



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

Item No. 10.1.1
Regional Centre Community Council
July 12, 2023

TO: Chair and Members of Regional Centre Community Council

SUBMITTED BY: - Original Signed -
Erin MacIntyre, Director- Development Services

DATE: June 12, 2023

SUBJECT: **Case 24350: Appeal of Variance Refusal – 6924 Armview Avenue, Halifax.
PID 00078881.**

ORIGIN

Appeal of the Development Officer's decision to refuse a variance.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part 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 by-law;
 - (b) the difficulty experienced is general to properties in the area; or
 - (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.
- 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

In accordance with Administrative Order One, the following motion shall be placed on the floor:

That the appeal be allowed.

Community Council approval of the appeal will result in approval of the variance.

Community Council denial of the appeal will result in refusal of the variance.

Staff recommend that Regional Centre Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 6924 Armview Avenue in Halifax. In order to enable a proposed addition to an existing single unit dwelling, a reduction in the minimum left yard setback is needed, from the required 4.5m to 1.8m. The addition is part of an extensive renovation of the existing dwelling which includes alterations to the interior and exterior, addition of a third storey, and expansion of the footprint of the building. The proposed development meets all other requirements of the land use by-law.

Site Details:

Zoning

The property is zoned ER-1 (Established Residential 1) and is within the Armview Special Area of the Regional Centre Land Use By-Law (LUB). The relevant requirement of the LUB and the related variance request are identified below:

	Zone Requirement	Variance Requested
Minimum Left Side Yard in the Armview Special Area	4.5m	1.8m

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment A). The property owner has appealed the refusal (Attachment B) and owners within the notification area (Map 1) have been notified of the appeal of the refusal and the matter is now before Regional Centre Community Council for 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 the motion is in opposition to the staff recommendation. The Recommendation section of this report contains the required wording of the appeal motion as well as a staff recommendation.

For the reasons outlined in this report, staff recommend that Community Council deny the appeal and uphold the decision of the Development Officer to refuse the request for variance.

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*.

The *Charter* sets out the following criteria by which the Development Officer may not grant a variance 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; or*
- (c) *the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.”*

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?

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets, and property lines for access, safety, privacy, and consistency of neighbourhood aesthetics. The Land Use By-law requirements reflect the intent of the Regional Centre Secondary Municipal Planning Strategy, which states that the Armview Special Area was established to “maintain the larger than average lot areas, front yard setbacks, and side yard setbacks of the area.” To reflect this intent, side yard setbacks of 4.5m were implemented through the LUB.

The adoption of the Regional Centre LUB introduced side setbacks of 4.5m side yard setbacks within the Armview Special Area to reflect the unique neighbourhood character. The proposed 1.8m setback is less than half of the minimum requirement. For these reasons, it is the Development Officer’s opinion that the proposal violates the intent of the Land Use By-Law.

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

In evaluating variance requests, staff must determine if general application of the by-law creates a specific difficulty or hardship that is not broadly present in the area. If these circumstances exist, then consideration can be given to the requested variance. If the difficulty is general to properties in the area, then the variance must be refused.

Properties in the Armview Special Area exhibit variation in size and orientation but are all subject to the same 4.5m side yard setback. The required side yard setback is met for some properties, but others have non-conforming side yard setbacks that are less than minimum required 4.5m. These non-conforming side yards are established by existing dwellings that predate the current regulation, and which are subject to the provisions and restrictions of the HRM Charter. Dwellings with non-conforming side yards are able to be extended or reconstructed as long as the setback condition is not worsened. This is true of the subject property, as the existing dwelling on the lot establishes a non-conforming 3.15m left side yard setback. This non-conforming side yard setback is 1.35m closer to the property boundary than the LUB requirement. All properties in the Armview Special Area with non-conforming setbacks would require a variance to build closer to the side lot line than an existing non-conforming setback allows.

For these reasons, it is the Development Officer’s determination that the difficulty experienced in meeting the setback 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.

The applicant has applied for a variance in good faith prior to commencing any work on the property. Intentional disregard of LUB requirements was not a consideration in this variance request.

Appellant’s Submission:

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 C) 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
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<p><i>We are proposing the setback be set to 10% of the lot width to a maximum of 1.8m per the original Peninsula Land Use Bylaw that the building was designed to. This bylaw allowed for narrow lots to still be buildable. The new Centre plan has increased the set back to 4.5m to increase distances between residences but this property is unique in that it is bordered by water on the west and a sewer easement on the east thus ensuring nothing will be built near it.</i></p>	<p>The regulations of the Halifax Peninsula Land Use By-law have been repealed and can not be considered as part of this variance request.</p> <p>The former side yard setback of the Halifax Peninsula Land Use By-law was a minimum of 10% of the width of the lot. It is worth noting, however, that the property was within the former Northwest Arm Sub Area, which required larger lot sizes (8000 sqft) along with a 30 foot setback between main buildings. The intent of the now-repealed requirements have been maintained through the establishment of The Regional Centre Armview Special Area, which requires a larger lot area, front yard setback, and side yard setback. While the newer regulations are structured differently (4.5m setback has replaced the former separation distance of 30 feet between main buildings) the intent is the same - a larger separation distance from property lines and abutting buildings. It also should be noted that this property has the benefit of an existing nonconforming setback of 3.15m which is less than the current requirement.</p> <p>The sewer easement that crosses this property is a feature found on the majority of the lots along the Northwest Arm within the Armview Special Area. This long-standing easement is a feature that limits the scope of potential development in many similarly situated lots. The presence of this easement does not substantially differentiate this lot from the surrounding properties.</p>
<p><i>This lot is burdened by the 9m water setback on the west and a sewer easement to the north of the existing building. No other waterfront lots are in the unique position that the 9m Northwest arm setback acts as a side yard limitation and are only 55ft wide. Without the requested variance to reduce the 4.5 side yard to 1.8m the buildable width is only 10'8".</i></p>	<p>The sewer easement that crosses this property is a feature found on the majority of the lots along the Northwest Arm within the Armview Special Area. The presence of this easement does not substantially differentiate this lot from the surrounding properties. The non-conforming provisions of the HRM Charter allow for the current building width of approximately 32.8 feet (10 metres).</p>

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance request. The HRM cost associated with processing this application can be accommodated with the approved 2023/24 operating budget for Planning and Development.

RISK CONSIDERATION

There are no significant risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a variance refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 metres of the variance and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

As noted throughout this report, Administrative Order One requires that Community Council consideration of this item must be in the context of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

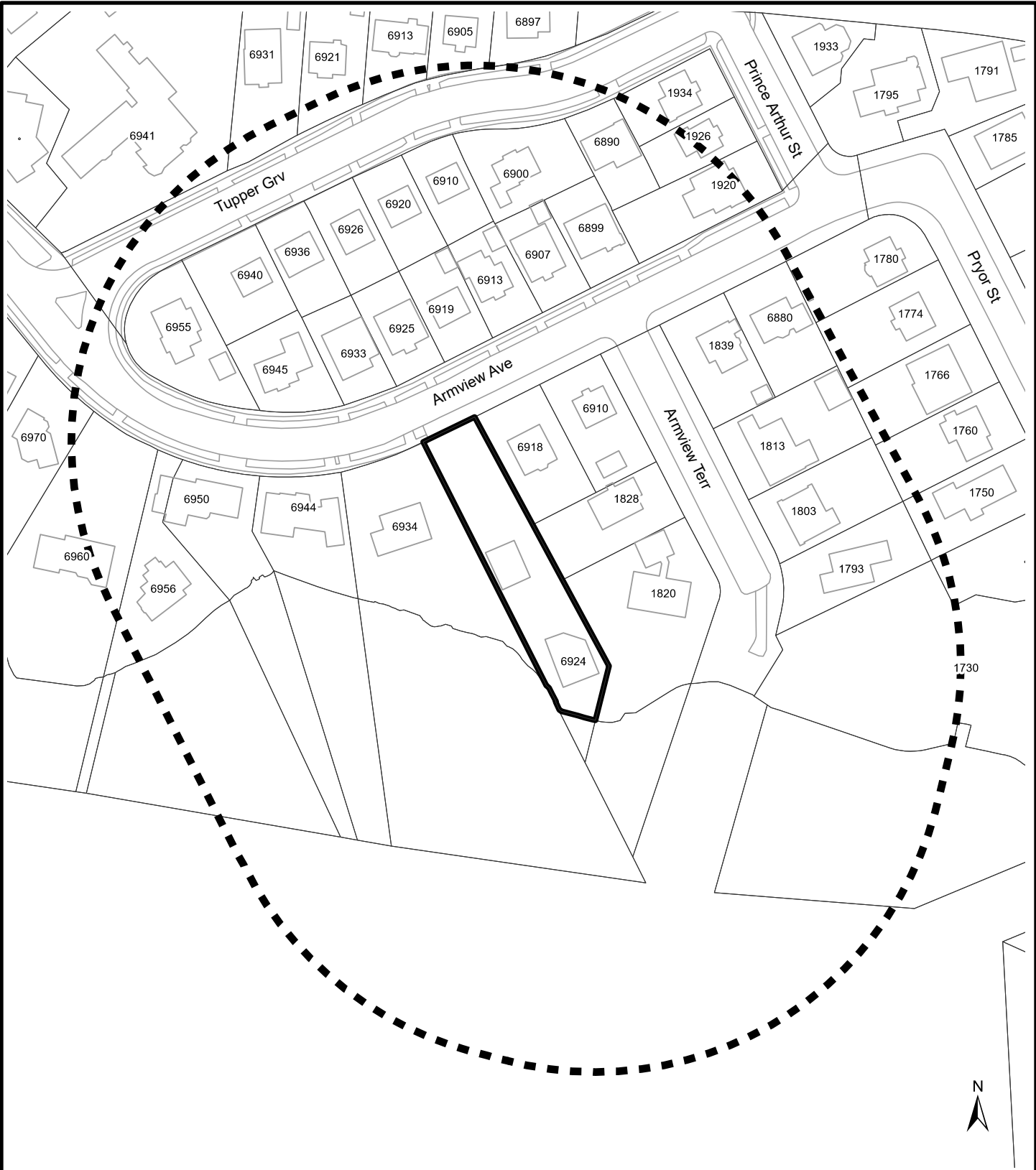
1. Denial of the appeal motion would result in the refusal of the variance. This would uphold the Development Officer's decision and this is staff's recommended alternative.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Officer.

ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Variance Refusal Notice
Attachment B:	Letter of Appeal from Applicant
Attachment C:	Building Elevations

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

Report Prepared by: Telina Debly, Planner 1, 782.640.6120
Stephanie Norman, Development Officer, 782.640.0702

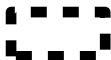


Map 1 - Location and Notification Area

6924 Armview Avenue,
Halifax



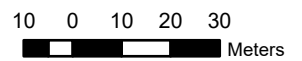
Subject Property

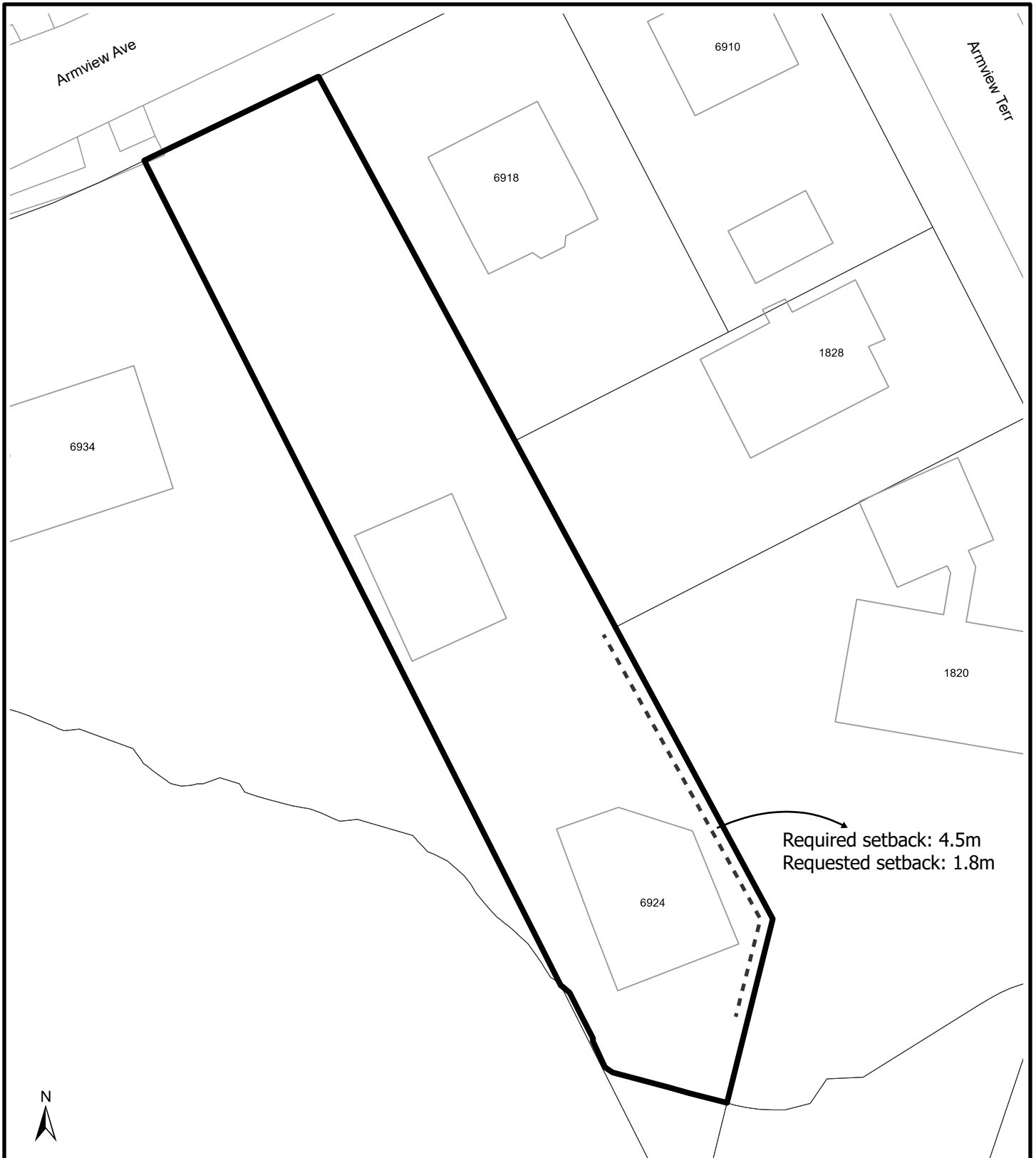


Notification Area

HALIFAX

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





Map 2 - Site Plan

6924 Armview Avenue,
Halifax



Subject Property

HALIFAX

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



Attachment A: Variance Refusal Notice

3 October 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: VARIANCE APPLICATION #24350, 6924 ARMVIEW AVENUE, PID #00078881

This will advise that I have refused your request for a variance from the requirements of the Regional Centre Land Use Bylaw as follows:

Location: 6924 Armview Avenue
Project Proposal: Request to reduce left yard setback from 4.5m to 1.8m.

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	4.5m	1.8m

Section 250(3) of the Halifax Regional Municipality Charter states that a variance may not be granted if:

- (a) the variance violates the intent of the 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 land use bylaw.

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (a) the variance violates the intent of the land use bylaw; and
- (b) the difficulty experienced is general to properties in the area.

Pursuant to Section 251 of the Halifax Regional Municipality 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:

**Municipal Clerk
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5
clerks@halifax.ca**

Your appeal must be filed on or before **Thursday, October 13th, 2022.**

If filing an appeal, be advised that your submission and appeal documents will form part of the public record, and will be posted on-line at www.halifax.ca. If you feel that information you consider to be personal is necessary for your appeal, please attach that as a separate document, clearly marked "PERSONAL". It will be provided to the committee and/or council members and staff, and will form part of the public record, but it will not be posted on-line. You will be contacted if there are any concerns.

If you have any questions or require clarification of any of the above, please call Telina Debly, Planner 1, at 782-640-6120.

Sincerely,



Stephanie Norman, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councillor Shawn Cleary

Attachment B: Letter of Appeal from Applicant



[This email has been received from an external person or system]

Good Afternoon,

This is a formal notice of appeal on the Development Officer's Decision of Variance Application #24350, 6924 Arvmview Avenue, PID 00078881.

We appeal the DO's decision that:

(a)the variance violates the intent of the land use bylaw;

- We are proposing the setback be set to 10% of the lot width to a maximum of 1.8m per the original Peninsula land Use bylaw that the building was designed to. This bylaw allowed for narrow lots to still be buildable. The new Centre plan has increased the set back to 4.5m to increase distances between residences but this property is unique in that it is bordered by water on the west and a sewer easement on the east thus ensuring nothing will be built near it.
and

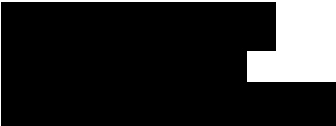
(b)the difficulty experienced is general to properties in the area.

- This lot is burdened by the 9m water setback on the west and a sewer easement to the north of the existing building. No other waterfront lots are in the unique position that the 9m Northwest arm setback acts as a side yard limitation and are only 55ft wide. Without the requested variance to reduce the 4.5 side yard to 1.8m the buildable width is only 10'8".

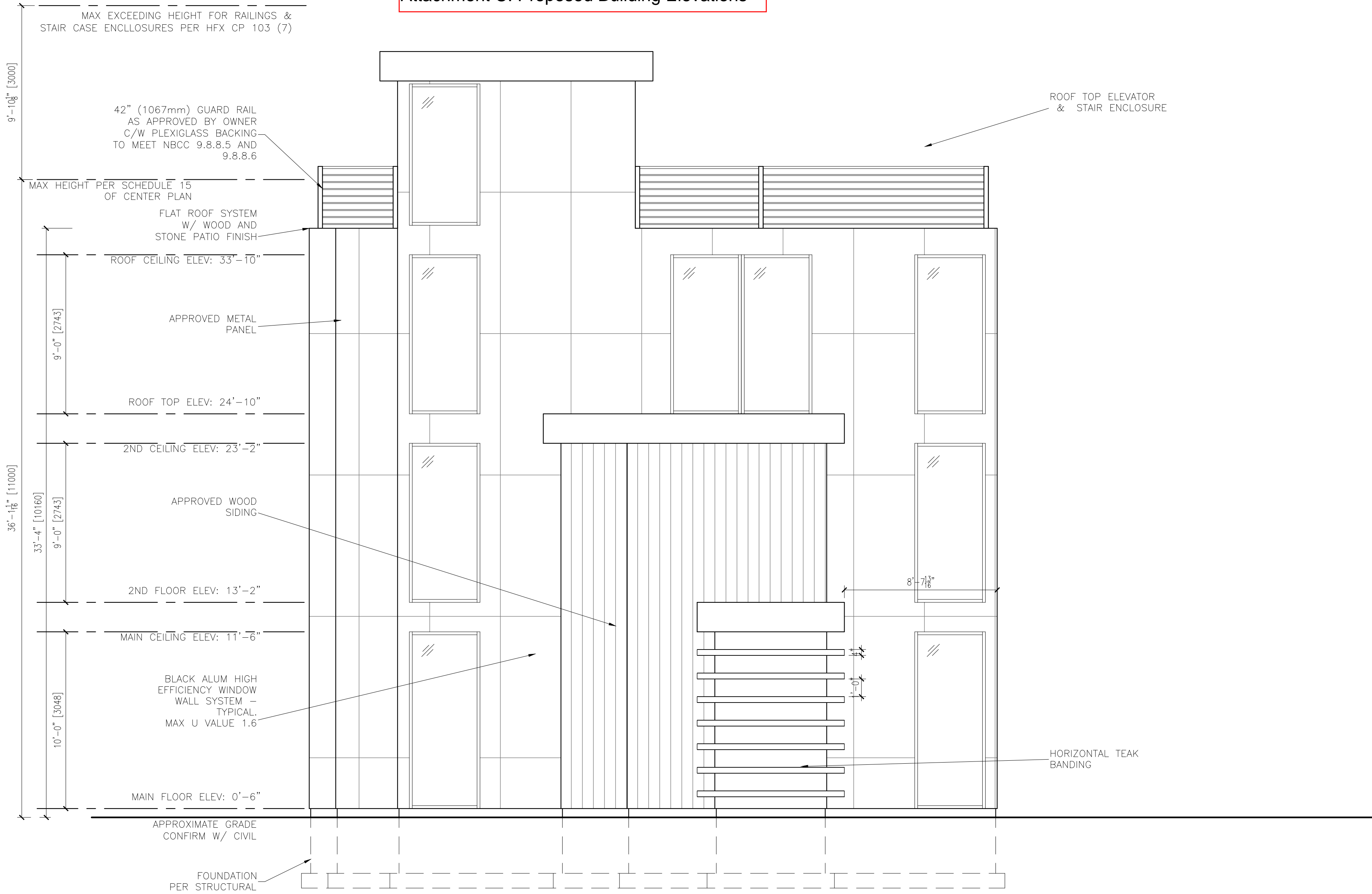
For records the original refusal letter, a site plan, and proposed building elevations are attached. Please let us know if you require any further information.

Thank you,

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Attachment C: Proposed Building Elevations



FRONT/ROAD

0	REVISED PER PLANNING COMMENTS	2025.05.31
#	REVISION	DATE

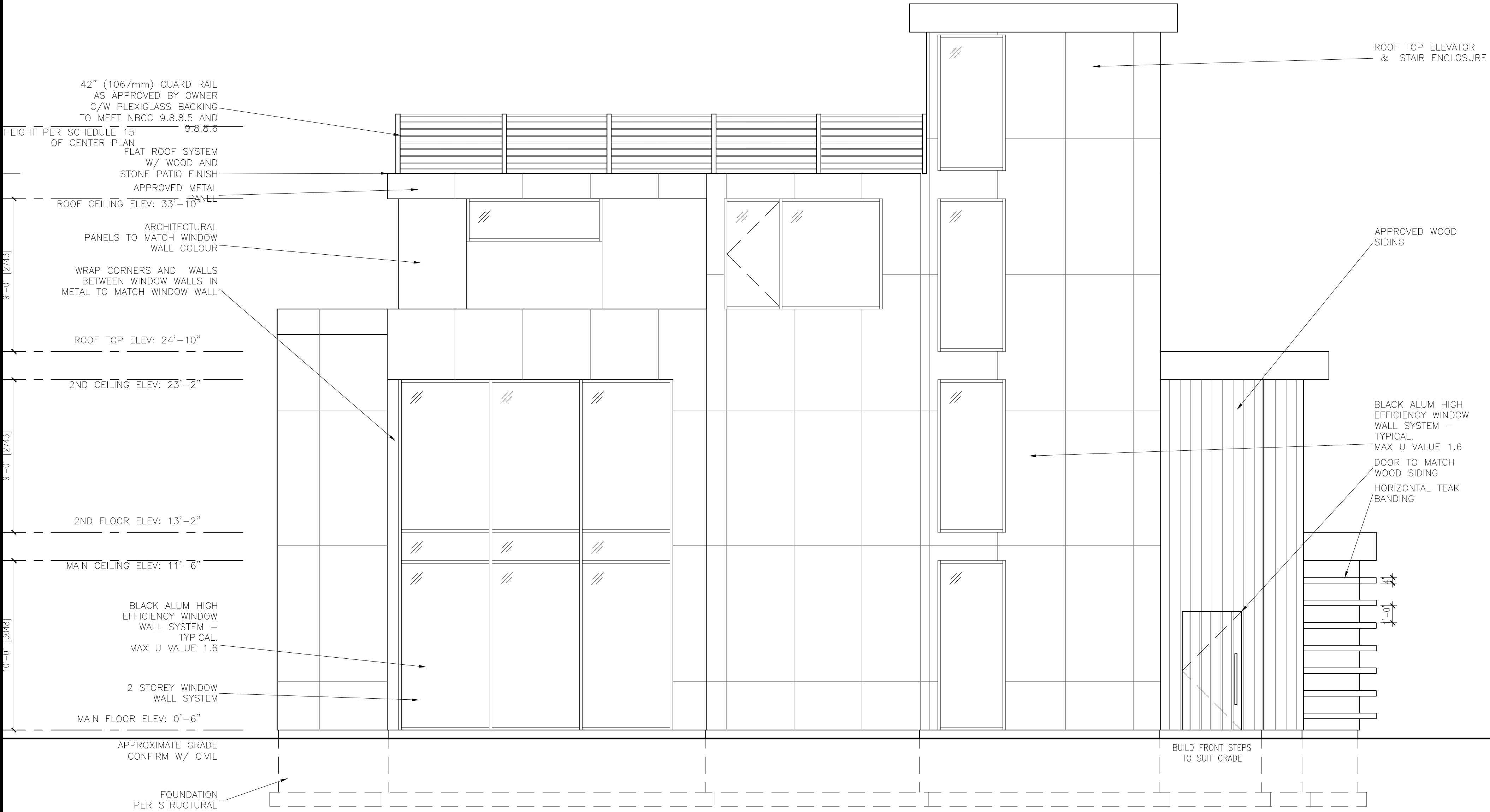
PROJECT:
6924 ARMVIEW
HALIFAX, NS

DRAWING:
FRONT ELEVATION

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

SHEET NO.:
A1

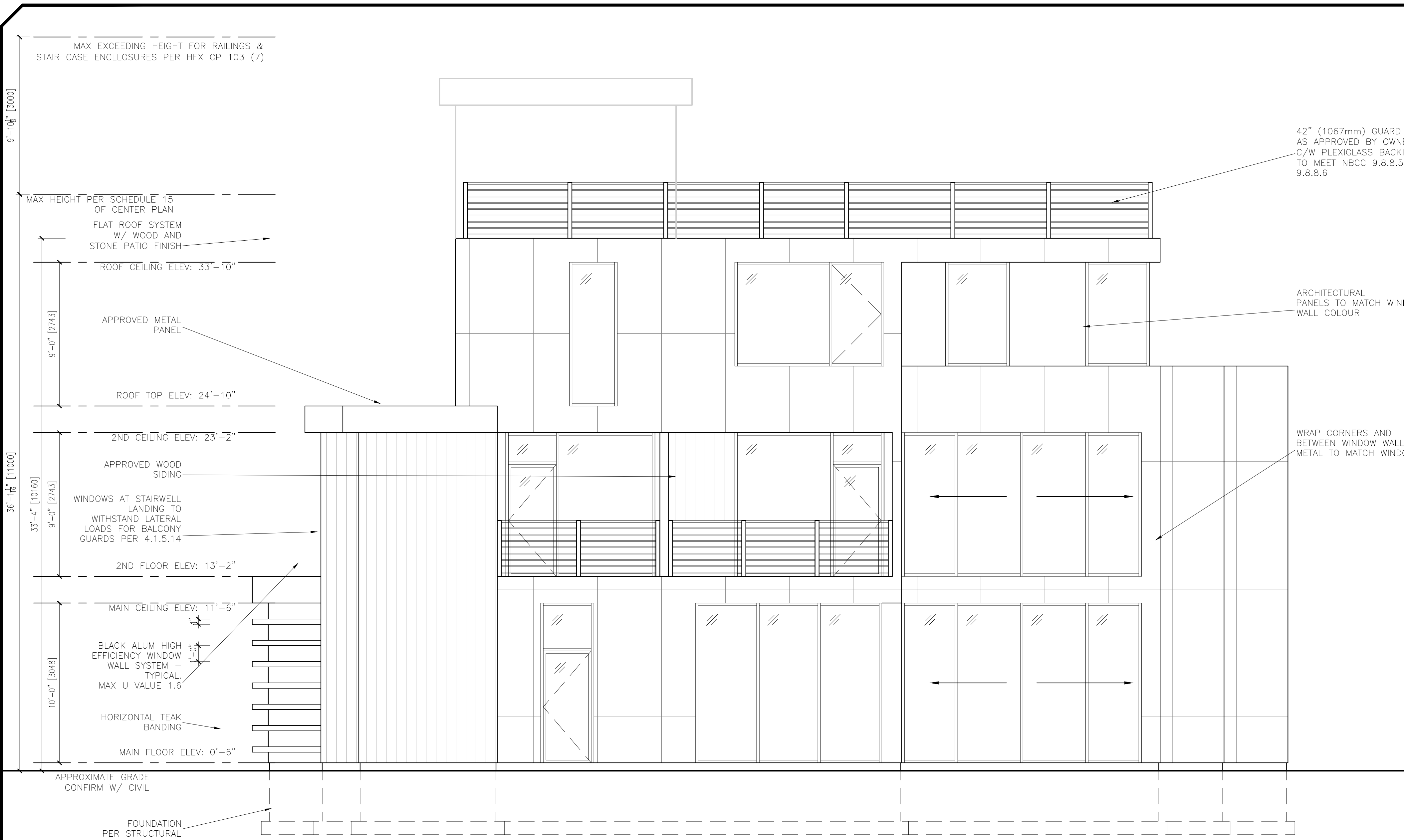
MAX EXCEEDING HEIGHT FOR RAILINGS &
 AIR CASE ENCLOSURES PER HFX CP 103 (7)



- NOTES:
- STEP FOUNDATION TO SUIT GRADE AND MAINTAIN FROST COVER
 - CONFIRM ALL WINDOWS INCLUDING OPERATION W/ OWNER
 - CONFIRM ALL EXTERIOR FINISHES WITH OWNER

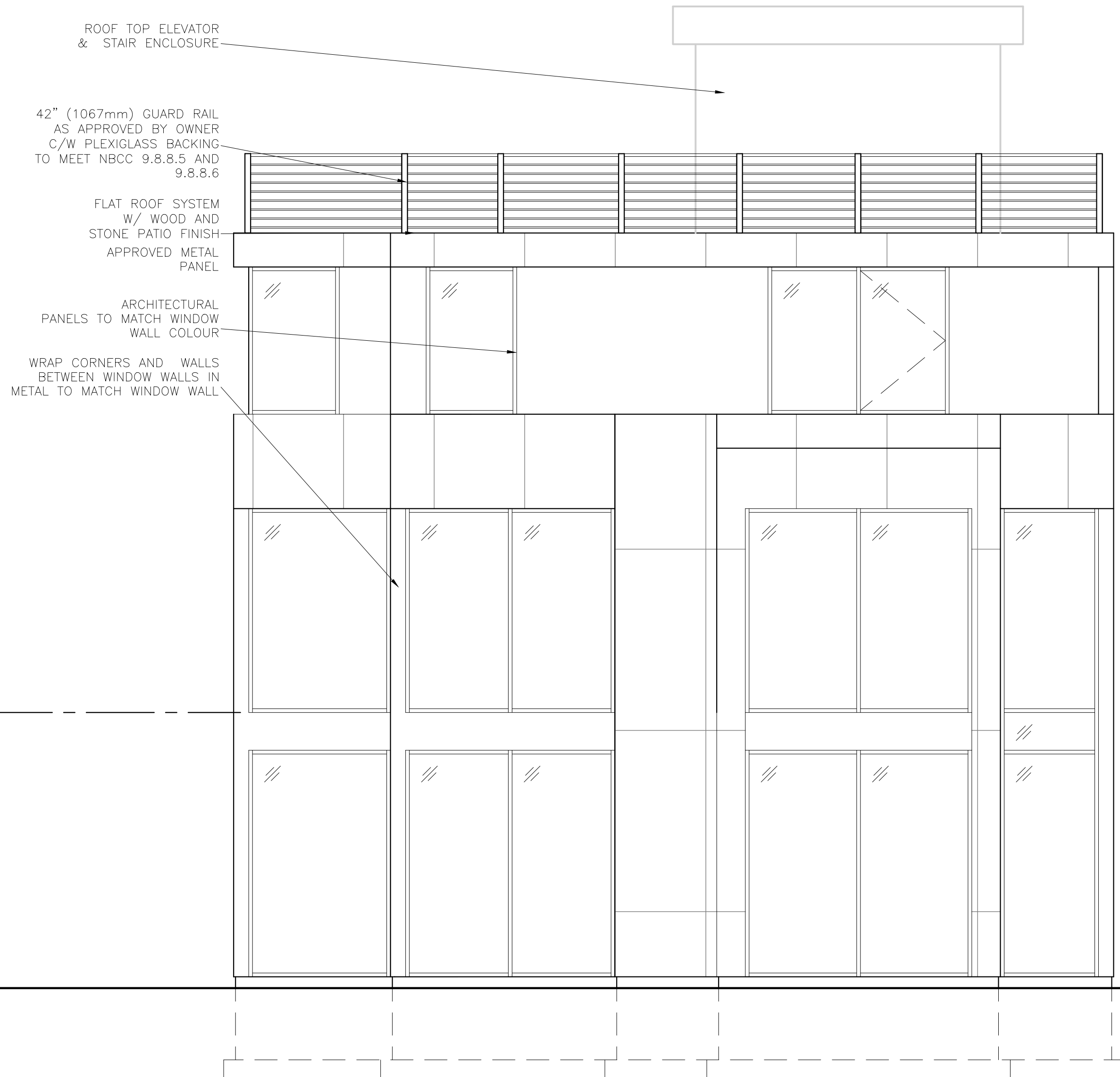
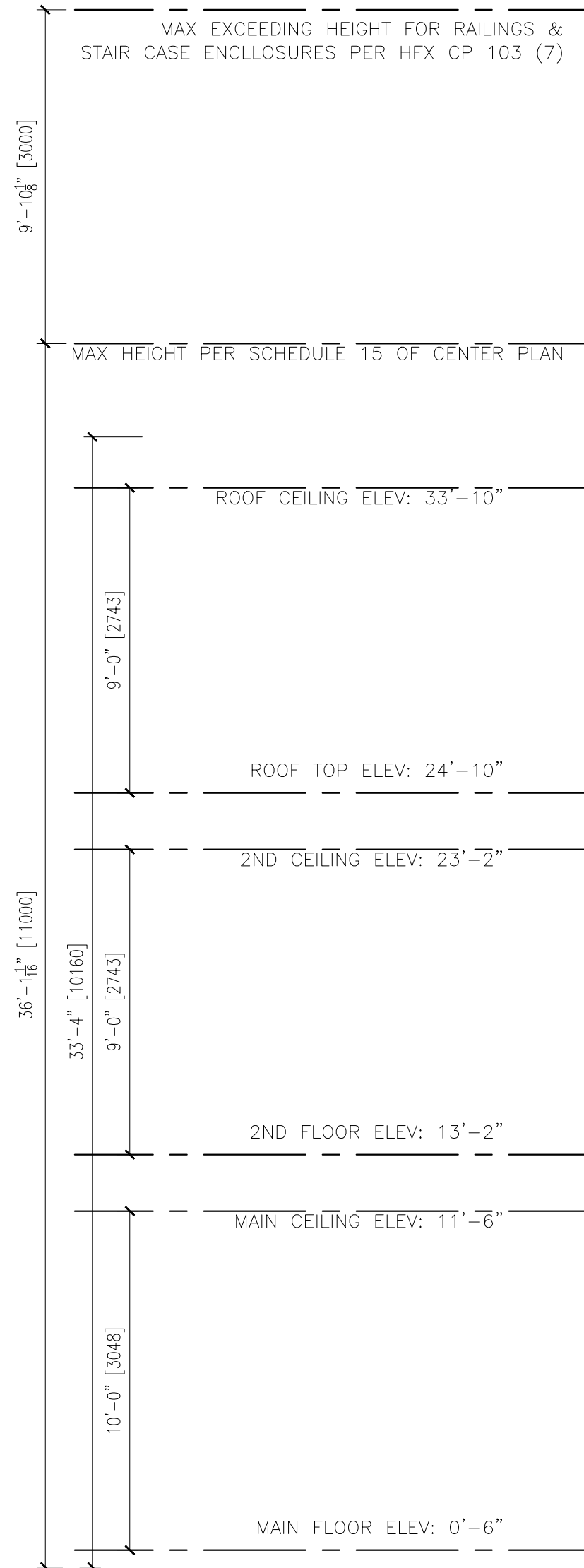
LEFT

0	REVISED PER PLANNING COMMENTS	2025.05.31
#	REVISION	DATE
PROJECT: 6924 ARMVIEW		
HALIFAX, NS		
DRAWING: LEFT ELEVATION		
SCALE: 1/4"=1'-0"		
SHEET NO.: A2		



RIGHT

0	REVISED PER PLANNING COMMENTS	2025.05.31
#	REVISION	DATE
PROJECT: 6924 ARMVIEW HALIFAX, NS		
DRAWING: RIGHT ELEVATION		
SCALE: 1/4"=1'-0"		
SHEET NO.: A3		



- NOTES:
- STEP FOUNDATION TO SUIT GRADE AND MAINTAIN FROST COVER
 - CONFIRM ALL WINDOWS INCLUDING OPERATION W/ OWNER
 - CONFIRM ALL EXTERIOR FINISHES WITH OWNER

BACK/WATER

0	REVISED PER PLANNING COMMENTS	2025.05.31
#	REVISION	DATE
PROJECT: 6924 ARMVIEW HALIFAX, NS		
DRAWING: BACK ELEVATION		
SCALE: 1/4"=1'-0"		
SHEET NO.: A4		