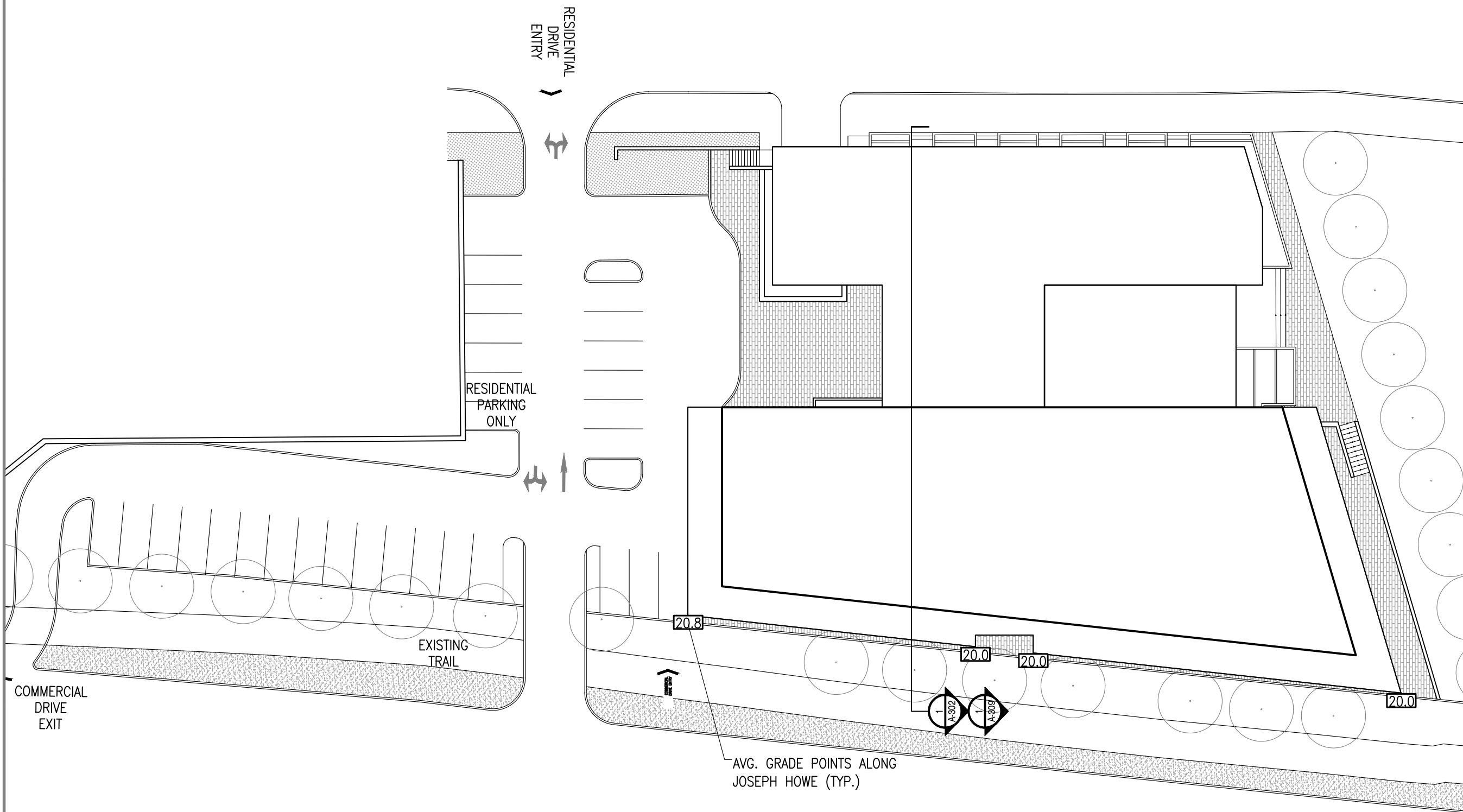
<b>Section VII –Fairview Area Secondary Planning Strategy</b>	
<b>2A. Plan Dutch Village Road</b>	
<b>Policy</b>	<b>Staff Comment</b>
<p><b>Objective:</b> <i>The lands around Dutch Village Road are a commercial area that services the larger Fairview community. Maintaining the vibrancy of the area by planning for redevelopment and rehabilitation will ensure success for the community. To create a commercial node that better balances development pressures with the needs of the community requires policies that address land use, external appearance of structures (built form), and urban design in a comprehensive manner. The goals for Plan Dutch Village Road are to:</i></p> <p><i>1. Maintain and encourage the retention of local businesses through zoning regulations; 2. Create greater predictability of built form through an as-of-right process; 3. Create development that is respectful of the community; 4. Allow commercial development along all parts of Dutch Village Road; 5. Ensure new development transitions appropriately to low density residential neighbourhoods within the Dutch Village Road study area; 6. Create new buildings that are better integrated with neighbourhood; 7. Require site design that creates livable and walkable communities; 8. Generate a more defined commercial node; 9. Regulate the lands under one By-Law (Mainland Land Use By-Law); and 10. Permit consideration of high-rise development in Area A.</i></p>	<p>The proposed development will meet these objectives through the as-of-right development process, subject to the requirements of the C-2C zone, with the exception of the amendments noted below.</p> <p>The proposed LUB amendment includes the following changes to method of calculating height:</p> <ol style="list-style-type: none"> <li>1. Provision of a second option for measuring the grade at the base of the building (streetline grade or average grade adjoining the building);</li> <li>2. Clarification that the Chain of Lakes trail property line may be substituted for the street line along Joseph Howe Drive; and</li> <li>3. Clarification that the highest part of a roof excludes rooftop architectural features, landscape elements, and non-habitable penthouses (for mechanical equipment and amenity space) provided they do not exceed 30 percent of the area of the roof.</li> </ol> <p>The proposed LUB amendment is reasonably consistent with the intent of the objectives and policies of the MPS.</p>
<p><b>Designations</b></p> <p><b>2A.1.</b> <i>Within the Dutch Village Road area the lands shall be designated either Commercial or Dutch Village Road Residential, as shown on the Generalized Future Land Use map.</i></p>	<p>The lands are designated Commercial and fall within Area B of the Dutch Village Road area.</p>
<p><b>Commercial Designation</b></p> <p><b>2A.2.</b> <i>Lands located on Joseph Howe Drive, Dutch Village Road, Titus Street and Alma Crescent shall be designated as Commercial. This designation is intended to provide for a variety of commercial and residential uses that service the needs of the broader Fairview community. The designation will introduce controls on the external appearance of structures. The designation will permit development of a height and scale up to a mid-rise form through an as of right process. However, high-rise buildings may be</i></p>	<p>The proposed development will primarily include multiple-unit residential uses and will also contain a small commercial component. The building will be mid-rise in form and developed through the as-of-right permitting process. The proposed LUB amendment will allow flexibility in how building height is calculated while at the same time ensuring that buildings do not exceed the mid-rise range (up to 8 storeys high), which was the originally intended height throughout the Plan Dutch</p>

<p><i>considered subject to a development agreement process within Area A (Plan Dutch Village Road Overview Map).</i></p>	<p>Village Road planning process. The additional flexibility created in the proposed LUB amendments takes into consideration the site grades in the area and allows height exemptions for rooftop features and penthouses which is consistent with more recent allowances in downtown Halifax and Centre Plan areas. Therefore, the proposed development will meet this policy.</p>
<p><b>2A.2.1.</b> <i>The Halifax Mainland Land Use Bylaw shall be amended to create a commercial zone (Dutch Village Road Mixed Use Zone) that permits multi-unit residential, retail, office uses, restaurants, personal service uses, institutional uses, community facilities and related commercial uses that service the local community. To encourage the retention of small scale, local businesses, and to reduce the impact of new commercial uses on low density residential environments, retail uses will have a limited ground floor area in Area D. Parking shall not be permitted in the front yard, but instead is encouraged below ground, or otherwise internal to a building. Lowered parking standards provide flexibility for development and reduce parking demand in support of active transportation and transit. (RC-Feb 12/19; E. Apr 13/19)</i></p> <p><i>The Dutch Village Road Mixed Use Zone will permit low-rise (buildings up to 11 metres) to mid-rise buildings (buildings taller than 11 m to 25 m), but will not permit single unit residential buildings;</i></p>	<p>The proposed development falls within Area B of Dutch Village Road area, will include multi-unit residential uses and a small ground-floor commercial space. The proposed mid-rise building will meet the LUB requirements through the as-of-right development process. The proposed amendments to the LUB (Attachment A) clarify that the minor height increases are intended to allow flexibility regarding rooftop elements and take into consideration the differing site grades and “streetline” grades in the area.</p>
<p><b>Building and Streetwall Heights</b></p> <p><b>2A.4.</b> <i>A mid-rise form shall be encouraged along Dutch Village Road and Joseph Howe Drive. The buildings shall be developed with the goal to improve public safety by removing the parking from the front yard, and also to create a defined streetwall. This streetwall will help enhance the pedestrian experience in the area;</i></p>	<p>The proposal will of mid-rise form along Joseph Howe Drive and low-rise along Percy Street. The proposal will adhere to LUB requirements related to streetwalls, surface parking and pedestrian level details such as adequate ground-floor height.</p>
<p><b>2A.4.1.</b> <i>HRM shall regulate the height of buildings in the Dutch Village Road area in the Halifax Mainland Land Use By-law;</i></p>	<p>The maximum building height of 25.5 metres will be met, as indicated on Map ZM-32, with the allowances of the proposed amendments contained in Attachment A factored in.</p>
<p><b>2A.5.</b> <i>HRM shall regulate the height of the streetwalls in the Dutch Village Road area in the Halifax Mainland Land Use By-law;</i></p>	<p>No changes are proposed to these elements of the Land Use By-law.</p>
<p><b>Low-rise and Mid-rise Commercial and Multi-Unit Buildings</b></p> <p><b>2A.6.</b> <i>Low-rise and mid-rise buildings shall be permitted in the Dutch Village Road Commercial and Dutch Village Road Residential Designations and shall be situated on the lot in such a way that the bulk of the building is located along the street frontage;</i></p>	<p>No changes are proposed to these elements of the Land Use By-law, excepting the clarification that the Chain of Lakes trail property line may be substituted for the street line along Joseph Howe Drive.</p>

**2A.6.1.** *Low-rise and mid-rise buildings may step down in the rear yard to an internal landscaped area. This landscaped area may include a one storey portion of the building where abutting low density residential or up to three stories where the building abuts commercial or multi-unit residential properties. Landscaping shall be required on the roof of these portions of the building.*

No changes are proposed to these elements of the Land Use By-law.

Attachment C: Conceptual Site Plan and Building Sections



KEY PLAN

NO.	REVISIONS	DATE
03	ISSUE FOR REVIEW	2018.10.04
02	ISSUE FOR REVIEW	2018.08.23
01	ISSUE FOR REVIEW	2018.06.xx

REVISIONS DATE

PROJECT  
**JOSEPH HOWE DRIVE  
 MIXED-USE DEVELOPMENT**

CLIENT  
**BLUE BASIN GROUP**

SCALE: 1/32"=1'-0"  
 DATE: 2019.07.31

DRAWN BY: \_\_\_\_\_ CHECKED: \_\_\_\_\_ REVIEWED: \_\_\_\_\_

APPROVED: CC

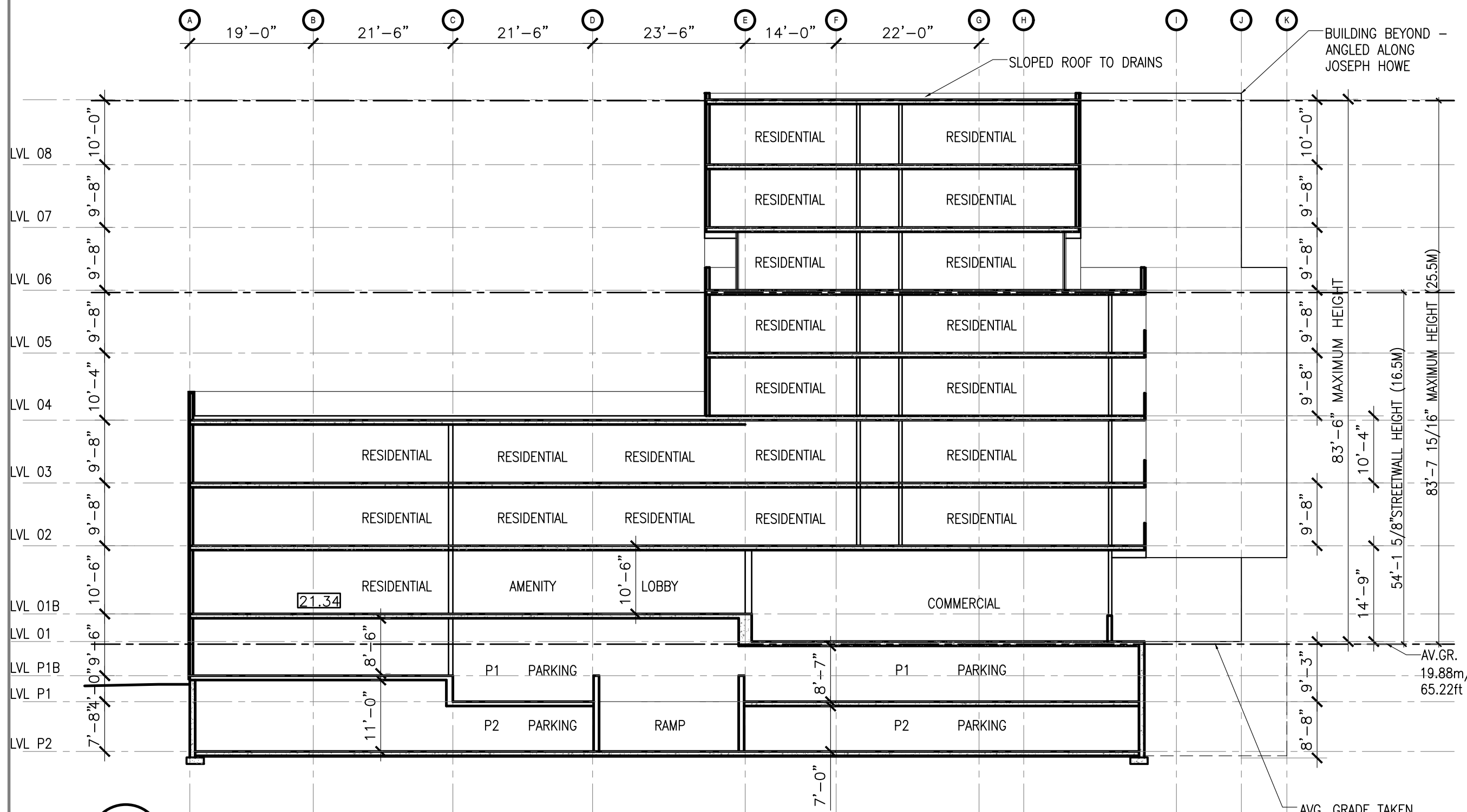
SEAL

**NOT FOR  
 CONSTRUCTION**

1/32"=1'-0" **1** SITE PLAN - JOSEPH HOWE  
 A-001 REF SHEET NO.

DRAWING  
**SITE\_PLAN**

DRAWING NO.  
**A-302**



KEY PLAN

REVISIONS	DATE
03	ISSUE FOR REVIEW 2018.10.04
02	ISSUE FOR REVIEW 2018.08.23
01	ISSUE FOR REVIEW 2018.06.xx

PROJECT  
**JOSEPH HOWE DRIVE  
 MIXED-USE DEVELOPMENT**

CLIENT  
**BLUE BASIN GROUP**

SCALE: 1/16"=1'-0"  
 DATE: 2019.07.31

DRAWN BY: \_\_\_\_\_ CHECKED: \_\_\_\_\_ REVIEWED: \_\_\_\_\_

APPROVED  
 CC

SEAL

**NOT FOR  
 CONSTRUCTION**

DRAWING  
**BUILDING\_SECTION**

DRAWING NO.  
**A-302**

1/16"=1'-0" **1** BUILDING SECTION  
 A-302

AVG. GRADE TAKEN FROM JOSEPH HOWE AND PERCY

