



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

Item No. 10.2.1
Halifax and West Community Council
October 10, 2017
December 13, 2017
(revised)

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

SUBMITTED BY: Original Signed

Kelly Denty, Acting Director, Planning and Development

DATE: September 22, 2017

SUBJECT: **Case 20624: Appeal of Variance Refusal – 1539 & 1541 Edward Street,
Halifax**

ORIGIN

Appeal of the Development Officer's decision to refuse a request for variances.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; VIII, Planning and Development:

- S.250, a development officer may grant variances in specified land use by-law or development agreement requirements but under 250(3) a variance may not be granted if:
 - (a) The variance violates the intent of the development agreement or land use bylaw;
 - (b) The difficulty experienced is general to properties in the area;
 - (c) The difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use bylaw
- S.251, regarding variance requirements for notice, appeals and associated timeframes
- S.252, regarding requirements for appeal decisions and provisions for variance notice cost recovery

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

It is recommended that Halifax and West Community Council deny the appeal, and in so doing, uphold the decision of the Development Officer to refuse the request for variances.

BACKGROUND

Variance requests have been submitted for the property at 1539 & 1541 Edward Street to authorize a third dwelling unit within an existing building. In order to facilitate the proposal, 5 variances have been requested to relax the minimum lot area, lot frontage, left and right side yard setbacks as well as gross floor area ratio.

Site Details:

Zoning: R-2 (General Residential) Zone, Peninsula Centre Secondary Plan
Halifax Peninsula Land Use By-Law.

| | Requirement | Variance Requested |
|------------------------------------|---|---|
| Min. Lot Area | 5,000 square feet | 3, 578 square feet |
| Min. Lot Frontage | 45 feet | 35 feet |
| Min. Right side setback | 6 feet | 3 feet |
| Min. Left side setback | 6 feet | 3 feet |
| Gross floor area (lot area) | 2, 683 square feet 3, 578 (lot area) | 3, 563 square feet 7, 126 (lot area) |

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment A). The applicant has appealed the refusal and the matter is now before Halifax and West Community Council for a decision.

Process for Hearing an appeal

Administrative Order Number One, the *Procedures of the Council Administrative Order* requires that Council, in hearing any appeal, must place a motion to “allow the appeal” on the floor, even if such motion is in opposition to the recommendation contained in the staff report. As such, this report contains within the Recommendation section, the wording of the appeal motion for consideration as well as a staff recommendation. For the reasons outlined in this report, staff recommends that Community Council deny the appeal and uphold the decision of the Development Officer to refuse the request for variances.

DISCUSSION

Development Officer’s Assessment of Variance Request:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

“250(3) A variance may not be granted if:

- (a) *the variance violates the intent of the development agreement or land use by-law;*
- (b) *the difficulty experienced is general to properties in the area;*
- (c) *the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.”*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer’s assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

The land use by-law intends that lot sizes and building setbacks should increase based on the number of

residential units to be established on a property and throughout the By-law, site density is directly or indirectly controlled by lot area requirements. The intent of the by-law is to require larger lots for developments containing a greater number of units. For example, the standard minimum lot area requirements of the R-2 Zone are 4,000 square feet for single unit dwellings, 5,000 square feet for duplexes and 8,000 square feet for three and four unit buildings. Side yard setbacks are also increased as the number of units is increased, ranging from 4 feet to 6 feet. For low density residential development, the By-law intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas and greater open space between buildings and side lot lines.

Apart from these standard requirements, there are also areas where certain development requirements are reduced such as within the Peninsula Centre and South End detailed planning areas. This property is located in Peninsula Centre which further reduced the frontage, lot area and side yards from the established R-2 Zone. The applicant is requesting a substantial reduction, within Peninsula Centre, which already allows for a reduction from the standard R-2 lot requirements.

In addition to the standard requirements Peninsula Centre has an internal conversion clause which could have permitted up to three units. To be eligible for an internal conversion, an increase in height or volume of the external dimensions of the dwelling must not have occurred after October 14, 1982. An addition to the dwelling in 1993 rendered this dwelling ineligible for consideration of this section of the By-Law. For these reasons it has been determined that the proposal violates the intent of the land use by-law.

2. Is the difficulty experienced general to properties in the area?

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

While the surrounding properties are developed with a variety of land uses including single and duplex dwellings, multiple unit dwelling and commercial enterprises, the lot fabric is similar with respect to lot frontage and lot area. The majority of the lots which have single and two unit dwellings range in size from 3,500 to 3,800 square feet.

The property at 1539 and 1541 Edward Street has a lot area of 3,570 square feet and 35 feet of frontage. Therefore this lot is similar to the majority of the lots in the vicinity. On this basis, the difficulty experienced relative to the requested variances is general to properties in the area.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

HRM records indicate two units in the building. Originally, one unit occupied the first floor; the second unit occupied the second and third floors. At some point in time, a third unit was created on the top floor, possibly after 1993, when a permit was issued, to construct an addition to the second unit on the third floor. The application states: *to construct two (2) shed dormers on the third floor to create living space for the existing second unit. Also construct a 5'X 10' deck off the third floor and install door to deck.*

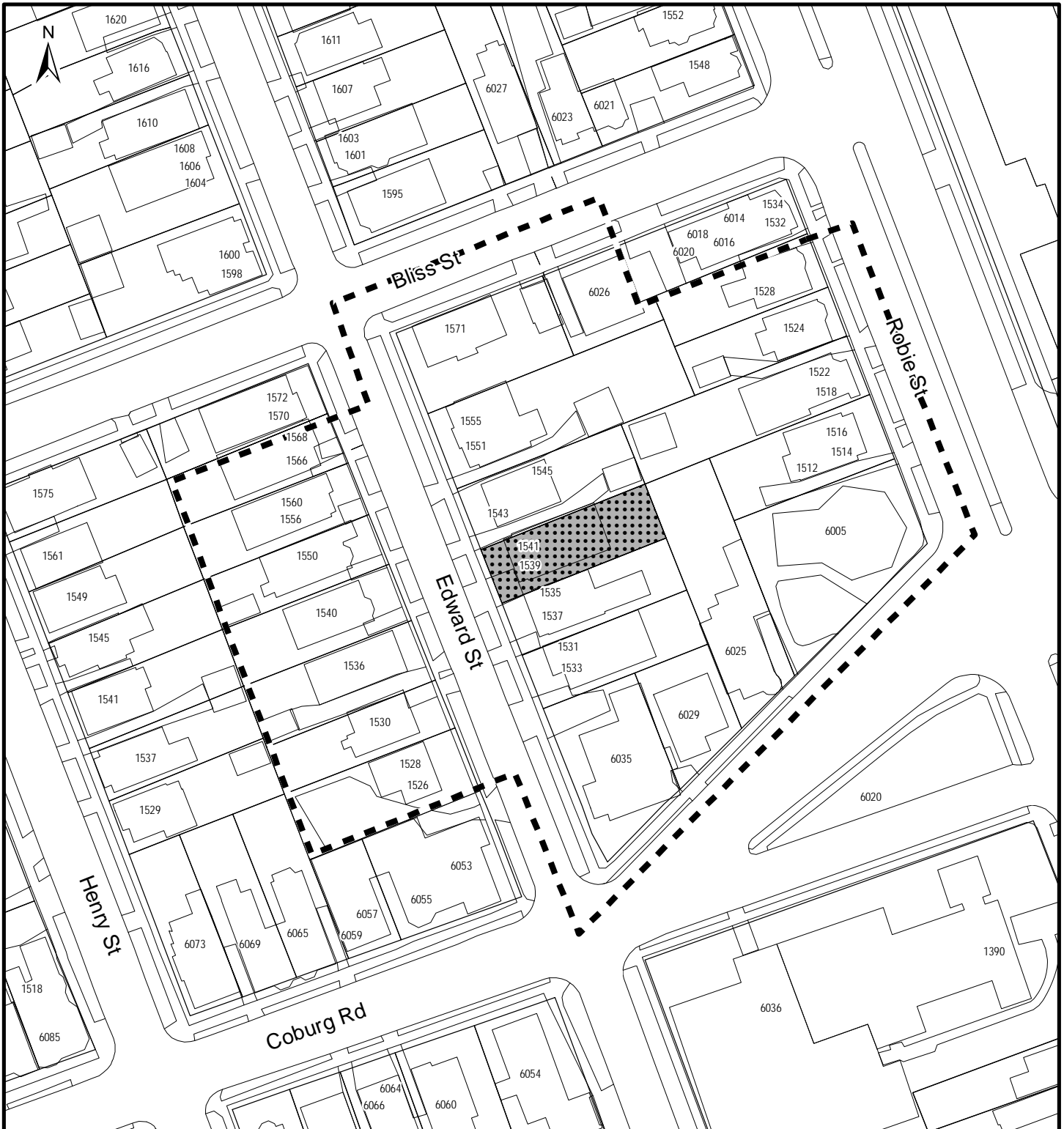
The current owner purchased the building in 2010 and stated that three units existed. (See Attachment B). No evidence has been submitted to confirm when the unit was created as the work was completed without a permit. In addition, common practice is to obtain a zoning confirmation letter during property transfers which would confirm the legal number of units on record. There is no evidence that a zoning confirmation letter was obtained.

It may have been possible to create the third unit through an internal conversion clause; however, in 1993 the dwelling was expanded, creating additional volume, which negated any opportunity to use the internal conversion clause. As such, it has been determined that the proposal results in intentional disregard for the requirements of the land use by-law as a unit was created without the required permit, contrary to the internal conversion clause along with not meeting the standard zone requirements.

Appellant’s Appeal:



While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment B) for Council’s consideration. These points are summarized and staff’s comments on each are provided in the following table:

| Appellant’s Appeal Comments | Staff Response |
|---|---|
| <p>The appellant states the variance does not violate the intention of the Land Use By-law, given the existing height, volume and density of the housing unit would remain unchanged if the variance were approved.</p> | <p>The request is to increase density within an existing dwelling. This would have been permitted if the owner of the day had not made modifications to the dwelling which increased the volume. A unit was then constructed in this additional space which leads to this application. The by-law is specific in how it regulates density for new construction and new builds versus an internal conversion. The purpose of an internal conversion is to maintain the existing housing form. The construction of an addition causes the application to be assessed under a different set of criteria. Where an addition has been made to a dwelling, it is no longer eligible for an internal conversion and as such, this proposal violates the intent of the land use by-law. Additional units may only be permitted by internal conversion if there is no increase in height or volume and that the external dimension of the building have not changed since 14 October 1982. A building permit was issued in 1993 to “<i>construct two (2) shed dormers on the third floor to create living space for the existing second unit</i>”. The addition of the shed dormers has increased the volume of the building. Therefore, an internal conversion is not possible.</p> |
| <p>Were it not for a conversion made to the building in 1993 (23 years ago, by several owners prior to the current owner), a conversion of the property into three units would be possible. Therefore, given the specific nature of this variance request, we are of the opinion that the difficulty experience by the property is not general to the area.</p> | <p>This a common issue throughout the Peninsula Center plan area. Additions and alterations after an established date may render an existing dwelling ineligible for internal conversions. This was intentional when these LUB provisions were established. They may change in the future, however, that is unknown at this point in time. This is not determined to be a specific request as many homes in Peninsula Center face this same challenge.</p> |
| <p>Our variance application is intended to remedy the status of a third unit to maintain the unit count which has been in existence within 1539 -1541 Edward Street prior to the current owner’s purchase the property in 2010.</p> | <p>HRM does not know who put in the unit and at what time because a permit was not obtained. Regardless, the unit would not have been granted a permit as it does not meet the land use by-law today or in 1993. In addition, when the owner purchased the property they could have obtained a zoning confirmation letter which confirms the legal use and number of units for a property. Another remedy would be to remove the third unit and reinstate the dwelling to the authorized use of a two unit dwelling.</p> |



Map 1 - Notification Area

1539 – 1541 Edward Street
Halifax

-  Subject Property
-  Notification Area

Halifax Plan Area

HALIFAX



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

Attachment A
Variance Refusal Letter

August 22, 2016

[REDACTED]

Dear [REDACTED]

RE: Application for Variance, Application 20624 – 1539-1541 Edward Street, Halifax, NS

This will advise that I have refused your request for variances from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 1539-1541 Edward Street, Halifax, NS
Project Proposal: Addition of third unit – To legalise third unit.

| | Requirement | Refused |
|---------------------|---|---|
| Lot area | 6,000 square feet | 3,578 square feet |
| Frontage | 60 feet | 35 feet |
| Right side lot line | 6 feet | 3 feet |
| Left side lot line | 6 feet | 3 feet |
| Lot area | 3,578 square feet (Maximum Grosse Floor Area permitted – 2,683 square feet) | 7,126 square feet required for a Gross Floor Area of 3,563 square feet. |

Section 250(3) of the *Halifax Regional Charter* states that:

No variance shall be granted if:

- (a) the variance violates the intent of the development agreement or land use bylaw;
- (b) the difficulty experienced is general to properties in the area; or
- (c) the difficulty experienced results from the intentional disregard for the requirements of the development agreement or land use bylaw

It is the opinion of the Principal Planner that the variance violates the intent of the By-law. The difficulty experienced is general to properties in the area, and the difficulty experienced results from the intentional disregard for the requirements of the By-law.

...2

Page 2
Variance 20624
August 22, 2016

Pursuant to Section 251(5) of the *Halifax Regional Charter* you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Sean Audas, Principal Planner c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5**

Your appeal must be filed on or before 09/1/2016.

If you have any questions or require additional information, please contact Paul Boucher at 902.490.4321.

Sincerely,

Sean Audas, Principal Planner/Development Officer
Current Planning
Halifax Regional Municipality

c. Kevin Arjoon, Municipal Clerk
Councilor Wayne Mason



August 31, 2016

HAND DELIVERED

Mr. Sean Audas, Principle Planner
c/o Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5

RECEIVED AUG 31 2016

Dear Mr. Audas:

**Re: Notice of Appeal for Refusal of Application for Variance #20624
1539-1541 Edward Street, Halifax, N.S.**

I have received your letter dated August 22, 2016, regarding the refusal of an Application for Variance from the requirements of the Land-Use Bylaw for Halifax Peninsula for the above-noted property. In accordance with the instructions contained within the August 22, 2016 letter, I am providing written notice of appeal of this decision. KWR Approvals Inc. respectfully disagrees with the interpretation, conclusions and decision of the Principal Planner in regard to this Variance Application and we will appeal this decision to Municipal Council.

It is our opinion that the requested variances do not violate the intention of the Land-Use Bylaw, given the existing height, volume and density of the housing unit would remain unchanged if the variances were approved. Were it not for a conversion made to the building in 1993 (23 years ago, by several owners prior to the current owner), a conversion of the property into three units would be possible. Therefore, given the specific nature of this variance request, we are of the opinion that the difficulty experienced by this property is not general to the area. Finally, the owner was informed through a previous Variance Application that the status of the third unit was in question. Our Variance Application is intended to remedy the status of the third unit to maintain the unit count, which has been in existence within 1539-1541 Edward Street prior to the current owner's purchase of the property in 2010.

As per the instructions of your August 22, 2016 letter, I will contact Paul Boucher if I have any further questions. Thank-you for your attention to this matter.

Regards,

Senior Planner

cc: Blake Thompson – Owner, 1539-1541 Edward Street, Halifax, NS
Kevin W. Riles, President and CEO – KWR Approvals Inc.

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



NOTES:

- PID# 00136507
- 100% RESIDENTIAL BUILDING
- BUILDING FOOTPRINT = 1250 ft²
- PARKING FOR 3 VEHICLES
- NO CHANGES TO EXISTING FOOTPRINT IN PROPOSED RENOVATION
- OWNER OCCUPIED RESIDENTIAL PROPERTY

TITLE

**SITE PLAN & PHOTOS
-EXISTING-**

CLIENT:

BLAKE THOMPSON

PROJECT:

PROPOSED RESIDENTIAL RENOVATION
 VARIANCE APPLICATION
 1541 EDWARD STREET
 HALIFAX, NOVA SCOTIA

DATE:

OCTOBER 2014

PROJECT #:

14-1056

SCALE:

1" = 20'-0"

FIGURE #:

S1

DRAWN BY:

AC

CHECKED BY:

DC



① VIEW OF WEST SIDE



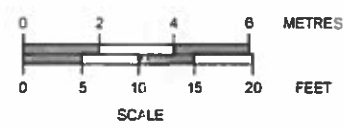
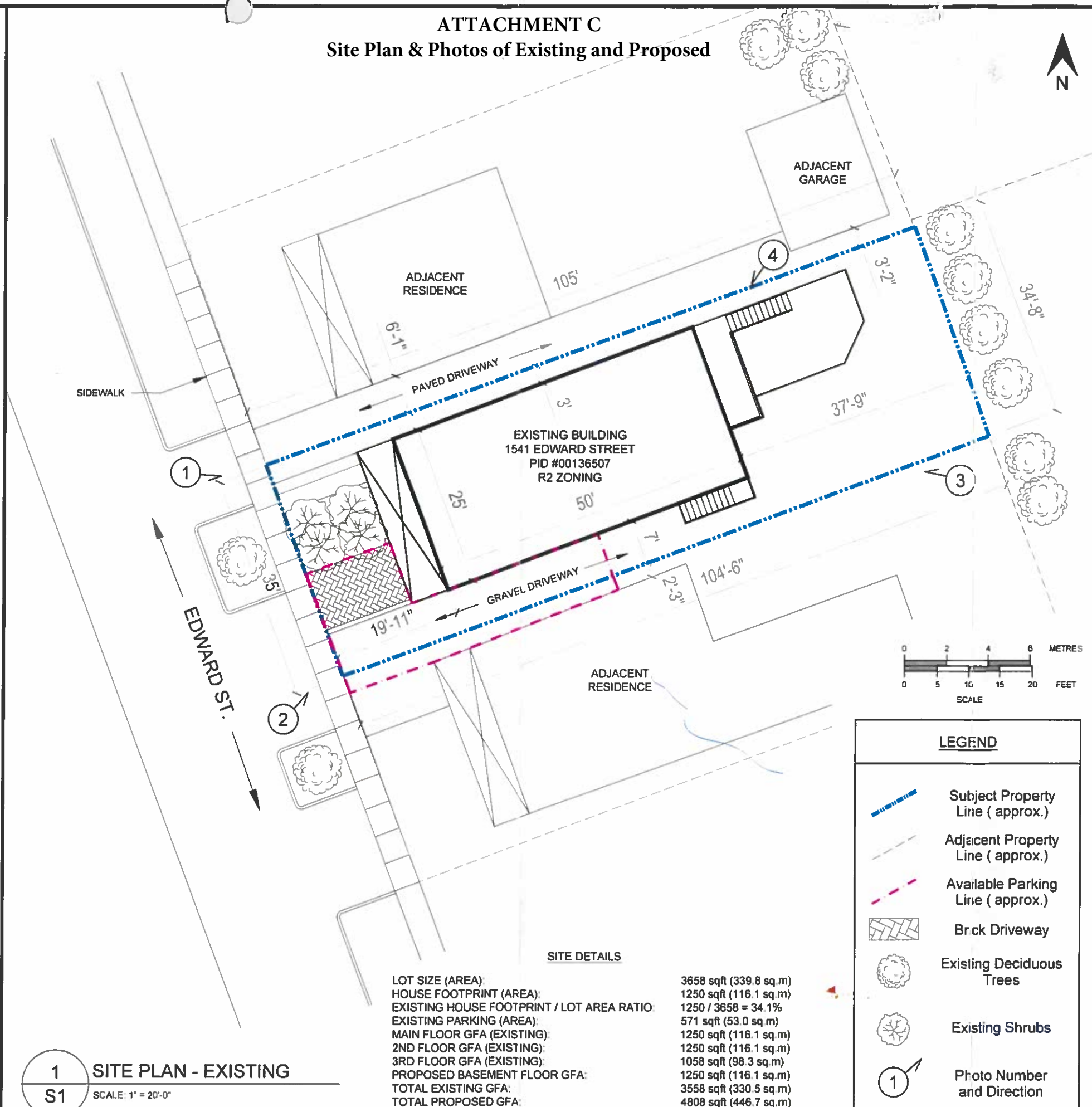
② VIEW OF WEST & SOUTH SIDE



③ VIEW OF EAST & SOUTH SIDE



④ VIEW OF EAST & NORTH SIDE



LEGEND

- Subject Property Line (approx.)
- Adjacent Property Line (approx.)
- Available Parking Line (approx.)
- Brck Driveway
- Existing Deciduous Trees
- Existing Shrubs
- Photo Number and Direction

SITE DETAILS

| | |
|--|------------------------|
| LOT SIZE (AREA): | 3658 sqft (339.8 sq.m) |
| HOUSE FOOTPRINT (AREA): | 1250 sqft (116.1 sq.m) |
| EXISTING HOUSE FOOTPRINT / LOT AREA RATIO: | 1250 / 3658 = 34.1% |
| EXISTING PARKING (AREA): | 571 sqft (53.0 sq.m) |
| MAIN FLOOR GFA (EXISTING): | 1250 sqft (116.1 sq.m) |
| 2ND FLOOR GFA (EXISTING): | 1250 sqft (116.1 sq.m) |
| 3RD FLOOR GFA (EXISTING): | 1058 sqft (98.3 sq.m) |
| PROPOSED BASEMENT FLOOR GFA: | 1250 sqft (116.1 sq.m) |
| TOTAL EXISTING GFA: | 3558 sqft (330.5 sq.m) |
| TOTAL PROPOSED GFA: | 4808 sqft (446.7 sq.m) |

1
S1 **SITE PLAN - EXISTING**
 SCALE: 1" = 20'-0"

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



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① VIEW OF WEST SIDE



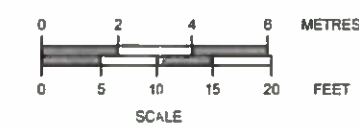
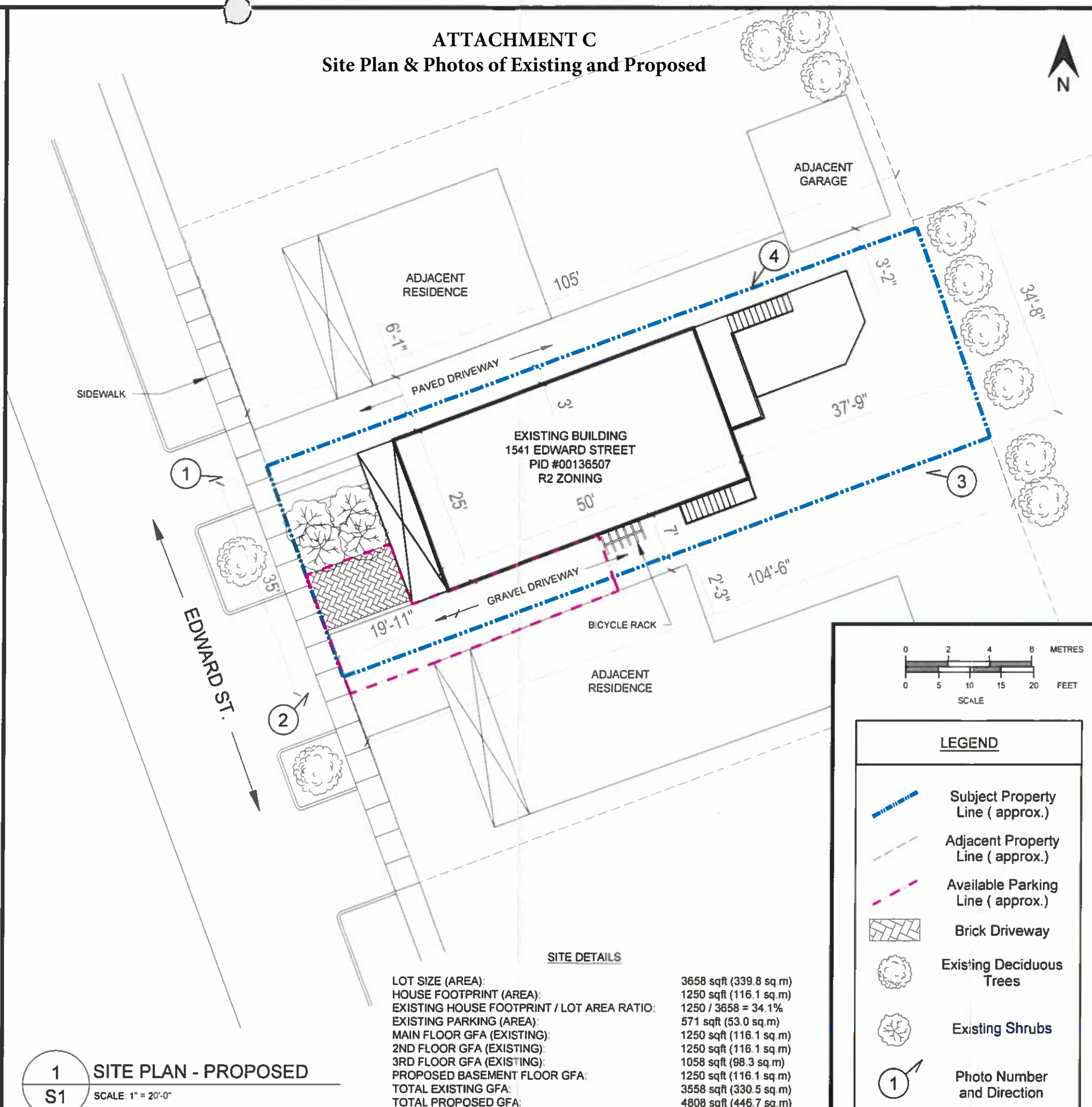
② VIEW OF WEST & SOUTH SIDE



③ VIEW OF EAST & SOUTH SIDE



④ VIEW OF EAST & NORTH SIDE



| LEGEND | |
|--------|------------------------------------|
| | Subject Property Line (approx.) |
| | Adjacent Property Line (approx.) |
| | Available Parking Line (approx.) |
| | Brick Driveway |
| | Existing Deciduous Trees |
| | Existing Shrubs |
| | Photo Number and Direction |

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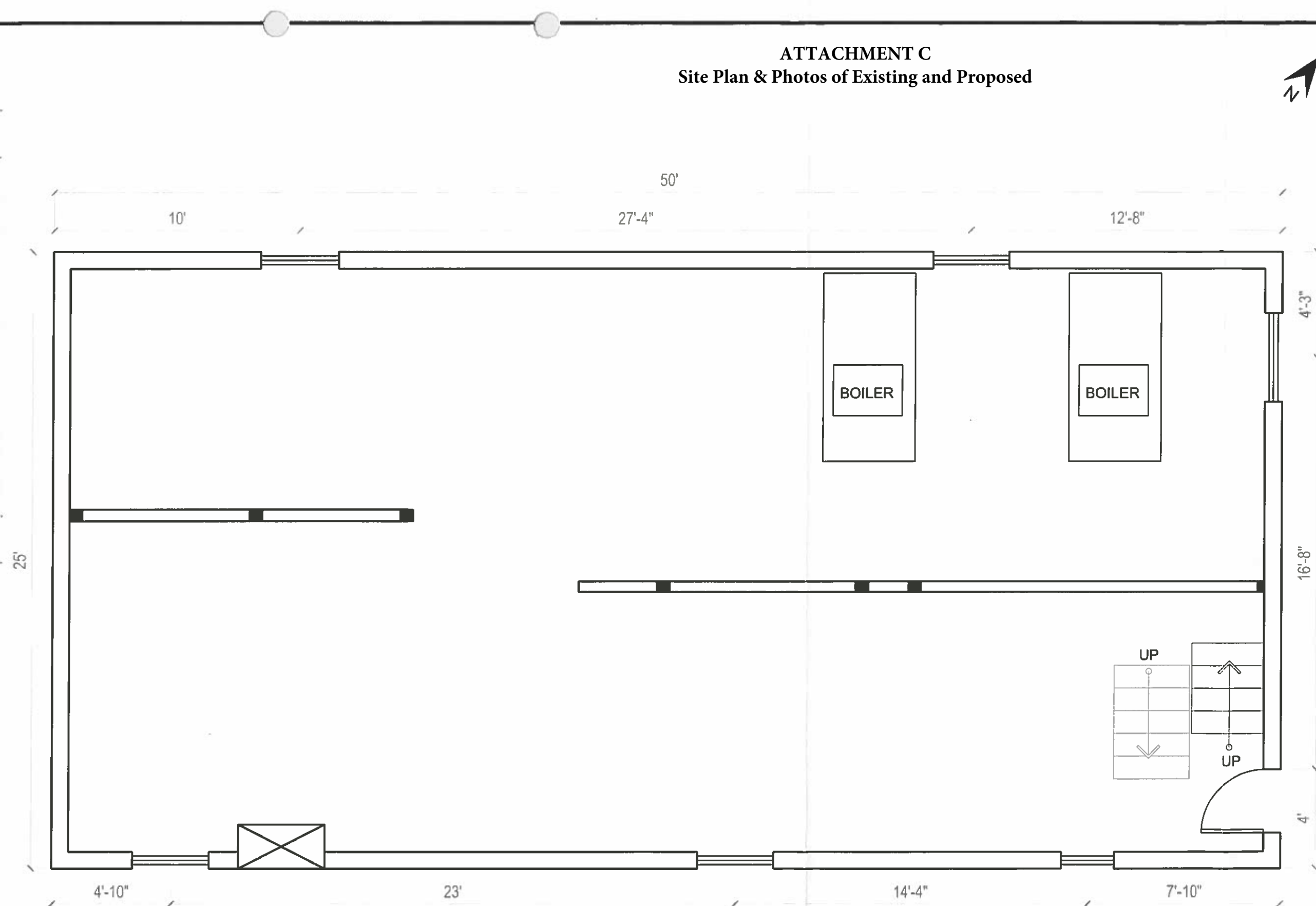
1
S1 **SITE PLAN - PROPOSED**
SCALE: 1" = 20'-0"

| | |
|---|------------------------|
| TITLE: SITE PLAN & PHOTOS -PROPOSED- | |
| CLIENT: BLAKE THOMPSON | |
| PROJECT: PROPOSED RESIDENTIAL RENOVATION VARIANCE APPLICATION 1541 EDWARD STREET HALIFAX, NOVA SCOTIA | |
| DATE: OCTOBER 2014 | PROJECT #: 14-1056 |
| SCALE: 1" = 20'-0" | FIGURE #: S2 |
| DRAWN BY: AC | CHECKED BY: DC |

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



360 CAD SERVICES INC.
"Where Imagination and Reality Collide"



- NOTES**
- PID# 00136507
 - 100% RESIDENTIAL BUILDING
 - BUILDING FOOTPRINT = 1250 ft²
 - NO CHANGES TO EXISTING FOOTPRINT IN PROPOSED RENOVATION
 - OWNER OCCUPIED RESIDENTIAL PROPERTY

TITLE:
BASEMENT FLOOR PLAN
-EXISTING-

CLIENT:
BLAKE THOMPSON

PROJECT:
 PROPOSED RESIDENTIAL RENOVATION
 VARIANCE APPLICATION
 1541 EDWARD STREET
 HALIFAX, NOVA SCOTIA

DATE:
 OCTOBER 2014

PROJECT #:
 14-1056

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

FIGURE #:

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 AC

CHECKED BY:
 DC

A1

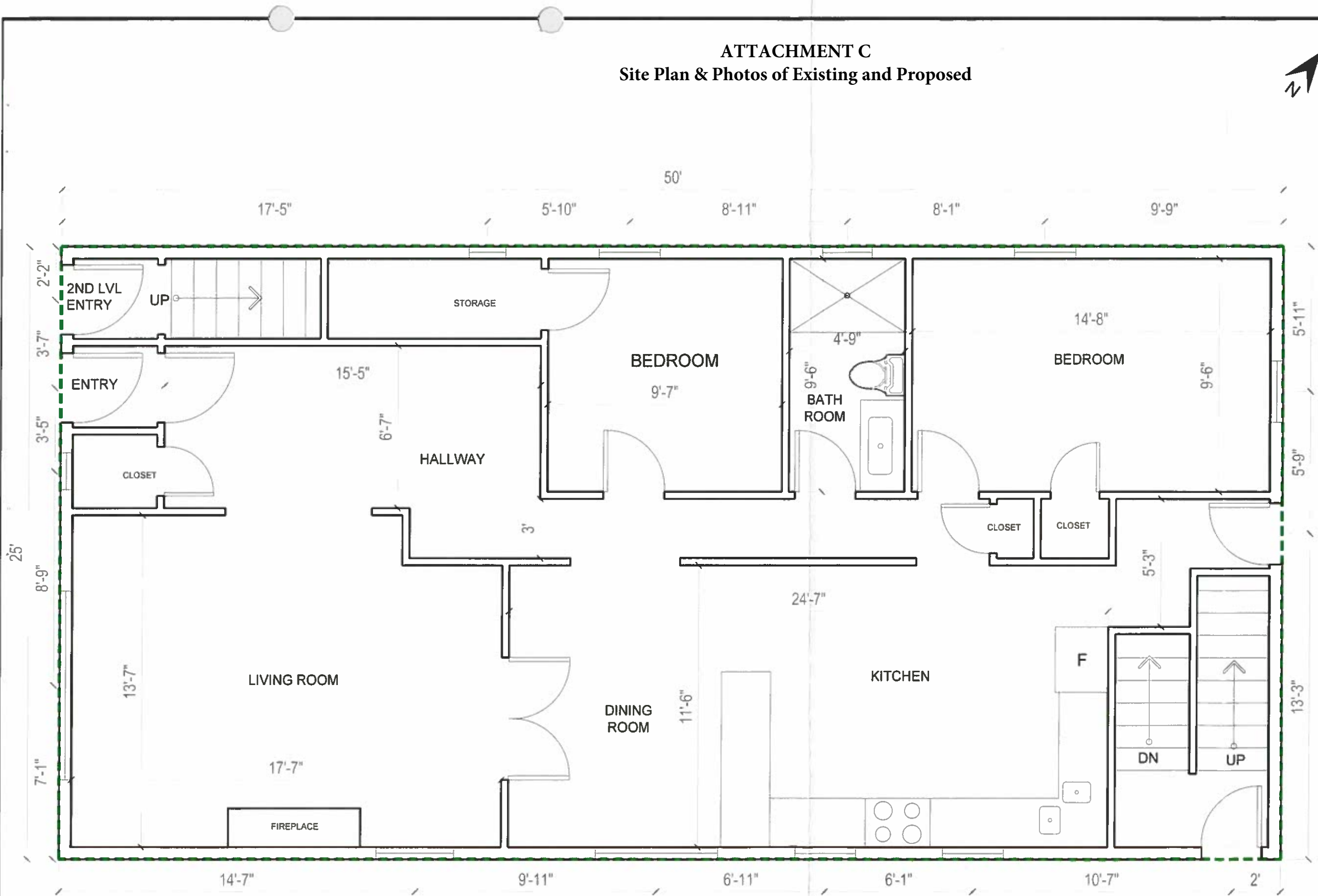
1 BASEMENT FLOOR PLAN - EXISTING
A1 SCALE: 1/4" = 1'-0"

***NOTE: EXISTING BASMENT CEILING HEIGHT IS LESS THAN 1.95 m**

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



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TITLE:
MAIN FLOOR PLAN -EXISTING-

CLIENT:
BLAKE THOMPSON

PROJECT:
 PROPOSED RESIDENTIAL RENOVATION
 VARIANCE APPLICATION
 1541 EDWARD STREET
 HALIFAX, NOVA SCOTIA

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|------------------------------|------------------------------|
| DATE: OCTOBER 2014 | PROJECT #: 14-1056 |
|------------------------------|------------------------------|

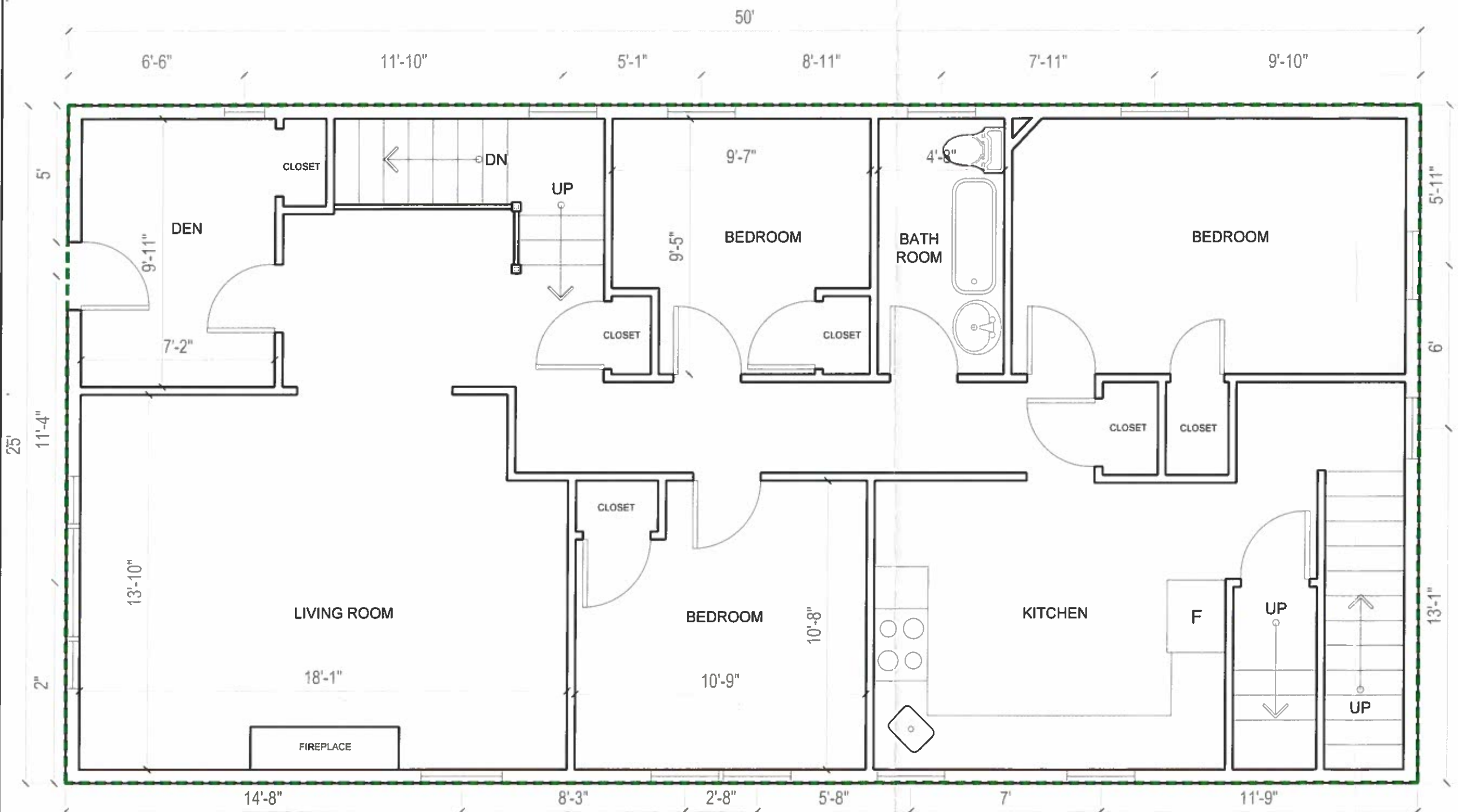
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| SCALE: 1/4" = 1'-0" | FIGURE #: |
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| CHECKED BY: DC | |

1 MAIN FLOOR PLAN - EXISTING
A2 SCALE: 1/4" = 1'-0"

GROSS FLOOR AREA = 1250 ft² (116.1 m²)
 --- CALCULATED GFA BOUNDARY

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



- NOTES:**
- PID# 00136507
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 - OWNER OCCUPIED RESIDENTIAL PROPERTY

TITLE
2ND FLOOR PLAN -EXISTING-

CLIENT:
BLAKE THOMPSON

PROJECT:
 PROPOSED RESIDENTIAL RENOVATION
 VARIANCE APPLICATION
 1541 EDWARD STREET
 HALIFAX, NOVA SCOTIA

| | |
|------------------------------|------------------------------|
| DATE: OCTOBER 2014 | PROJECT #: 14-1056 |
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| SCALE: 1/4" = 1'-0" | FIGURE #: |
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| CHECKED BY: DC | |

1 2ND FLOOR PLAN - EXISTING
A3 SCALE: 1/4" = 1'-0"

GROSS FLOOR AREA = 1250 ft² (116.1 m²)
 --- CALCULATED GFA BOUNDARY

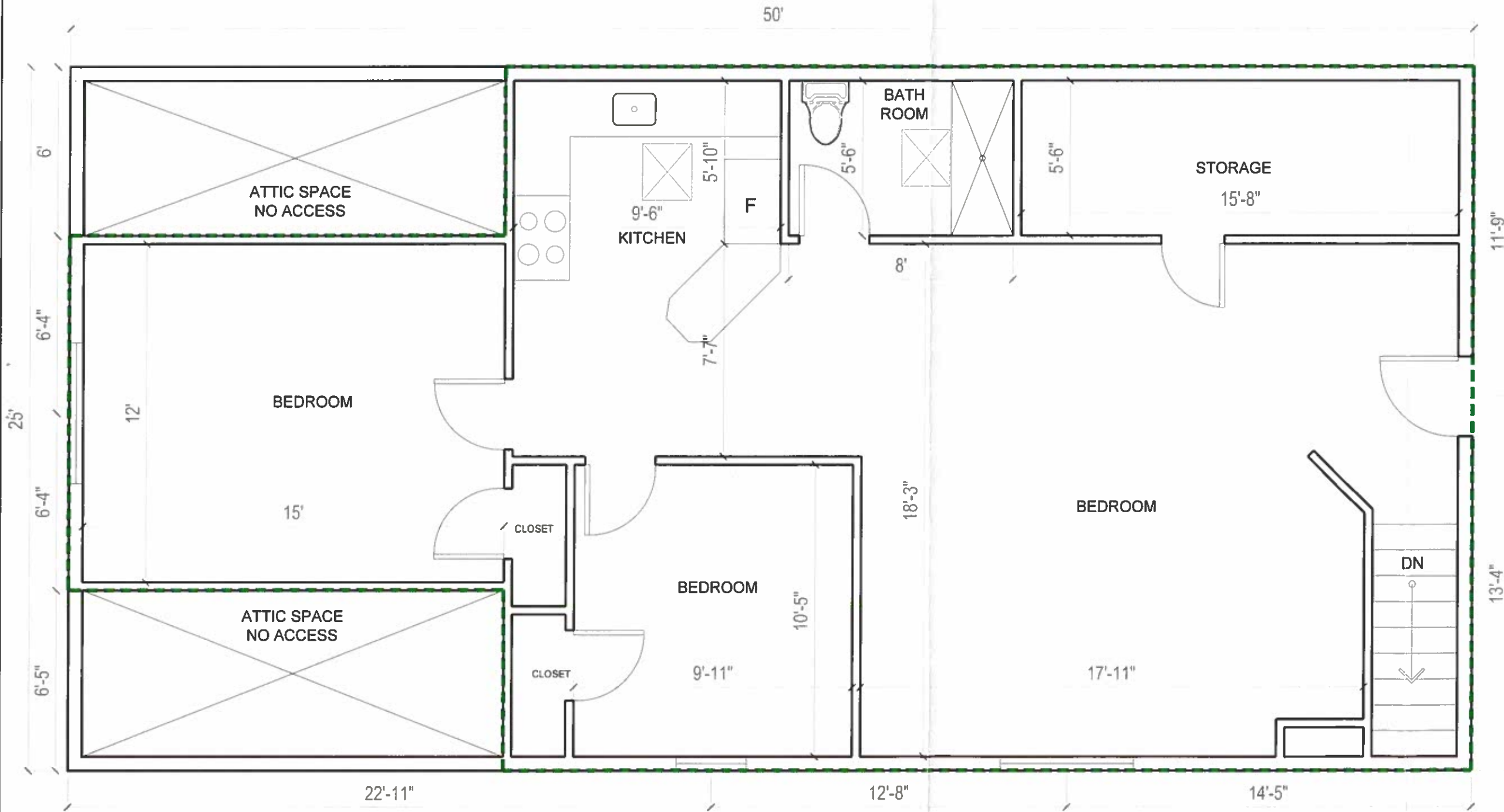
ATTACHMENT C
Site Plan & Photos of Existing and Proposed



360 CAD SERVICES INC.
"Where Imagination and Reality Collide"

NOTES

- PID# 00136507
- 100% RESIDENTIAL BUILDING
- BUILDING FOOTPRINT = 1250 ft²
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- OWNER OCCUPIED RESIDENTIAL PROPERTY



GROSS FLOOR AREA = 1058 ft² (98.3 m²)

--- CALCULATED GFA BOUNDARY



SKYLIGHT

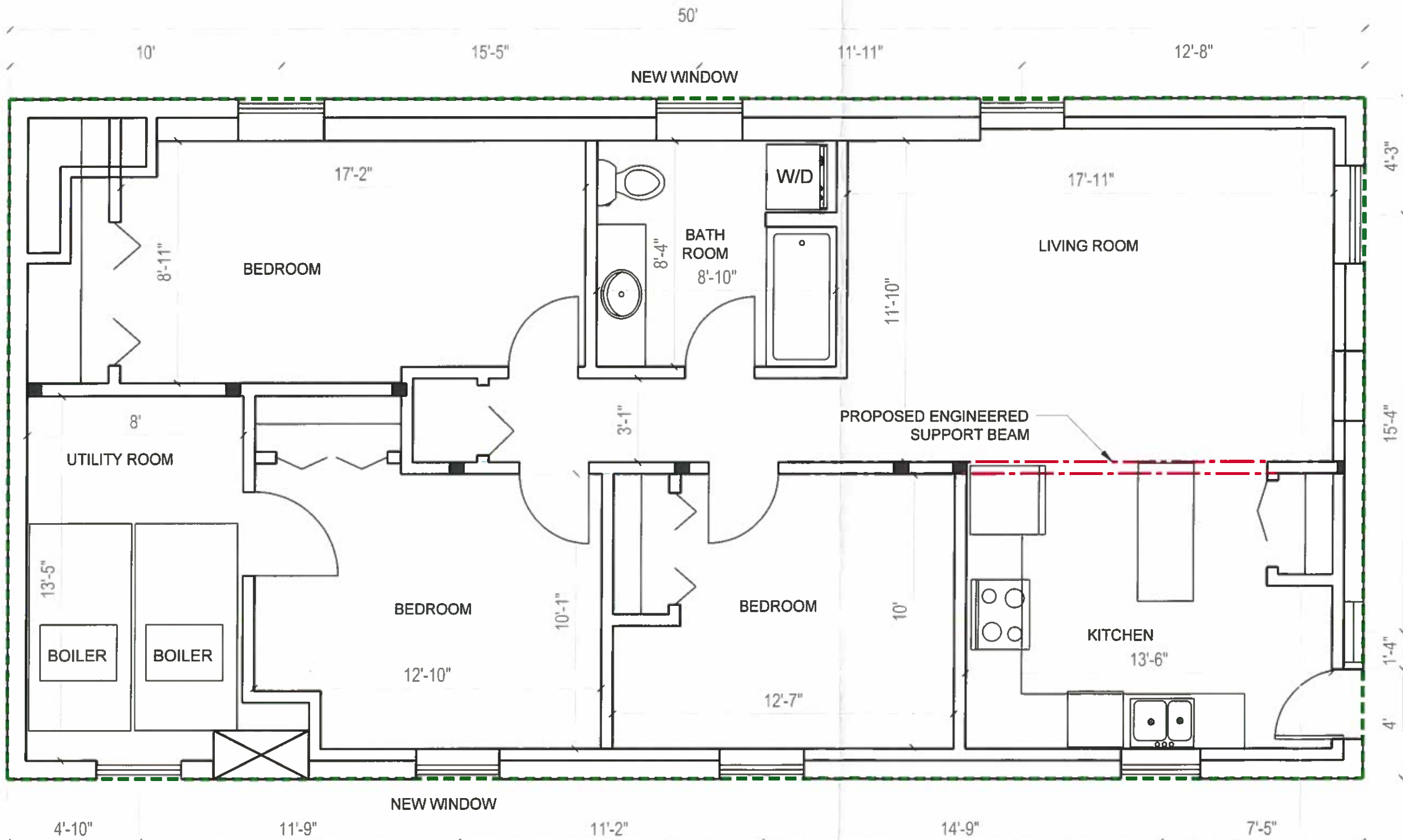
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|-----------------|---|
| TITLE | 3RD FLOOR PLAN -EXISTING- |
| CLIENT: | BLAKE THOMPSON |
| PROJECT: | PROPOSED RESIDENTIAL RENOVATION VARIANCE APPLICATION 1541 EDWARD STREET HALIFAX, NOVA SCOTIA |

| | |
|--------------|-------------------|
| DATE: | PROJECT #: |
| OCTOBER 2014 | 14-1056 |

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| SCALE: | FIGURE #: |
| 1/4" = 1'-0" | A4 |
| DRAWN BY: | |
| AC | CHECKED BY: |
| DC | |

1 3RD FLOOR PLAN - EXISTING
A4 SCALE: 1/4" = 1'-0"

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



- NOTES:**
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TITLE:
BASEMENT FLOOR PLAN
-PROPOSED-

CLIENT:
BLAKE THOMPSON

PROJECT:
 PROPOSED RESIDENTIAL RENOVATION
 VARIANCE APPLICATION
 1541 EDWARD STREET
 HALIFAX, NOVA SCOTIA

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| SCALE: 1/4" = 1'-0" | FIGURE #: |
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DRAWN BY:
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CHECKED BY:
DC

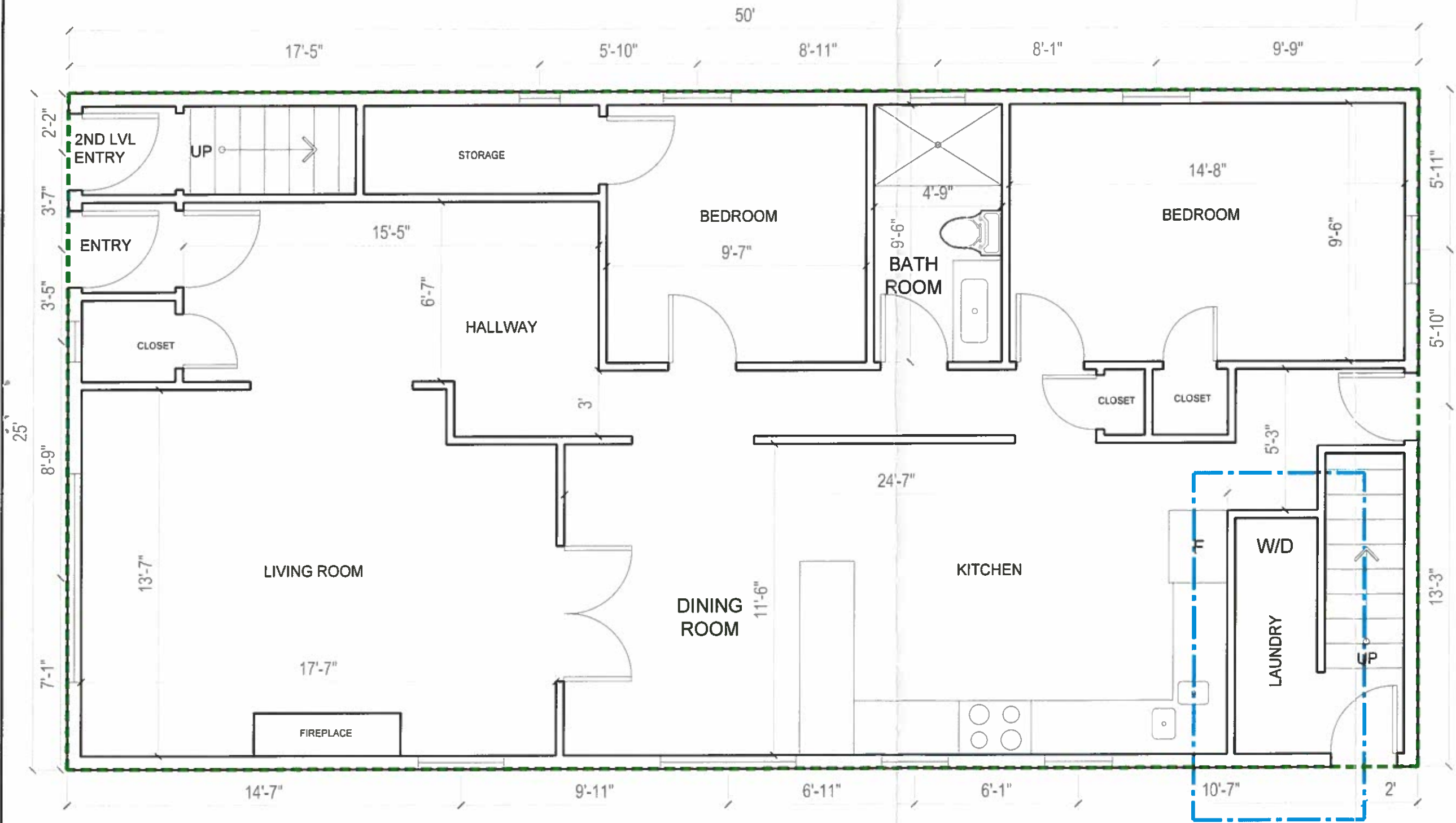
A5

GROSS FLOOR AREA = 1250 ft² (116.1 m²)

- CALCULATED GFA BOUNDARY
- SUPPORT BEAM

1 BASEMENT FLOOR PLAN - PROPOSED
A5 SCALE: 1/4" = 1'-0"

ATTACHMENT C
Site Plan & Photos of Existing and Proposed



NOTES

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 HALIFAX, NOVA SCOTIA

DATE: OCTOBER 2014 **PROJECT # :** 14-1056

SCALE: 1/4" = 1'-0" **FIGURE # :**

DRAWN BY: AC **A6**

CHECKED BY: DC

GROSS FLOOR AREA = 1250 ft² (116.1 m²)

--- CALCULATED GFA BOUNDARY

--- PROPOSED RENOVATION

1 MAIN FLOOR PLAN - PROPOSED
A6 SCALE: 1/4" = 1'-0"