



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

**Item No. 7.1.2**  
**Halifax and West Community Council**  
**March 11, 2020**  
**September 8, 2020**

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

Original Signed

**SUBMITTED BY:**

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Kelly Denty, Director of Planning and Development

Original Signed

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Jacques Dubé, Chief Administrative Officer

**DATE:** February 12, 2020

**SUBJECT:** **Case 21916: Amendments to the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law and Development Agreement for a 12-storey mixed-use development at 3514 Joseph Howe Drive, Halifax**

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**ORIGIN**

- Application by Zwicker Zareski Architecture & Planning, on behalf of BANC Investments Limited;
- April 2, 2019 Regional Council initiation of MPS/ LUB amendment process.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

**It is recommended that Halifax and West Community Council recommend that Regional Council:**

1. Give First Reading to consider the proposed amendments to the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law, as set out in Attachments A and B of this report, to enable streetwall heights of up to 5 storeys and overall building heights of up to 12 storeys within 'Area A' of the Plan Dutch Village Road Area by development agreement, and schedule a public hearing; and
2. Approve the proposed amendments to the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law, as set out in Attachments A and B of this report.

**Recommendation cont'd on Page 2**

**It is further recommended that Halifax and West Community Council:**

3. Give Notice of Motion to consider the proposed development agreement, as set out in Attachment C of this report, to allow a 12-storey mixed-use development at 3514 Joseph Howe Drive, Halifax. The public hearing for the proposed development agreement shall be held concurrently with the public hearing referenced in Recommendation 1.

**Contingent upon the amendments to the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law being approved by Regional Council and becoming effective pursuant to the requirements of the *Halifax Regional Municipality Charter*, it is further recommended that Halifax and West Community Council:**

4. Approve the proposed development agreement to allow a 12-storey mixed-use development at 3514 Joseph Howe Drive, Halifax, which shall be substantially of the same form as set out in Attachment C of this report.
5. 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**

Zwicker Zareski Architecture & Planning, on behalf of BANC Investments Limited, has requested amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to allow minor increases in the maximum streetwall heights and maximum building heights within 'Area A' of the Plan Dutch Village Road area. These amendments would allow for a mixed-use development with a streetwall height of up to 5 storeys and an overall building height of up to 12 storeys in a mixed-use configuration at 3514 Joseph Howe Drive, Halifax through the development agreement process.

<b>Subject Site</b>	3514 Joseph Howe Drive, Halifax
<b>Location</b>	West side of Joseph Howe Drive, next to St. Lawrence Place, Fairview area
<b>Regional Plan Designation</b>	Urban Settlement (US)
<b>Community Plan Designation (Map 1)</b>	Commercial (COM), Fairview Secondary Planning Strategy - Plan Dutch Village Road area, Halifax Municipal Planning Strategy
<b>Zoning (Map 2)</b>	Dutch Village Road Mixed Use (C-2C) Zone, Halifax Mainland Land Use By-law
<b>Size of Site</b>	0.93 hectares (2.3 acres)
<b>Street Frontage</b>	123.5 meters (405 feet) on Joseph Howe Dr., 18.3 meters (60 feet) at the end of Percy Street
<b>Current Land Use(s)</b>	1-storey commercial building
<b>Surrounding Use(s)</b>	Primarily mixed commercial and multi-unit residential development to the north, west and south; low and medium density residential uses across Joseph Howe Drive to the east.

**Proposal Details**

This is the first development proposal being considered by development agreement in Area A since the adoption of the Plan Dutch Village Road amendments in 2016. The applicant is seeking amendments to the Halifax MPS and Halifax Mainland LUB as follows (Attachments A and B):

- to allow for an increase in the maximum building height from 37.5 metres to 42 metres within “Area A” of the Plan Dutch Village Road area (Fairview Area Secondary Planning Strategy), without exceeding the originally-intended 12 storey maximum.;
- to allow for an increase in the maximum streetwall height allowance from 16.5 metres to 20 metres (not exceeding 5 storeys) on Joseph Howe Drive, and from 13.5 metres to 17 metres (not exceeding 4 storeys) on Dutch Village Road within “Area A” of the Plan Dutch Village Road area.;
- to clarify that at the southernmost end of Percy Street, which abuts the side property line of 3514 Joseph Howe Drive, there will not be a requirement to include a building ‘streetwall’ nor will there be limitations on surface parking in that location.

The proposed MPS and LUB amendments would enable the development agreement process to be considered concurrently by the Halifax and West Community Council for a mixed-use development at 3514 Joseph Howe Drive, including:

- a 5-storey streetwall (podium) containing approximately 2,137 sq. metres (23,000 sq. feet) of ground-floor commercial uses (retail space, restaurant with a drive-through), and multi-unit residential uses above the ground-floor;
- two 7-storey residential towers above the building podium with an overall height of 12 storeys and containing an approximate total of 324 residential units;
- approximately 360 underground parking spaces on two levels and 50 surface parking spaces behind the commercial uses for a total of 410 parking spaces. The parking is accessed via two existing driveways on Joseph Howe Drive; and
- landscaped areas on the rooftops of the base and tower portions of the building, and ground-level landscaping along the building and site perimeter.

### **MPS 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 A of the Plan Dutch Village Road area (Map 1). The commercial 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).

Policies 2A.7 and 2A.7.1 of the Fairview Area Secondary Planning Strategy (Section VII) allow Council to consider high-rise developments which exceed 25 metres in height within ‘Area A’ of the Plan Dutch Village Road area by development agreement (Attachment D).

### “Plan Dutch Village Road” MPS/LUB Amendments (2016)

The Plan Dutch Village Road amendments were created to establish comprehensive planning policies that enable additional commercial and residential developments on the lands located on Dutch Village Road and neighbouring areas. The adopted approach, similar to that in Downtown Halifax uses elements of form-based code to control the massing of buildings, controls building placement to encourage street level activity, provides sidewalks and bicycle lanes to allow safer and more enjoyable mobility and permits a wide variety of commercial uses servicing the larger Fairview community.

With regard to maximum building heights within the Plan Dutch Village Road area, the staff report presented to Council in 2016, prior to adoption of the MPS and LUB amendments, indicated the following:

*The plan aims to create a comfortable pedestrian experience by reducing the mass of the buildings near the sidewalk by introducing the requirement to establish a streetwall. This means that buildings will need to be set back above a certain height to prevent them from ‘overpowering’ the pedestrian realm. In Area A, buildings that front on Joseph Howe Drive will be allowed a five storey, or 16.5 m streetwall height, which steps down to four stories on Dutch Village Road. On the remainder of the*

*streets, the streetwall heights are reduced to three storeys (10.5 m), reflecting the change in lot configuration to smaller lots with smaller buildings and reduced heights.*

*Taller buildings will be focused around Joseph Howe Drive and the existing commercial area, with as-of right heights of up to 25.5 m (8 stories) permitted here as well as in Area A. The maximum height will be reduced to 19.5 m (6 stories) along Dutch Village Road, with shallow properties only permitted a maximum height of 13.5 m (4 stories) to prevent over development of small lots and to reduce the impact on abutting residential buildings. Additionally, the ground floor height of any commercial building is required to be 4.5 m to create a more defined commercial floor space, as well as to provide enhanced retail and commercial space for tenants.*

Regarding controls for larger development, the report indicated the following:

*The policy allows the consideration of high-rise development of up to 37.5m only in Area A (Attachment C, ZM-27). This area is an existing commercial area that has large lots with large building footprints, and an existing 14 storey building. Due to the size of the lots, it is harder to predict how they should be developed, making this area suitable for the consideration of development agreements.*

### **Approval Process**

The approval process for this application involves two steps:

- a) First, Regional Council must consider and, if deemed appropriate, approve proposed amendments to the MPS and LUB; and
- b) Secondly, Halifax and West Community Council must consider and, if deemed appropriate, approve the proposed development agreement once the MPS/LUB amendments are in effect.

Notwithstanding the two-stage approval process, a joint public hearing can be held by both Regional and Community Council to consider both the proposed MPS/ LUB amendments and the proposed development agreement. In the event, Regional Council approves the MPS and LUB amendments, Halifax and West Community Council may only make a decision on a proposed development agreement following the amendments to the MPS and LUB coming into effect. A decision on proposed MPS and LUB amendments is not appealable to the Nova Scotia Utility and Review Board (the Board). However, the decision on the proposed development agreement is appealable to the Board.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy, the HRM Charter, and the Public Participation Program approved by Council on February 25, 1997. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area as shown on Map 2, and a public information meeting, with 6 attendees, held on May 1, 2019. Attachment E contains a summary of the comments from the meeting. The public comments received include the following topics:

- Positive comments related to the design and appearance of the building;
- Question whether longstanding practice of pedestrians cutting through the site, between Percy Street and Joseph Howe Drive, would be able to continue; and
- Question regarding the timing of building construction.

A public hearing must be held by Regional Council before consideration can be given to the approval of the proposed MPS and LUB amendments. Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners.

## **DISCUSSION**

The MPS is a strategic policy document that sets out the goals, objectives and direction for long term growth and development in Municipality. Amendments to an MPS are significant undertakings and Council is under no obligation to consider such requests. In this case, staff advise that there is merit in considering the proposed MPS and LUB amendment. The following paragraphs review the rationale and content of the proposed MPS and LUB amendments, as well as the associated development agreement.

### **Proposed MPS and LUB Amendments**

Staff considered the existing MPS policy context when drafting the proposed MPS and LUB amendments (Attachments A and B). A summary of the proposed amendments are as follows:

- Allow for a minor increase in the maximum building height allowance within “Area A” of the Plan Dutch Village Road area (Fairview Area Secondary Planning Strategy);
- Allow for a minor increase in the maximum streetwall height allowance on Joseph Howe Drive and Dutch Village Road, within “Area A” of the Plan Dutch Village Road area; and
- To clarify that at the southernmost end of Percy Street, there will not be a requirement to include a building ‘streetwall’ nor will there be limitations on surface parking in that location.

Of the matters addressed by the proposed MPS and LUB amendments, the following has been identified for detailed discussion.

### **Increase in the maximum overall building height and streetwall height**

Staff have reviewed the applicant’s rationale in the context of site circumstances and surrounding land uses, and advise that it is reasonable to consider amending MPS policies to allow for the proposed height increases for the following reasons:

- The proposed increases in the maximum building height and streetwall height are relatively minor. The increases are not intended to allow for additional habitable floor space, nor will they increase the number of building storeys allowed beyond what the policy originally intended;
- In the 2016 MPS and LUB amendments, the intent with regard to number of storeys was identified in the staff report presented to Council and during community engagement sessions. Notwithstanding references to storeys in the staff report, MPS amendments only referenced height in metres and underestimated the actual heights required when considering sloping site conditions, rooftop mechanical and architectural features;
- Existing policy enables streetwalls of 5 storeys along Joseph Howe Drive and 4 storeys along Dutch Village Road, and overall building heights of 12 storeys within Area A. However, without the proposed amendments the proposed development would contain one less storey than was originally intended in terms of both the streetwall and overall building heights due in part to grade changes;
- The 2016 LUB amendments which created the Dutch Village Road zones (R-2TA, R-4A, and C-2C) and height definitions allowed for little or no flexibility for site conditions such as sloping site, drainage requirements and rooftop mechanical or architectural features. This was unintentional and has only come to light as a result of detailed drawings by the applicant in advance of this request; and
- Proposed height exemptions for rooftop architectural features, mechanical equipment and non-habitable penthouses are consistent with HRM’s recent planning frameworks such as the Downtown Halifax MPS and Centre Plan areas.

### Frontage at end of Percy Street

The site's northern property line includes a small portion of frontage in common with the southern end of Percy Street. The elevation of Percy Street is approximately 3 metres (10 feet) higher than much of the subject site and 4.5 metres (15 feet) higher than Joseph Howe Drive. An extension of Percy Street would not be appropriate in this location, nor would a streetwall facing Percy Street. Instead, the northern property line is treated as a side lot line, with larger building setbacks, surface parking and landscaping. The grade condition necessitates a retaining wall and fence structure due to the substantial grade difference. The proposed amendments to the MPS and LUB clarify that there was no intention to include a building 'streetwall' and limitations on surface parking in that location of the site. In this instance, it is reasonable to consider amending the policies to allow for this clarification.

During public consultation, a comment was made regarding the longstanding practice of pedestrians cutting through the site to get from Percy Street to Joseph Howe Drive and potentially to Dutch Village Road to the west, and if this would continue to be permitted. Staff and the applicant reviewed this matter and are not aware of any easements or legal right for the public to pass through the site. Furthermore, there are existing pedestrian pathways in the area, both to the south and the north, which link Joseph Howe Drive to Dutch Village Road. Therefore, no further action is recommended with regard to the subject site at 3514 Joseph Howe Drive.

### **Proposed Development Agreement**

Attachment C contains the proposed development agreement for the subject site. The proposed agreement addresses the following matters:

- Permitted land uses include apartments, ground-level (and possible 2<sup>nd</sup> floor) commercial uses permitted in the C-2C zone, parking and accessory uses, with the exception that a drive-through restaurant/ café is permitted in the southern retail unit along Joseph Howe Drive;
- Allowance for maximum building heights of 5 storeys for the streetwall and 12 storeys for the two recessed tower components of the building;
- Requirements related to building siting, massing, exterior design and materials;
- Landscaping details and requirements for hard and soft landscaped surfaces on the ground floor, the 6<sup>th</sup> level roof terrace and the rooftop of the towers;
- Requirement to include both indoor and outdoor amenity space in the development;
- Minimum requirements related to vehicular and bicycle parking and pedestrian walkways and crosswalks;
- Requirements related to building signs; and
- Timelines related to the commencement and completion of the development.

Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

### Permitted Land Uses

As described above, the proposed agreement provides for a variety of commercial uses which are compatible with the existing community and in keeping with the intent of the Plan Dutch Village Road area. While stand-alone drive-throughs are not permitted in the C-2C zone, the development agreement process allows for their consideration. Regarding residential uses, a minimum of 30% of the residential units will consist of 2 bedrooms or greater. Staff advise the proposed uses are compatible with the surrounding neighbourhood.

### Building and Site Design

The proposed building will meet all MPS/ LUB requirements related to the placement of the building's streetwall in close proximity to Joseph Howe Drive, minimum side and rear yard setbacks, minimum tower separation distance and maximum tower floor area (Attachment F). The two at-grade residential entrances for pedestrians and deliveries are located behind the streetwall, at the base of each residential tower. The

agreement requires that signs be placed at these entrances for identification purposes, since these entrances are not visible from Joseph Howe Drive.

The MPS requires the articulation of buildings in a “base/middle/top” form. The “base”, which can be considered the streetwall, has a distinct design which differs from the recessed towers (middle). The towers are topped with recessed penthouses and open framing which extend outward to the edges of the towers for visual effect and to emulate the shape of the towers below. Therefore, staff advise the proposal follows a base/ middle/ top articulation.

The design of the streetwall incorporates a combination of vertical and horizontal articulation, and the materials change from glass curtain wall at the ground-floor level to a combination of aluminum, porcelain or pre-cast concrete panels and glass in the upper portion of the streetwall. This design includes a series of cantilevered, panel-clad projections and recessed, glass-clad walls and balconies which are intended to emulate movement and transportation elements found in the Joseph Howe Drive corridor (cars, rail, transit, pedestrian trail). The design incorporates a series of vertical breaks in the façade formed by linking recessed portions in a vertical manner in three different locations (over each driveway entrance and one in the middle of the façade), which results in the division of the streetwall façade into 4 segments. As well, the randomized pattern of projections and recesses results in smaller sections of the streetwall being different from one another.

It is worthy to note that the streetwall is quite long (114 metres wide). Not all segments are narrower than the height of the streetwall and the segmentation may not be easily identifiable, especially when viewed in close proximity. Despite this, the combined factors of randomization and segmentation allow for some discretion in the interpretation of the policies. Therefore, the proposal can be considered to meet the MPS in terms of streetwall design as well as overall building and site design.

#### Traffic and Servicing

A Traffic Impact Study (TIS) was prepared by the developer’s consultant regarding the proposal. The study was reviewed by HRM staff and no concerns were raised. Additional details will be reviewed at the permitting stage.

The proposal was reviewed by Halifax Water and no concerns were identified. The developer will be required to confirm that the project meets all water, wastewater and stormwater regulations and that capacity exists in the system prior to the issuance of construction permits.

#### **Conclusion**

Staff have reviewed the proposal and the existing policy context and advise that it is reasonable to amend the MPS to allow minor increases in the maximum streetwall heights and maximum building heights within ‘Area A’ of the Plan Dutch Village Road area, and to allow for a mixed-use development at 3514 Joseph Howe Drive, Halifax by development agreement. The proposed development is reasonably consistent with the intent of the Halifax MPS. Therefore, staff recommend that Halifax and West Community Council recommend that Regional Council approve the proposed MPS and LUB amendments. Should Regional Council approve the MPS and LUB amendments, Halifax and West Community Council may render a decision on the proposed development agreement.

#### **FINANCIAL IMPLICATIONS**

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of the proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2019-2020 budget with existing resources.

## **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

## **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

## **ALTERNATIVES**

Halifax and West Community Council may choose to recommend that Regional Council:

1. Modify the proposed amendments to the Halifax MPS and Halifax Mainland LUB, as set out in Attachments A and B of this report. If this alternative is chosen, specific direction regarding the requested modifications is required. Substantive amendments may require another public hearing to be held before approval is granted. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.
2. Refuse the proposed amendments to the Halifax MPS and Halifax Mainland LUB. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

The Halifax and West Community Council may choose to:

3. Approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.
4. Refuse the proposed development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement 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

Attachment A: Proposed Amendments to the Halifax Municipal Planning Strategy  
Attachment B: Proposed Amendments to the Halifax Mainland Land Use By-law  
Attachment C: Proposed Development Agreement  
Attachment D: Review of Relevant Sections of the Halifax Municipal Planning Strategy  
Attachment E: Public Information Meeting Summary  
Attachment F: Project Rendering

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

Report Prepared by: Paul Sampson, Planner II, Current Planning, 902.490.6259

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

Financial Approval by: Jane Fraser, Director of Finance, Asset Management & ICT, 902.490.6308

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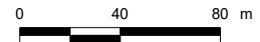
**Map 1 - Generalized Future Land Use**

3514 Joseph Howe Drive,  
Halifax

 Subject Property

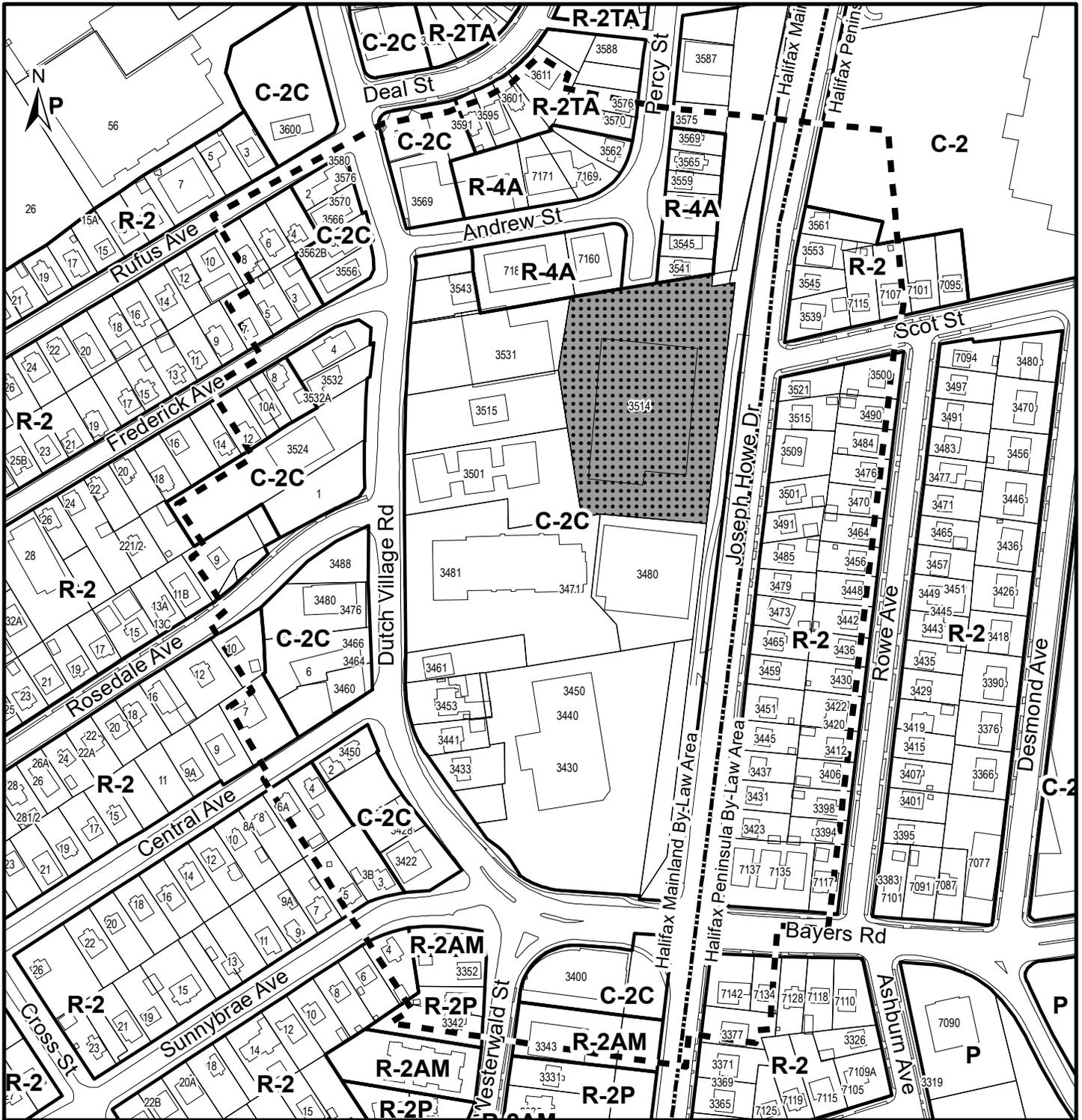
- Designation Halifax Plan Area**  
 COM Commercial  
 RES Residential Environments
- Designation Fairview Secondary Plan Area**  
 CF Community Facilities  
 COM Commercial  
 DVR RES Dutch Village Road Residential  
 LDR Low Density Residential  
 MDR Medium Density Residential

**HALIFAX**



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.

Halifax Plan Area  
 Fairview Secondary Plan Area



**Map 2 - Zoning and Notification**

3514 Joseph Howe Drive,  
Halifax

-  Subject Property
-  Area of Notification

Halifax Mainland  
Land Use By-Law Area

**Halifax Peninsula By-Law Area**

- C-2 Commercial
- P Residential Environments
- P-2 General Residential

**Halifax Mainland By-Law Area**

- C-2C Dutch Village Road Mixed Use
- P Park and Institutional
- R-2 Two Family Dwelling
- R-2AM General Residential Conversion
- R-2P General Residential
- R-2TA Dutch Village Road Townhouse
- R-4A Dutch Village Road Multi Unit Zone

**HALIFAX**



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

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## ATTACHMENT A

### Proposed Amendments to the Halifax Municipal Planning Strategy

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Halifax Municipal Planning Strategy is hereby further amended as follows:

1. Policy 2A.7, Subsections a), b), f) and g) of Section VII (Fairview Area Secondary Planning Strategy Objectives and Policies) shall be amended by deleting the following text shown in ~~strikeout~~ and inserting the following text shown in **bold**, as follows:

2A.7 a) ~~the maximum height of a building shall be 37.5 m;~~ **Buildings shall not exceed a height of 42 metres and a height of 12 storeys above the average grade of the finished ground adjoining the building. This maximum height 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 50 percent of the area of the roof on which they are located;**

b) buildings exceeding a height of 25 metres shall be designed in a podium and tower configuration. ~~where the maximum height of the~~ **streetwall/ podium, excluding any rooftop architectural features and landscape or mechanical elements, shall be 46.5 metres and not exceed:**

- (i) **20 metres and 5 storeys**, for lands located along Joseph Howe Drive; and
- (ii) ~~43.5~~ **17 metres and 4 storeys**, for lands located on Dutch Village Road;

f) surface parking shall not be located between a building and adjacent street, **with the exception of the southernmost end of Percy Street abutting 3514 Joseph Howe Drive;**

g) the building shall have a maximum front yard setback of 3 metres. Where a property fronts two streets, this maximum will apply to both street frontages, **with the exception of the southernmost end of Percy Street abutting 3514 Joseph Howe Drive;**

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Regional Council of Halifax Regional Municipality held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GIVEN under the hand of the municipal clerk and under the Corporate Seal of the said Municipality this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Sherryl Murphy, Acting Municipal Clerk

## ATTACHMENT B

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

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

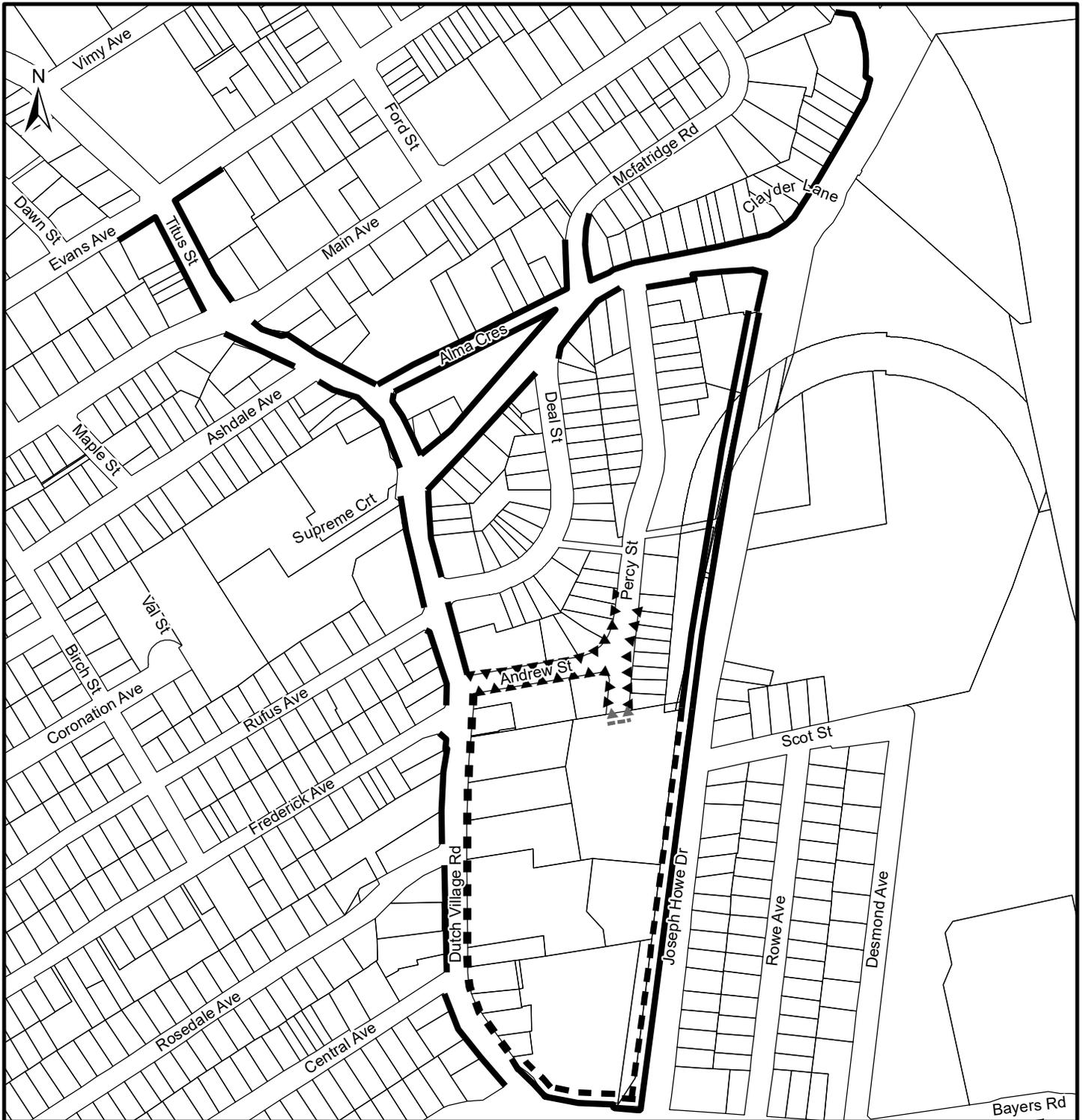
1. Amend Map ZM-31, the Plan Dutch Village Road Street Wall Height Map, by changing the streetwall heights for properties within Area A which front on portions of Joseph Howe Drive and Dutch Village Road, Halifax from “13.5m” and “16.5m” to “17 metres (4 storeys)” and “20 metres (5 storeys)” respectively, as shown on the attached Schedule A;
2. Amend Map ZM-31, the Plan Dutch Village Road Street Wall Height Map, by removing the streetwall frontage on Percy Street as it pertains to the property at 3514 Joseph Howe Drive, Halifax, as shown on the attached Schedule A;
3. Amend subsection 70(f) by deleting the text “Policies 7 and 7.1.” and replacing it with the text “Policies 2A.7 and 2A.7.1.” and adding the following heading in bold text above subsection (f): “**Plan Dutch Village Road - Area A**”; and
4. Amend subsection 38BC(1)(e) by inserting the following text at the end, as shown in bold below:

(e) The maximum streetwall height shall be as shown on ZM-31, Plan Dutch Village Road Street Wall Height Map. **The streetwall height shall not exceed the height shown in metres and shall not exceed the number of storeys, excluding rooftop architectural features, landscape elements and mechanical penthouses and equipment.**

I, Sherryl Murphy, Acting 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  
Acting Municipal Clerk



**Schedule A**

Amendments to ZM-31 Plan Dutch Village Road  
Street Wall Height Map

To be amended:	
▲▲▲▲ to be removed	▲▲▲▲ 9m
■ ■ ■ 13.5m ■ ■ ■ 17m (4 storeys)	— 10.5m
■ ■ ■ 16.5m ■ ■ ■ 20m (5 storeys)	=== 16.5m



Halifax Peninsula  
Land Use By-Law Area

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

**Attachment C: Proposed Development Agreement**

THIS AGREEMENT made this      day of **[Insert Month]**, 20\_\_.

BETWEEN:

**[Insert Name of Corporation/Business LTD]**  
a body corporate, 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 3514 Joseph Howe Drive, Halifax 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 a 42 metre mixed-use building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies 2A.7 and 2A.7.1 of Section VII of the Halifax Municipal Planning Strategy and Section 70(f) of the Halifax Mainland Land Use By-law;

**AND WHEREAS** the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 21916;

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

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## **PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

### **1.1 Applicability of Agreement**

- 1.1.1 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**

- 1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Halifax Mainland Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.
- 1.2.2 Variances to the requirements of the Halifax Mainland Land Use By-law as amended shall not be permitted.

### **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**

- 1.5.1 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**

- 1.6.1 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.

## **1.7 Lands**

- 1.7.1 The Developer hereby represents and warrants to the Municipality that the Developer is the owner of the Lands and that all owners of the Lands have entered into this Agreement.

## **PART 2: DEFINITIONS**

### **2.1 Words Not Defined under this Agreement**

- 2.1.1 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.

### **2.2 Definitions Specific to this Agreement**

- 2.2.1 The following words used in this Agreement shall be defined as follows:

- (a) "Hard Landscaping" means covered by hard or impermeable material such as outdoor furniture, planters, decorative concrete, stonework, bricks, gravel, tiles, pavers, boardwalks, or wood decking.
- (b) "Indoor Amenity Space" means common amenity areas for residents of the development that are located within the building, including but not limited to, exercise facilities and multipurpose rooms with associated kitchen facilities.
- (c) "Outdoor Amenity Space" means common amenity areas for residents located on the rooftop or the level 6 roof terrace.
- (d) "Soft Landscaping" means covered by soft or water-permeable material and vegetation such as trees, hedges, shrubs, flowers, grass, fruit and vegetable plants, sod, or other vegetative groundcover.

## **PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS**

### **3.1 Schedules**

- 3.1.1 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 21916:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Landscape Plan, Ground Floor
Schedule D	Landscape Plan, Level 6 Roof Terrace
Schedule E	Typical Tower Floor Plates
Schedule F	Penthouse Plan, Level 13 Roof
Schedule G	East Elevation
Schedule H	South Elevation
Schedule I	West Elevation
Schedule J	North Elevation
Schedule K	Exterior Sample Finishes

### **3.2 Requirements Prior to Approval**

- 3.2.1 Prior to the commencement of any site work on the lands, the Developer shall provide to the Development Officer, the documents required under Section 5.2 of this Agreement.
- 3.2.2 Prior to the issuance of a Development Permit, the Developer shall provide to the Development Officer a detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.6 of this Agreement.
- 3.2.3 Prior to the issuance of any Municipal Occupancy Permit, the Developer shall provide to the Development Officer, written confirmation from a qualified professional which the Development Officer may accept as sufficient record of compliance with the Landscape Plan.
- 3.2.4 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 the following:
  - (a) Apartment house;
  - (b) Non-residential uses permitted in the C-2C zone (Dutch Village Road Mixed Use Zone);
  - (c) A drive-through in association with a restaurant in Retail Unit #1 as shown on Schedule B;
  - (d) Underground and surface parking; and
  - (e) Uses accessory to any of the foregoing uses.

### **3.4 Detailed Provisions for Land Use**

- 3.4.1 A minimum of 30% of residential units shall contain two or more bedrooms.
- 3.4.2 Indoor and Outdoor Amenity Space shall be provided as per Section 3.6 and as shown on Schedules D and F.
- 3.4.3 Any portion of the ground floor of the building which faces Joseph Howe Drive shall be limited to non-residential uses permitted in the C-2C zone.
- 3.4.4 Non-residential uses permitted in the C-2C zone shall be limited to the ground floor and second floor above the ground floor.

### **3.5 Siting and Architectural Requirements**

- 3.5.1 The development shall comply with the following:
  - (a) The building shall not exceed a height of 42 metres and a height of 12 storeys above the average grade of the finished ground adjoining the building. This maximum height excludes any rooftop architectural features, landscape elements, and non-habitable penthouses (including residential amenity space);
  - (b) Rooftop architectural features, landscape elements and non-habitable penthouses shall not exceed 50 percent of the area of the roof on which they are located;

- (c) The building shall be designed in a podium and tower configuration where the height of the streetwall along Joseph Howe Drive shall not exceed 20 metres and 5 storeys, excluding any rooftop architectural features and landscape or mechanical elements;
  - (d) The building shall have a minimum ground floor height of 4.5 metres;
  - (e) The tower portions of the building shall have a minimum of 25 metre separation distance with other towers, shall not be closer than 12.5 metres from a side or rear lot line, as shown on Schedule E; and
  - (f) The Surface parking shall not be located between the building and Joseph Howe Drive.
- 3.5.2 The building's siting, height, massing, exterior design and materials shall comply with the Schedules.
- 3.5.3 Large blank or unadorned walls shall not be permitted. The scale of large walls shall be tempered by the introduction of artwork, such as murals, textural plantings and trellises, and architectural detail to create shadow lines (implied windows, cornice lines, or offsets in the vertical plane).
- 3.5.4 Any exposed foundation in excess of .75 metres in height and 2 square metres in total area shall be architecturally detailed, veneered with stone or brick or treated in an equivalent manner acceptable to the Development Officer.
- 3.5.5 The following external cladding materials are prohibited:
- (a) vinyl siding;
  - (b) plastic;
  - (c) plywood;
  - (d) unfinished concrete;
  - (e) cinder block;
  - (f) exterior insulation and finish systems where stucco is applied to rigid insulation; and
  - (g) darkly tinted or mirrored glass, excepting spandrel glass panels and balcony rail systems.
- 3.5.6 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 3.5.7 Fixed or retractable awnings are permitted at ground floor levels provided the awnings are designed as an integral part of the building façade.
- 3.5.8 All roof mounted mechanical or telecommunication equipment shall be visually integrated into the roof design or screened from public view.

### **3.6 Amenity Space and Landscaping**

- 3.6.1 Landscaping and amenity space shall conform with this section of the agreement and Schedules C, D and F. At grade level (Schedule C), flexibility shall be provided regarding the location of any building mechanical and electrical equipment which, if relocated, shall include associated landscaped screening elements.
- 3.6.2 Pedestrian crosswalks shall be provided at the ground level which link the sidewalks surrounding each of the retail and apartment building components. The pedestrian crosswalks shall be shown on Schedules B and C and shall be clearly visible and differentiated from the driveway aisles by such means as a different surface material, markings, raised surfaces and signage, as appropriate.
- 3.6.3 The building shall include common Outdoor Amenity Space generally located on the Level 6 Roof Terrace as shown on Schedule D. Access to this space from the building interior is required. Levels 1 and 6 may also include Indoor Amenity Space.

- 3.6.4 The building shall include common Indoor Amenity Space generally located on the tower rooftops (Level 13), which may be combined with mechanical space, as shown on Schedule F. The Level 13 rooftops may also include Outdoor Amenity Space.
- 3.6.5 Outdoor Amenity Space must be landscaped with a combination of hard and Soft Landscaping elements, except on Level 13 (Schedule F) which is permitted to be all Hard Landscaping.
- 3.6.6 All plant material shall conform to the Canadian Nursery Landscape Association's Canadian Nursery Stock Standard (ninth edition). All landscape construction on the site shall conform to the Canadian Landscape Standard.
- 3.6.7 Prior to the issuance of a Development Permit, the Developer agrees to provide a Landscape Plan which complies with the provisions of this section and generally conforms with Schedules C, D and F. The Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- 3.6.8 Prior to issuance of an Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.
- 3.6.9 Notwithstanding Section 3.6.8, where the weather and time of year do not allow the completion of the outstanding landscape works prior to the issuance of the Occupancy Permit, the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

### **3.7 Parking, Circulation and Access**

- 3.7.1 A minimum of 300 parking spaces shall be provided, which may be a combination of underground parking and surface parking. Each parking space shall measure at least 8 feet wide and 17 feet long.
- 3.7.2 Access to underground parking levels shall be as shown on Schedule B.
- 3.7.3 Bicycle parking shall be provided in accordance with the requirements of the Halifax Mainland Land Use By-law.

### **3.8 Outdoor Lighting**

- 3.8.1 Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.
- 3.8.2 The building may be illuminated for visual effect provided such illumination is directed away from streets, adjacent lots and buildings and does not flash, move or vary in intensity such that it

creates a hazard to public safety.

### **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, recreational amenities, 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, salting of walkways and driveways.

3.9.2 All disturbed areas shall be reinstated to original condition or better.

### **3.10 Signs**

3.10.1 The sign requirements shall be in accordance with the Halifax Mainland Land Use By-law as amended from time to time, except as follows:

- (a) signs may be permitted on the side elevations of the streetwall portion of the building in addition to the front elevation;
- (b) window signs shall comply with Section 38BH(1)(d) of the Land Use By-law;
- (c) notwithstanding Section 38BH(1)(b) of the Land Use By-law, fascia signs shall not extend beyond 20 cm on the extremity of a wall on which they are affixed;
- (d) any ground-floor residential entrance shall be clearly identified by a sign; and
- (e) billboards shall not be permitted.

### **3.11 Temporary Construction Building**

3.11.1 A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction building shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

### **3.12 Screening**

3.12.1 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing, masonry walls, suitable landscaping or acceptable equivalent.

3.12.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing, masonry walls, suitable landscaping or acceptable equivalent.

3.12.3 Mechanical equipment shall be permitted on the roof and podium provided the equipment is screened and not visible from the surrounding properties and public streets, or incorporated in to the architectural treatments and roof or podium structure.

3.12.4 Any mechanical equipment shall be visually concealed from abutting properties, including municipal rights-of-way, and shall include noise reduction measures.

### **3.13 Reinstatement**

3.13.1 All disturbed areas shall be reinstated to original condition or better.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

#### **4.1 General Provisions**

- 4.1.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

#### **4.2 Off-Site Disturbance**

- 4.2.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

#### **4.3 Undergrounding Services**

- 4.3.1 All secondary or primary (as applicable) electrical, telephone and cable service the building shall be underground installation.

#### **4.4 Outstanding Site Work**

- 4.4.1 Securities for the completion of outstanding on-site paving and landscaping work (at the time of issuance of the first Occupancy Permit) may be permitted. Such securities shall consist of a security deposit in the amount of 110 percent of the estimated cost to complete the work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable automatically renewing letter of credit issued by a chartered bank. The security shall be returned to the Developer by the Development Officer when all outstanding work is satisfactorily completed.

#### **4.5 Solid Waste Facilities**

- 4.5.1 The building shall include designated space for five stream commercial waste containers (1. Garbage, 2. Blue Bag Recyclables, 3. Paper, 4. Corrugated Cardboard, and 5. Organics) to accommodate source separation program in accordance with By-law S-600 as amended from time to time.
- 4.5.2 Refuse containers and waste compactors shall be confined to the loading areas of each building, and shall be screened from public view where necessary by means of opaque fencing or masonry walls with suitable landscaping.
- 4.5.3 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street or sidewalk. Further, consideration shall be given to locating of all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls with suitable landscaping.

### **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

#### **5.1 Private Storm Water Facilities**

- 5.1.1 All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

#### **5.2 Stormwater Management Plans and Erosion and Sedimentation Control Plan**

- 5.2.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:
- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
  - (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and
  - (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer.

### **5.3 Sulphide Bearing Materials**

- 5.3.1 The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

## **PART 6: AMENDMENTS**

### **6.1 Non-Substantive Amendments**

- 6.1.1 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 Section 7.3.1 of this Agreement;
  - (b) The granting of an extension to the length of time for the completion of the development as identified in Section 7.5.1 of this Agreement;
  - (c) Changes to the sign requirements as per Section 3.10; and
  - (d) Changes to the parking provisions of Section 3.7.

### **6.2 Substantive Amendments**

- 6.2.1 Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## **PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 Registration**

- 7.1.1 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.

### **7.2 Subsequent Owners**

7.2.1 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.

7.2.2 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).

### **7.3 Commencement of Development**

7.3.1 In the event that development on the Lands has not commenced within six (6) years 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.

7.3.2 For the purpose of this section, commencement of development shall mean the installation of the footings and foundation for the proposed building.

### **7.4 Completion of Development**

7.4.1 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 Halifax Peninsula as may be amended from time to time.

### **7.5 Discharge of Agreement**

7.5.1 If the Developer fails to complete the development, or phases of this development, after ten (10) years from the date of registration of this Agreement at the Land Registration Office in Halifax 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 Halifax Peninsula Municipal Planning Strategy and Halifax Mainland Land Use By-law for, as may be amended from time to time.

## **PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **8.1 Enforcement**

8.1.1 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.

### **8.2 Failure to Comply**

- 8.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (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

Per: \_\_\_\_\_

**HALIFAX REGIONAL MUNICIPALITY**

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

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**MAYOR**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**MUNICIPAL CLERK**

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

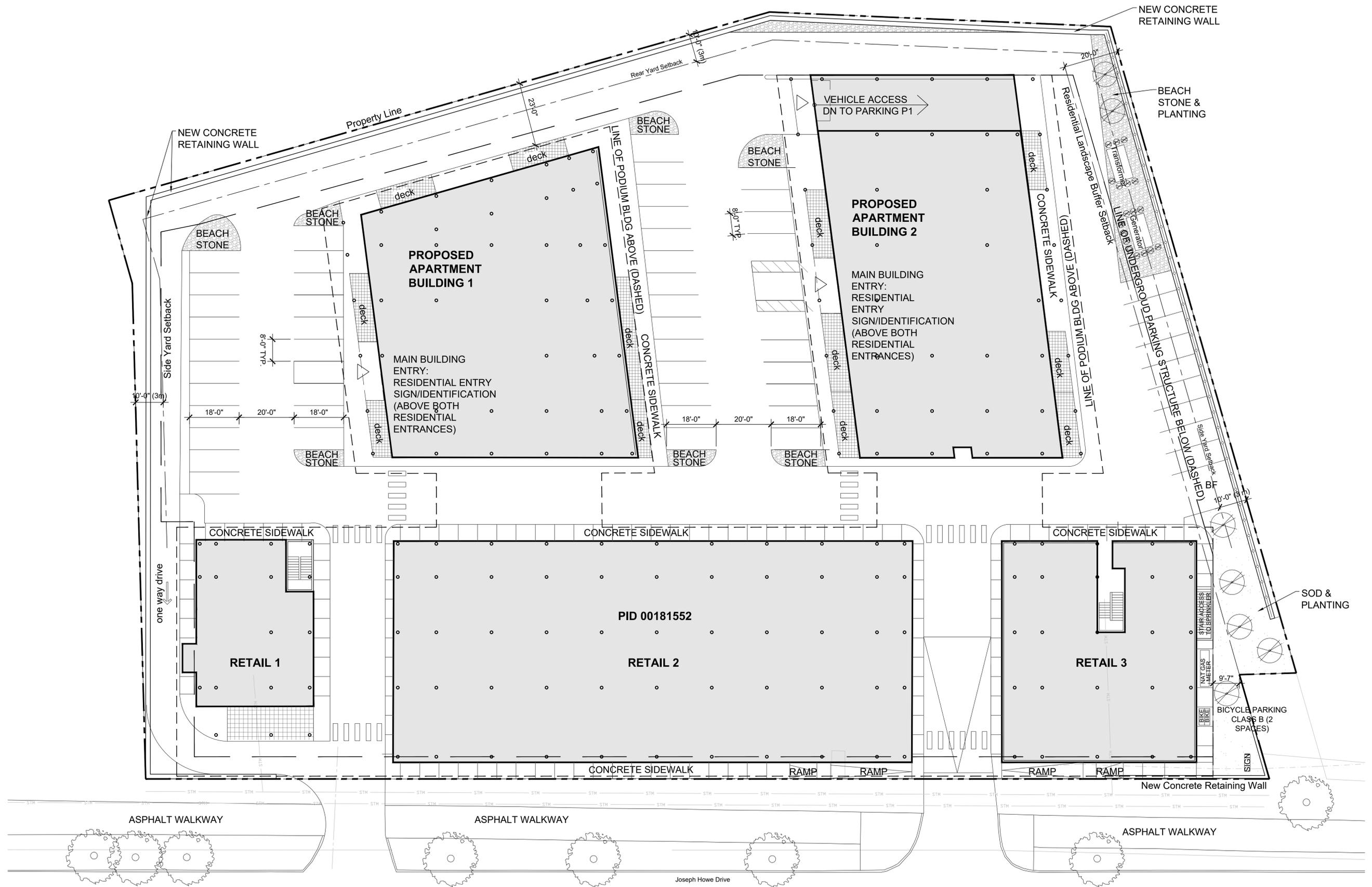
On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_, \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Sherryll Murphy, Acting Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia



**LYDON LYNCH**

401 - 1668 BARRINGTON STREET  
 HALIFAX, NOVA SCOTIA B3J 2A2  
 902-422-1446 LYDONLYNCH.CA

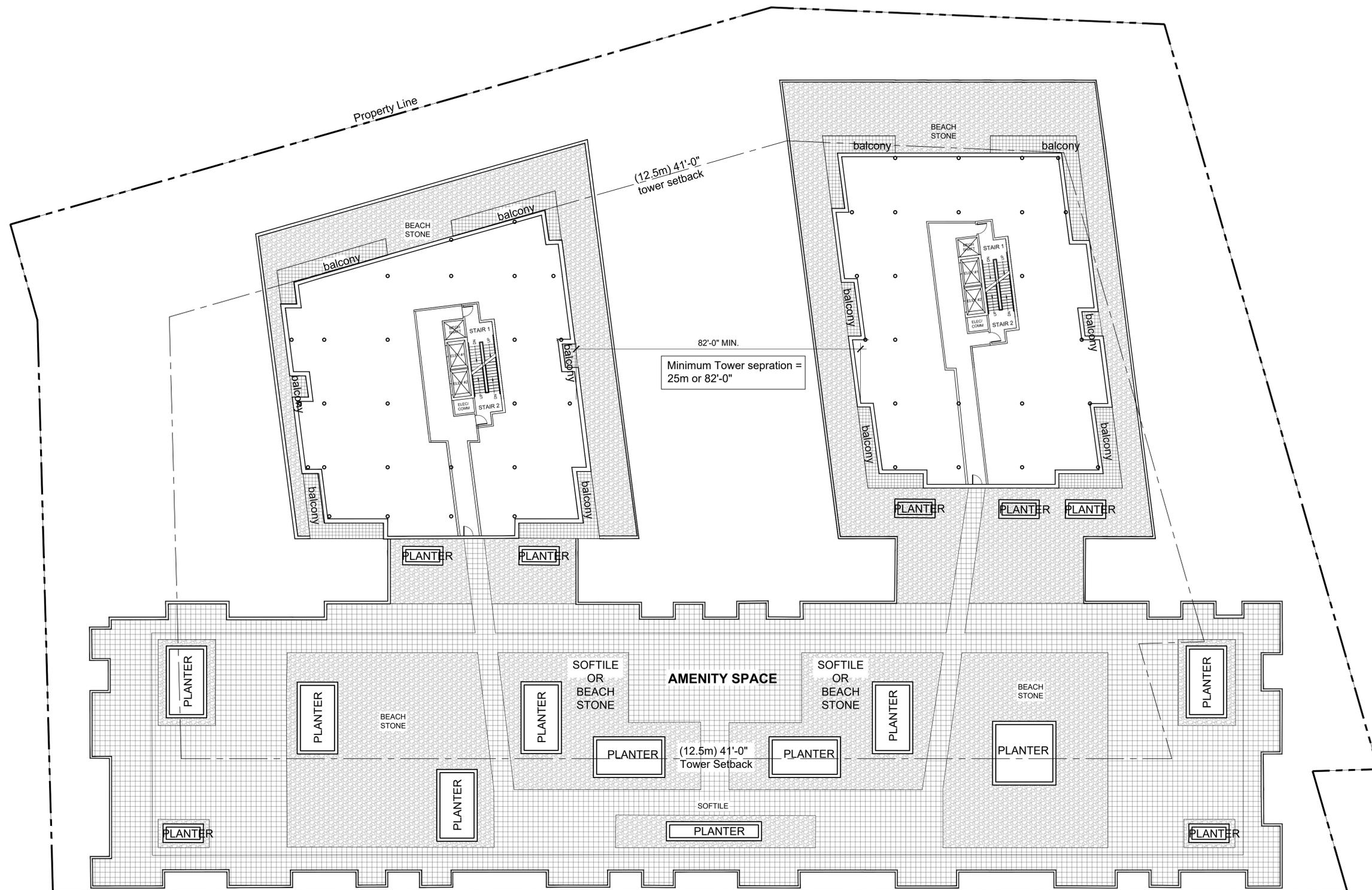


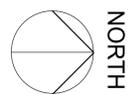
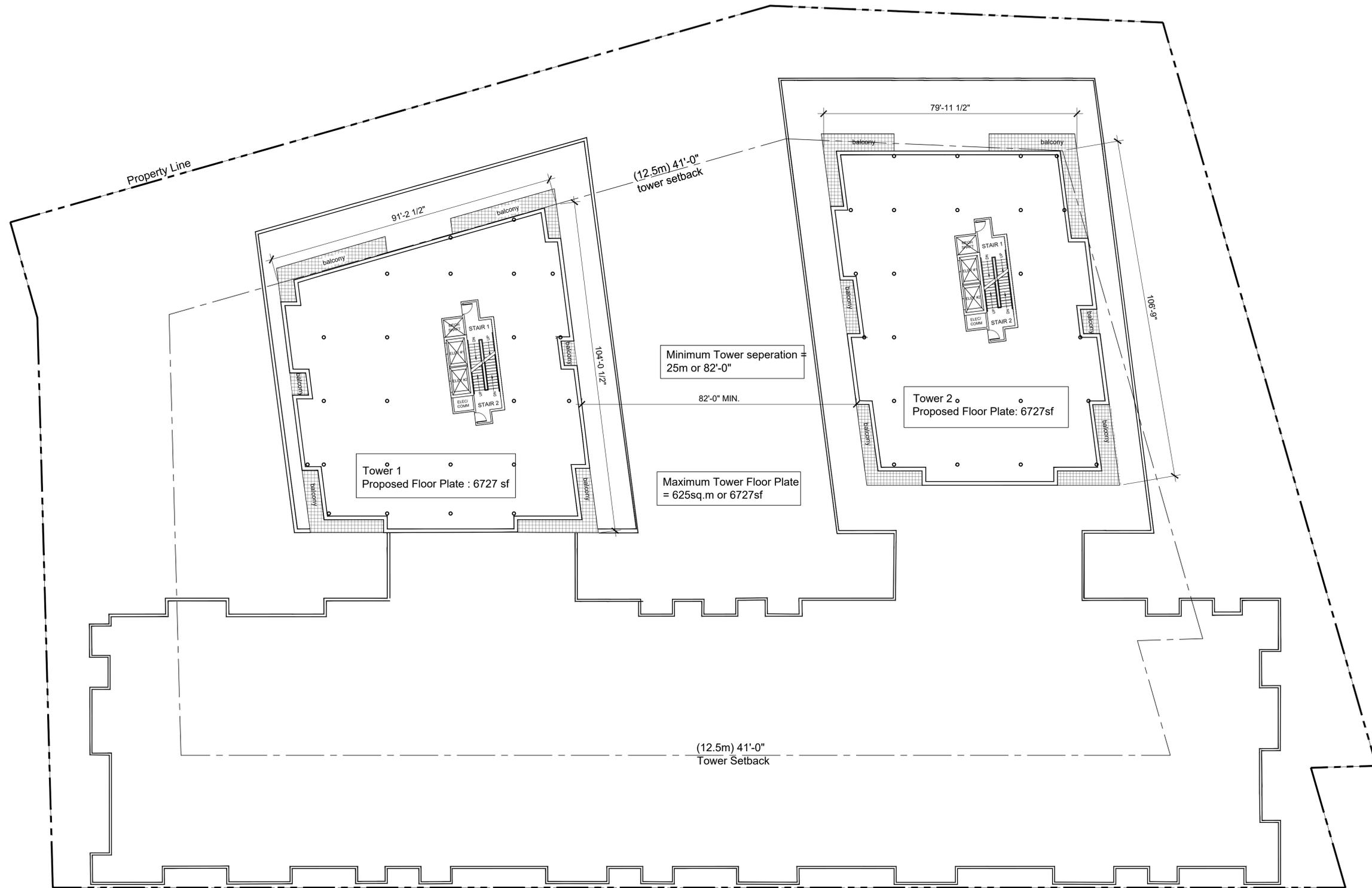
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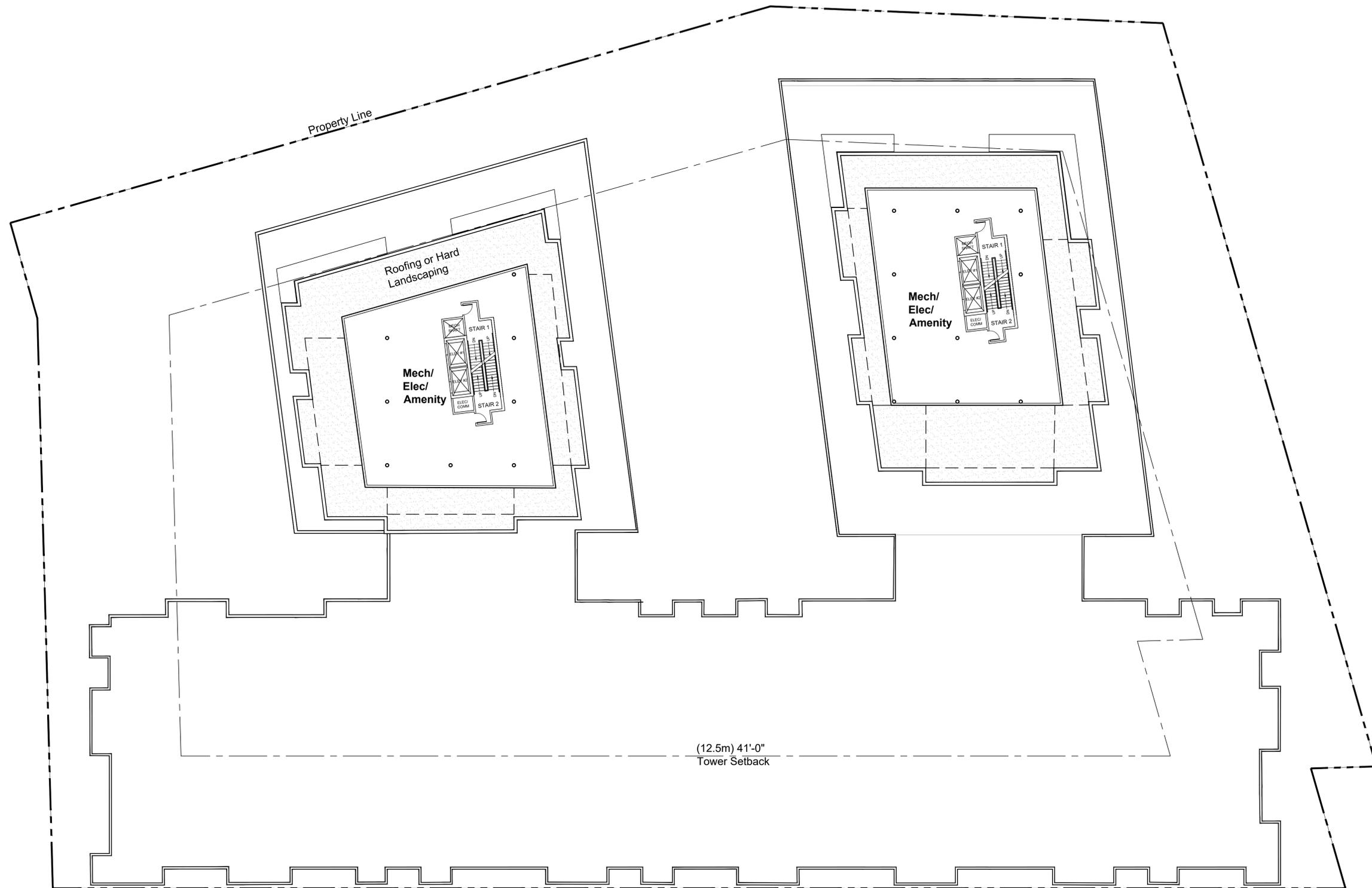
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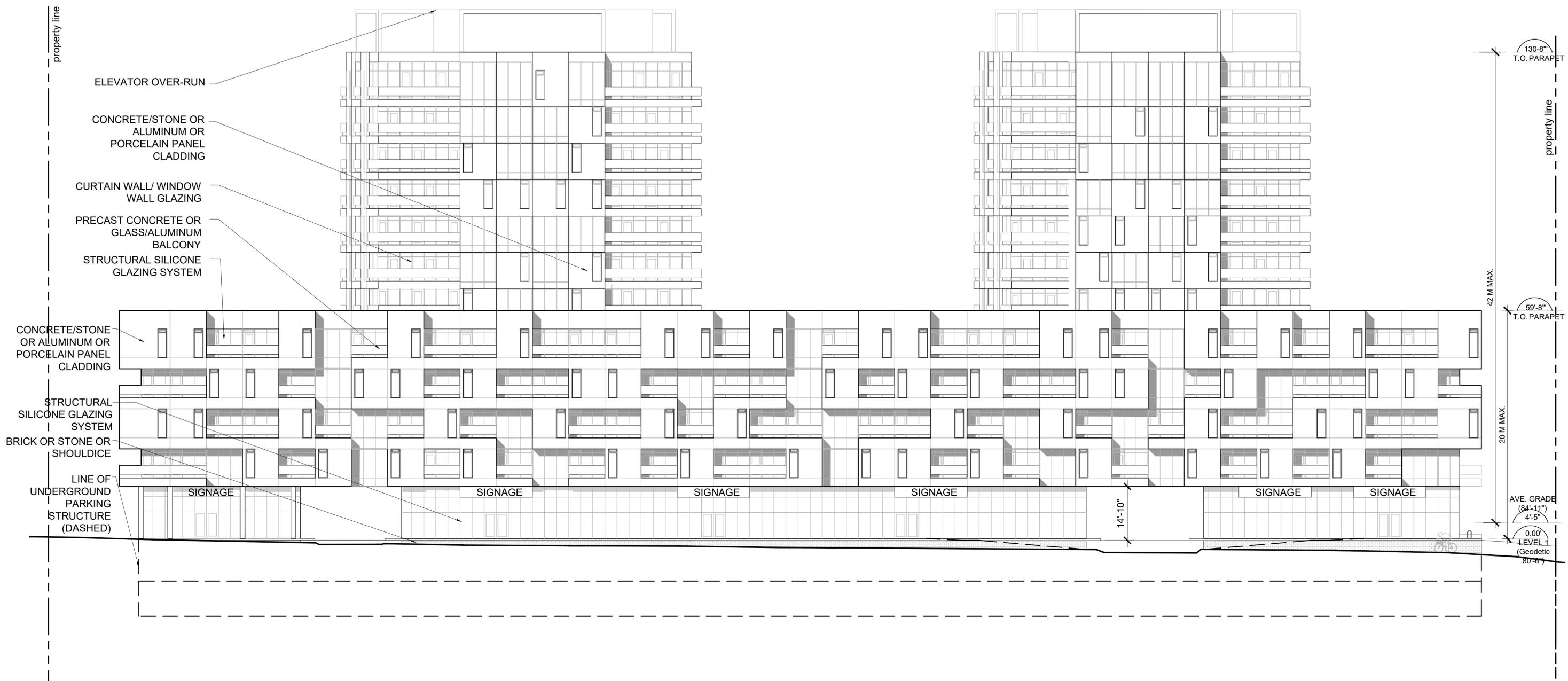
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 SCHEDULE B**

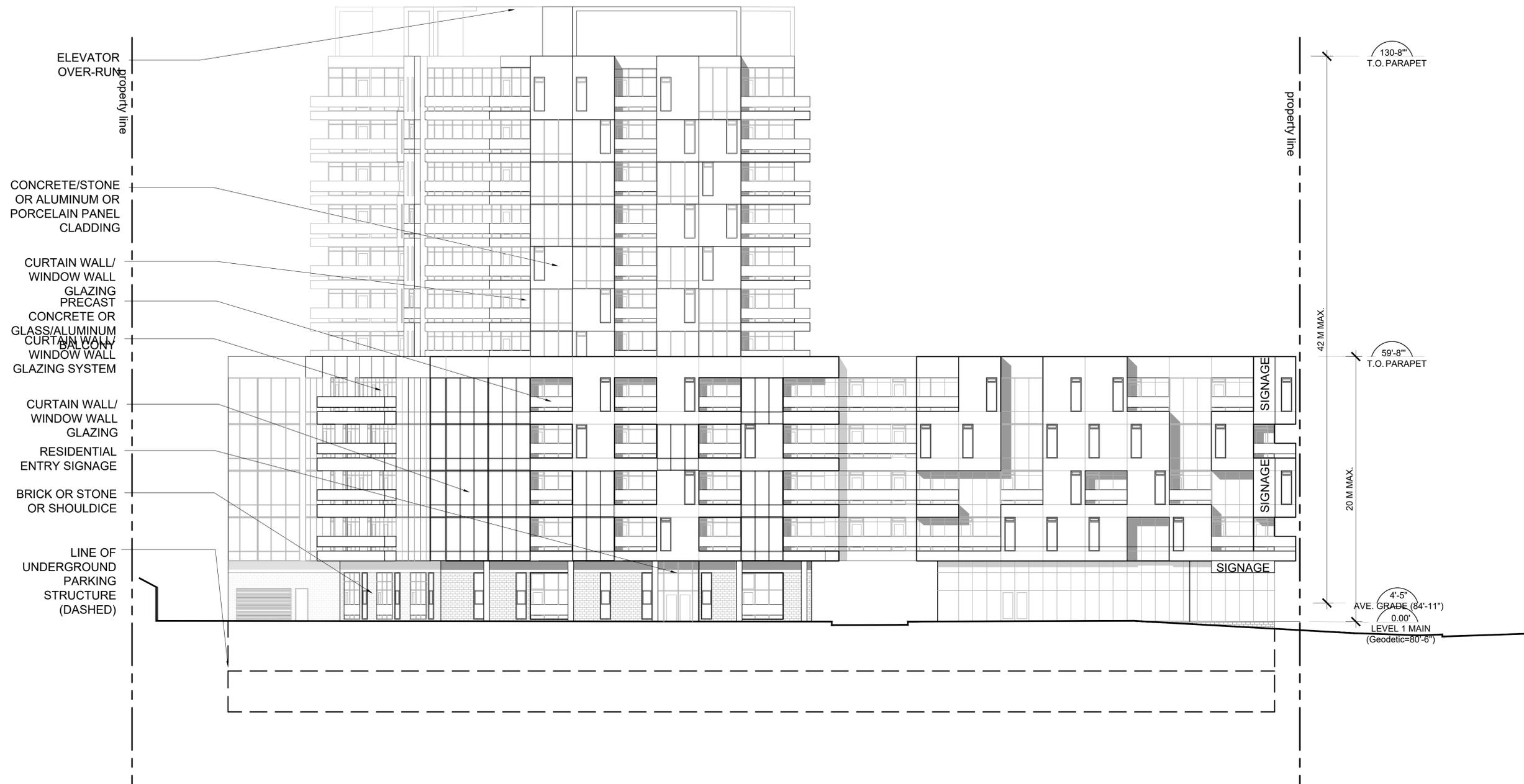


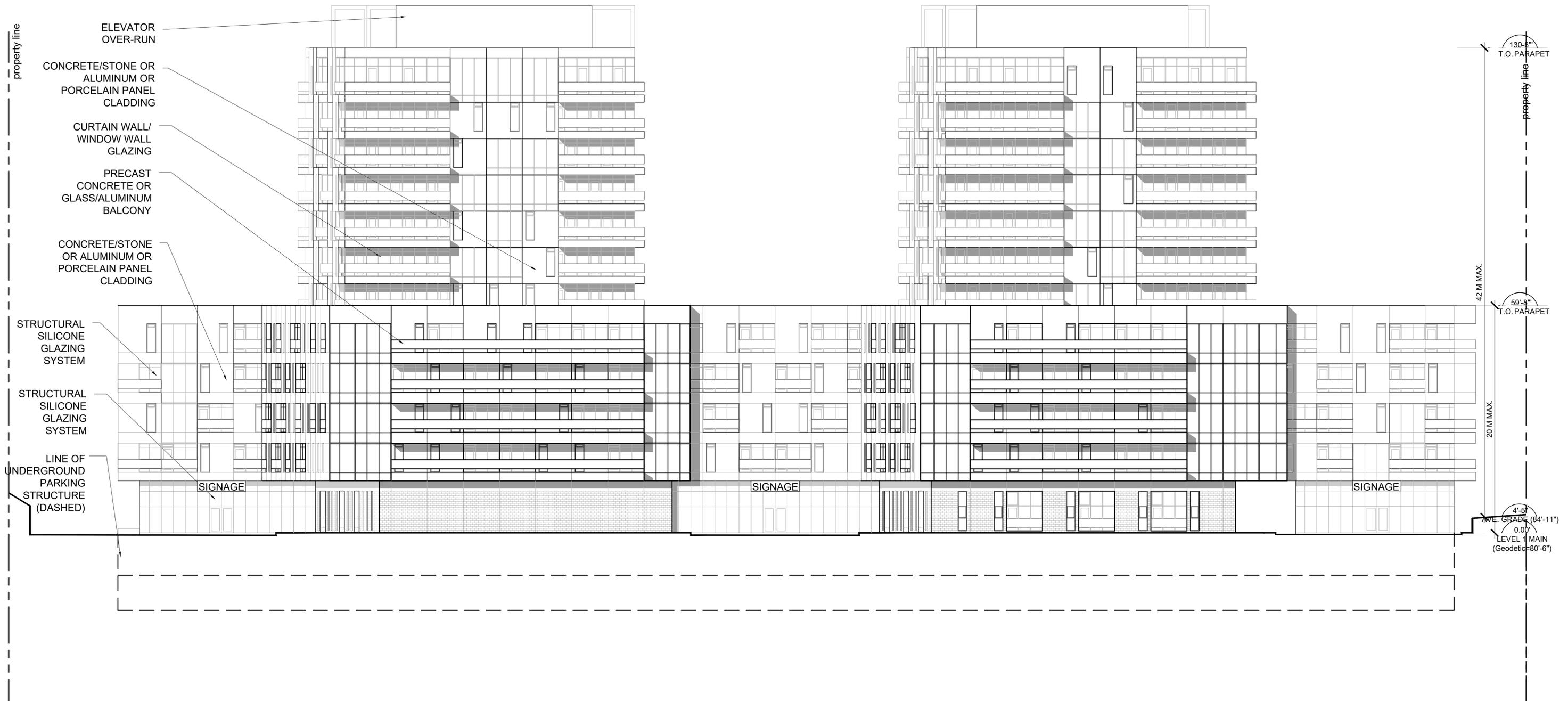


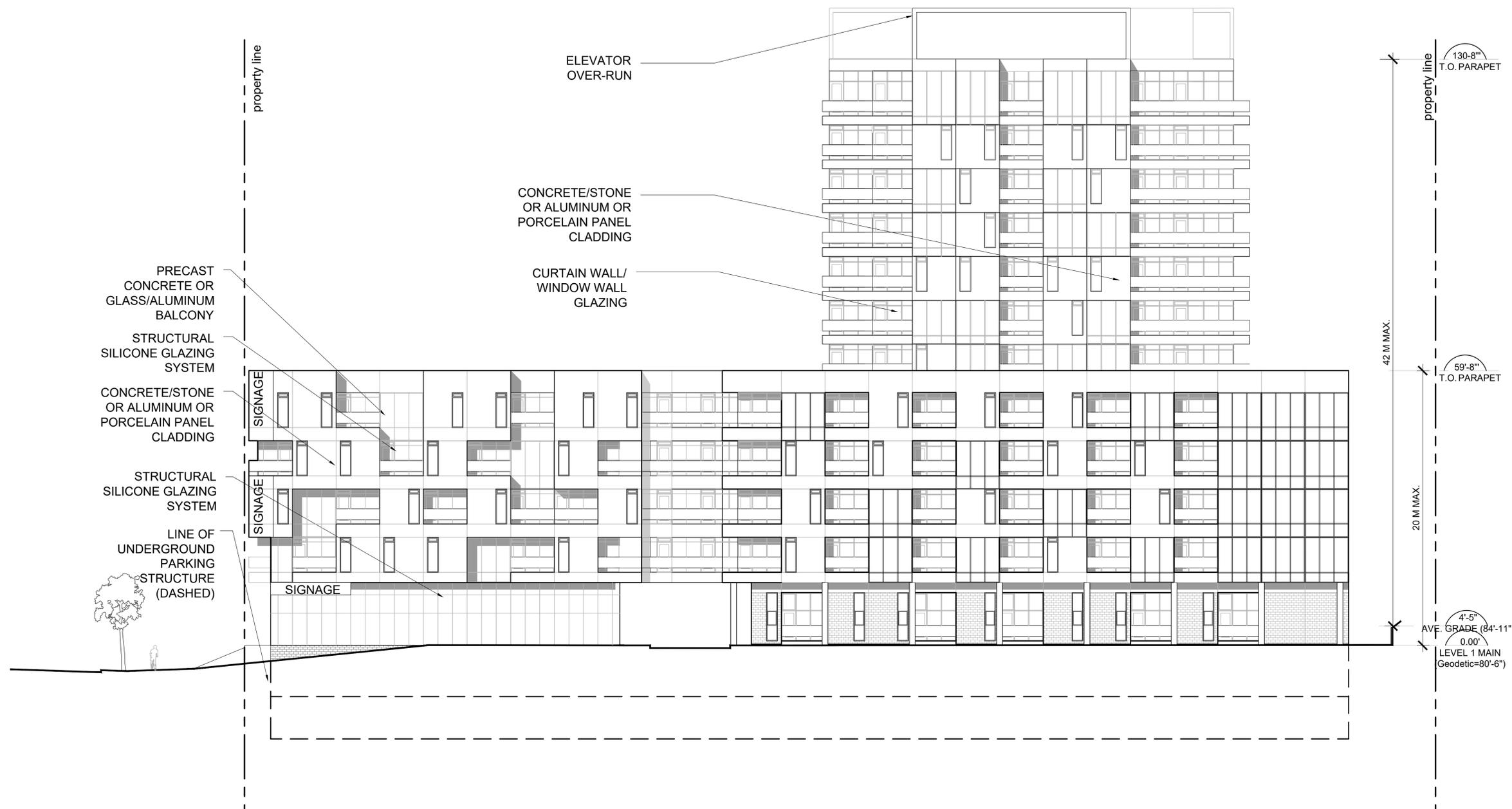














COMPOSITE ALUMINUM PANEL



CURTAIN WALL SYSTEM/WINDOW WALL GLAZING



PRECAST CONCRETE, WHITE



BALCONY GUARD WITH ALUMINUM



PRECAST CONCRETE, WHITE



COMPOSITE ALUMINUM PANEL, WHITE



PORCELAIN PANEL, WHITE



SHOULDICE MASONRY



BRICK



STONE



BALCONY GUARD



STRUCTURAL SILICONE GLAZING, GRAY TINT

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

<p><b>Section VII –Fairview Area Secondary Planning Strategy</b>  <b>2A. Plan Dutch Village Road</b></p>	
<p><b>Policy *(proposed edits are in bold &amp; strikeout)</b></p>	<p><b>Staff Comment</b></p>
<p><b>Commercial Designation</b>  <b>2A.2.</b> 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 considered subject to a development agreement process within Area A (Plan Dutch Village Road Overview Map).</p>	<p>The proposed development is being considered by development agreement.</p>
<p><b>Highrise Buildings:</b>  <b>2A.7.</b> Any building in Area A on Plan Dutch Village Road Overview Map that exceeds 25 m in height shall be considered a high-rise and shall only be considered by Council through the development agreement process. Any development proposal contemplated pursuant to this policy cannot be considered unless the following criteria are satisfied:</p>	<p>Draft development agreement is included as Attachment C.</p>
<p>a) <del>the maximum height of a building shall be 37.5 m;</del>  <b>Buildings shall not exceed a height of 42 metres and shall not exceed a height of 12 storeys above the average grade of the finished ground adjoining the building, excluding any rooftop architectural features, landscape elements and non-habitable penthouses which may include residential amenity space and which do not exceed 50 percent of the area of the roof on which it is located;</b></p>	<p>The proposed revisions to this policy clarify that buildings in Area A can be up to 12 storeys high, which was the originally intended height throughout the Plan Dutch Village Road planning process. The additional 4.5 metres of building height will allow flexibility to ensure that this can be achieved, taking into consideration the site grades in the area. Height exemptions for rooftop features and penthouses are consistent with more recent allowances in downtown Halifax and Centre Plan areas.</p>
<p>b) buildings exceeding a height of 25 metres shall be designed in a podium and tower configuration where the <del>maximum</del> height of the <b>streetwall/ podium shall be 16.5 not exceed 20 metres and shall not exceed 5 storeys, excluding any rooftop architectural features and landscape or mechanical elements, for lands located along Joseph Howe Drive and shall not exceed 13.5 17 metres and 4 storeys, excluding any rooftop architectural features and landscape or mechanical elements, for lands located on Dutch Village Road;</b></p>	<p>Proposed revisions to this policy clarify that the streetwalls of buildings in Area A can be up to 5 storeys high on Joe Howe Drive and up to 4 storeys high on Dutch Village Road. As with the overall heights in subsection a) above, the minor height increases are also intended to allow flexibility. This takes into consideration the differing site grades and “streetline” grades in the area.</p>
<p>c) <del>the building shall meet the requirements of the Dutch Village Road Mixed Use Zone in the Halifax</del></p>	<p>The proposal meets the minimum setbacks. In terms of the residential unit mix, the proposed</p>

<p><i>Mainland Land Use By-law with respect to side yard setbacks, residential unit mix and ground floor height;</i></p>	<p>agreement requires that a minimum of 30% of the units consist of 2 bedrooms or greater. The minimum height for ground-floor commercial uses is 4.5 metres.</p>
<p><i>d) towers shall have a minimum of 25 m separation distance with other towers and no tower shall be closer than 12.5 metres from a side or rear lot line;</i></p>	<p>The two towers are to be separated by 25 metres and to be located at least 12.5m from the side/ rear property lines.</p>
<p><i>e) the tower portion of the building, excluding any podium, shall have a maximum floor plate of 625 m2 per floor;</i></p>	<p>The proposal meets this requirement, as neither tower exceeds this floor area.</p>
<p><i>f) surface parking shall not be located between a building and adjacent street, <b>with the exception of the southernmost end of Percy Street abutting 3514 Joseph Howe Drive;</b></i></p>	<p>There is no parking permitted in the front yard and the building is proposed to be located close to the front property line in common with the AT trail and Joseph Howe Drive. Parking will be permitted in the side and rear yards as per LUB requirements. The agreement allows for parking along the north side property line, in proximity to the small portion of frontage in common with Percy Street, as there is a substantial grade difference which necessitates a retaining wall and fence structure in this location. For these reasons, the proposal does not utilize Percy Street for access purposes nor is a streetwall portion of building proposed in this location. The proposed revisions to this policy and LUB amendment No. 2 (changes to Map ZM-31) clarifies that the end of Percy Street is not to have streetwall frontage.</p>
<p><i>g) the building shall have a maximum front yard setback of 3 metres. Where a property fronts two streets, this maximum will apply to both street frontages, <b>with the exception of the southernmost end of Percy Street abutting 3514 Joseph Howe Drive;</b> and</i></p>	<p>The proposal meets this policy. The streetwall on Joseph Howe Drive will be very close to the streetline, with exceptions for the two driveway entrances which pass through the streetwall portion of the building and a small portion of the ground-floor at the southern end to accommodate a drive-through restaurant. This policy was intended to apply to front yards with one building “streetwall” and on corner lots and “through lots” where more than one building frontage close to the street can be achieved. As noted above, in this case the northern property line has a small amount of frontage at the end of Percy Street but was intended to be treated as a side property line, which provides a much greater setback from abutting properties. As noted above, the proposed revisions to this policy and the LUB will clarify the intent that there be no streetwall in that location.</p>
<p><i>h) buildings shall be located close to the street to create a defined street wall and occupy a minimum of 65% of a given property’s frontage. All buildings, regardless of their use, should have easily identifiable entry points for each individual uses.</i></p>	<p>In this case, the building’s streetwall is proposed to occupy approximately 90% of the street frontage, with the above-noted exceptions for the driveway entrances and small setback for the drive-through at the southern end. There will be several entry points</p>

	<p>to the building's three ground-floor retail spaces, highlighted with associated signage. Two ground-level residential entrances will be located behind the commercial spaces, at the south facing side of each residential tower and will be highlighted with signs above the entry doors. The proposal is required to comply with the Civic Addressing By-law (C-300), the details of which will be determined at the permitting stage.</p>
<p><b>2A.7.1.</b> <i>In considering a development agreement pursuant to policy 2A.7, Council shall have regard for the following:</i></p>	
<p><i>a) towers shall be placed away from streets, open space, and neighbouring properties to reduce visual and physical impacts of the tower and allow the base of the building to be the primary defining element for the site and adjacent public realm;</i></p>	<p>The proposed towers meet all setbacks and requirements of Policy 2A.7 and of the LUB. The towers are set back approximately 34m (110 ft.) from the Joseph Howe Drive right-of-way and are at least 12.5m (41 ft.) from all other property lines. As such, the base of the building will be more prominent from Joseph Howe Drive than the towers.</p>
<p><i>b) site design that incorporates landscaping, conspicuous building entrances, and considers the impact of retaining walls, lighting and signage to enhance the design of the building and limit the impacts on adjacent properties;</i></p>	<p>Landscaping at the ground level is to include a combination of hard surface (pavers, beach stone, walkways) and soft landscaping (sod, trees, ground cover and vines). There will also be hard and soft landscaping on the Level 6 Roof Terrace and possible landscaping on the penthouse level of each tower. Building entrances for the retail spaces will be highlighted with associated signage and will be clearly visible from the abutting Chain of Lakes AT trail, but may benefit from further details such as canopies, lighting or other elements to make them more conspicuous. Retaining walls will be utilized primarily along the north side and rear property lines in combination with landscaping and fencing.</p>
<p><i>c) buildings shall be vertically articulated into 3 distinct sections; a base, middle and top, via such devices as: changes in colors, materials, protrusions and recesses;</i></p>	<p>The proposal follows a base/ middle/ top articulation. There can be different interpretations of what elements comprise the distinct, individual sections. For example, the "base" can be considered the retail ground-floor only or can be the entire 5-storey streetwall. The "middle" can be considered either the section of the streetwall between floors 2-5, which differs in design from the ground-floor, or the recessed towers which are visually distinct. There is a combination of vertical and horizontal articulation in the base. Materials change from glass curtain wall at the ground-floor level to a combination of aluminum or porcelain panels and glass in the upper-base and tower levels. The design expression includes a series of</p>

	<p>cantilevered projections (panel-clad “solids”) and recessed balconies (glass-clad “voids”). The towers are topped with recessed penthouses and extruded open frames which extend outward to the edges of the towers for visual effect and to emulate the shape of the towers below.</p>
<p><i>d) streetwalls should be vertically articulated into distinct sections, via such devices as: changes in colors, materials, protrusions and recesses. These sections should be narrower than the streetwall is tall;</i></p>	<p>As indicated above, there is a combination of vertical and horizontal articulation in the streetwall portion of the building and the materials change from glass curtain wall at the ground-floor level to a combination of aluminum or porcelain panels and glass in the upper portion of the streetwall. This design is intended to emulate movement and transportation elements found in the Joseph Howe Drive corridor (cars, rail, transit, pedestrian trail). The design incorporates a series of vertical breaks in the façade formed by linking recessed portions (voids) in a vertical manner in three different locations (over each driveway entrance and one in the middle of the façade), which results in the division of the façade into 4 segments. As well, the randomized pattern of projections and recesses results in smaller sections of the streetwall being different from one another. Note: the streetwall is quite long (114 metres wide), not all segments are narrower than the height of the streetwall and the segmentation may not be easily identifiable, especially when viewed in close proximity. However, these combined factors of randomization and segmentation allow for some discretion in the interpretation of this advisory policy. Therefore, the proposal can be considered to meet the MPS in this regard.</p>
<p><i>e) streetwalls should be animated with frequent entrances and large windows. All streetwalls directly adjacent to a sidewalk should contain at least 1 prominent entrance;</i></p>	<p>As noted above, the ground-floor building entrances for the retail spaces will be highlighted with associated signage, will be clearly visible from the abutting pedestrian/ AT trail and will include floor-to-floor windows (curtain wall system) with full visibility to the exterior. The ground-floor design could benefit from additional elements and details such as canopies and lighting to make them more prominent.</p>
<p><i>f) materials used in the streetwall and at the base of the building should be of the highest quality and durability;</i></p>	<p>The proposal includes the use of architectural metal or porcelain panels (with optional pre-cast concrete panels), brick or stone panels, glass curtain wall, which are high quality materials.</p>
<p><i>g) areas visible to the public realm or adjacent residential uses and not used for parking or driveways, should be landscaped with vegetation or</i></p>	<p>This policy is met. Areas not used for parking, driving aisles, etc. will be landscaped with either patio stones, beach stone, sod and trees.</p>

<p><i>hard landscaping using quality materials, such as stone, wood, or concrete paths/ patios;</i></p>	
<p><i>h) surface parking, utilities and services should be buffered and visually screened from the public realm and adjacent low density residential properties. Landscaping shall be included in surface parking lots and integrated with the storm water management for the site;</i></p>	<p>Parking and utilities are proposed to be located to the rear of the site and will be screened with landscape elements or fencing. Drainage and stormwater management will comply with HRM requirements, as noted in the text of the agreement.</p>
<p><i>i) adequacy of safe vehicular, bicycle and pedestrian access and egress to and from the site. Priority shall be given to pedestrian movement when there is potential pedestrian and vehicular conflicts;</i></p>	<p>A Traffic Impact Statement was prepared by the applicant. The TIS was reviewed by staff and no concerns were raised to date with regard to its findings. Additional details will be reviewed at the permitting stage. The proposal includes sidewalks around each of the ground-floor building components. These sidewalks will be linked by way of pedestrian crossings which will be clearly visible and differentiated from the driveway aisles by such means as a different surface material, markings, raised surfaces and signage, as appropriate. This is a requirement of the agreement in order to ensure priority for pedestrians.</p>
<p><i>j) blank-walls shall be avoided on parts of buildings which are highly visible from the public realm;</i></p>	<p>There are no proposed blank walls. The agreement includes a clause requiring architectural treatment of blank walls, such as with murals, textural plantings, trellises, and architectural detail.</p>
<p><i>k) the adequacy of servicing for the site; and</i></p>	<p>There are no concerns with regard to sewer and water servicing, the details of which will be confirmed at the permitting stage.</p>
<p><i>l) high quality landscaping and indoor and outdoor amenity space areas for building residents are provided.</i></p>	<p>The proposal includes a combination of ground-level landscaping and indoor / outdoor amenity space on the rooftop levels of the streetwall and the towers. The agreement addresses landscaping and amenity space in the text (Section 3.6) and on the Schedules.</p>

## Schedule E - Public Information Meeting Summary

HALIFAX REGIONAL MUNICIPALITY  
Public Information Meeting  
Case 21916

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*The following does not represent a verbatim record of the proceedings of this meeting.*

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Wednesday, May 1, 2019  
7:00 p.m.

Centennial Arena (Meeting Room), 27 Vimy Avenue, Halifax, Nova Scotia

### STAFF IN

#### ATTENDANCE:

Paul Sampson, Planner, Planner II, HRM Planning  
Holly Kent, Planning Technician, HRM Planning  
Tara Couvrette, Planning Controller, HRM Planning

### ALSO IN

#### ATTENDANCE:

Councillor, Russell Walker, District 10  
Keith Tufts– Applicant, Lydon Lynch Architects  
Alex Halef – Banc Investments Ltd.

### PUBLIC IN

#### ATTENDANCE:

Approximately: 6

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The meeting commenced at approximately 7:00 p.m.

### Call to order, purpose of meeting – Paul Sampson

Mr. Sampson introduced himself as the Planner and Facilitator for the application. They also introduced; Councillor Russell Walker, Tara Couvrette – Planning Controller, Holly Kent - Planning Technician, Keith Tufts – Applicant, and Alex Halef – Banc Investments Ltd.

Case 21916 - Application by Lydon Lynch Architects, on behalf of the owner, requesting to enter into a development agreement to allow for a 12 storey mixed-use building at 3514 Joseph Howe Drive, Halifax.

Mr. Sampson explained; the purpose of the Public Information Meeting (PIM) is: a) to identify that HRM has received a proposal for the site; b) to provide information on the project; c) to explain the Planning Policies and the stages of the Planning Process; d) an opportunity for Staff to receive public feedback regarding the proposal. No decisions are made at this PIM.

### 1a) Presentation of Proposal – Mr. Sampson

Mr. Sampson provided a brief introduction to the application and then made a presentation to the public outlining the purpose of the meeting, status of the application and the applicants request. Mr. Sampson outlined the context of the subject lands and the relevant planning policies.

### 1b) Presentation by Keith Tufts, Lydon Lynch Architects

Mr. Tufts explained what they were looking to do on the site and the materials they were going to be using.

## 2. Questions and Comments

**Denis O’Hanley, Fairview** – Would like to know if the right-of-way would be maintained. Would there be pedestrian access from Percy St. stated it was a long-established pedestrian way. **Paul Sampson** stated the current proposal doesn’t have pedestrian access from that street. **Alex Halef** stated there was a 10-foot grade drop and no easement from Percy St. from this property. **Denis O’Hanley** stated at some point in its history there were stairs that went from that property to Percy St. **Alex Halef** stated there is no legal right-of-way there and there is also a fence there currently that cuts off access to Percy St. **Paul, Alex and Keith** offered to check into it.

**Christopher Rolland, Joe Howe property owner** – wanted to know if the residential part would be condo's or apartments. **Alex Halef** stated it would be apartments. **Christopher Rolland** wanted to know the timeframe for when this is all going to happen. **Alex** stated with the next 12-14 months they would like to start construction.

**Nick Maclsaac, Stoney Brook** – Thinks it is a great idea and can't wait to visit the local shops etc. Wanted to know if the residences would have a positive impact on local stores, like corner stores, in the area. **Alex Halef** thinks it will.

**Denis O'Hanley, Fairview** – wanted to know if one of the residents from the building wanted to go to Giant Tiger would you expect them to walk all the way around instead of just going through the back of the property. The pedestrian way is important to a lot of people and would probably be important to the residents of this building as well. **Alex Halef** advised they would need permission from other property owners to even build a set of stairs and then there would be liability/safety issues. **Paul Sampson** stated it is not something that could be enforced through a development agreement.

**Logan Saffwell** – thinks this is going to be a quality, top notch project and would like to see the building go up.

**Nick Maclsaac, Stoney Brook** – Thinks the design is super cool and innovative.

### 3. Closing Comments

**Mr. Sampson** thanked everyone for coming and expressing their comments.

### 4. Adjournment

The meeting adjourned at approximately 7:30 p.m.

**Attachment F: Project Rendering**



**EXTERIOR RENDERING, JOSEPH HOWE DRIVE**