

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Kelly Denty, Acting Chief Administrative Officer

DATE: June 23, 2020

SUBJECT: **Encroachment of an Overhead Deck at 1505 Barrington St., Halifax**

ORIGIN

Application 176633 by WSP Inc. for approval of an encroachment of an overhead deck, a portion of which is proposed to be constructed over the HRM right-of-way at 1505 Barrington St., Halifax.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Subsections:

324 (1) "Where any part of a street, other than the travelled way, has been built upon and it is determined that the encroachment was made in error, the Engineer may permit, in accordance with any by-law made pursuant to subsection (2), the encroachment to continue until such time as the building or structure encroaching upon the street is taken down or destroyed.

(2) "The Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments. 2008, c. 39, s. 324."

Encroachment By-Law E-200, Subsection:

4B "An encroachment license shall not be issued unless the encroachment is authorized by Council except for the following encroachments, which may be authorized by the Engineer..."

Administrative Order Number 15 Respecting License, Permit and Processing Fees:

Schedule A, Encroachment Bylaw S.6, (1) "Encroachment other than those described in paragraph 4(a)(iv) of Bylaw E-200 shall be subject to an annual rental fee in the amount of \$1.00 per 0.1 square metres of such encroachment, with a minimum fee of \$10.00."

RECOMMENDATION

It is recommended that Halifax Regional Council deny the application for an encroachment for a portion of an overhead deck that is proposed to be constructed over the Salter Street right-of-way at 1505 Barrington Street, Halifax. The location of the proposed overhead deck encroachment is shown on Map 1, Attachment A, and Attachment B.

BACKGROUND

The Maritime Center located at 1505 Barrington Street is undergoing a substantial, four-story addition which is being constructed on both sides of the building. On the second level of the side of the building facing Salter Street, the applicant, Slate REIT has proposed a new patio/deck as part of the new location for Niche restaurant that would include a 1 ft wide portion that would be constructed over the HRM right-of-way.

Under the *Encroachment By-law E-200*, the Engineer may authorize encroachment licenses for canopies and awnings; for building elements that are encroaching no further towards the curb than other existing building elements; pole mounted infrastructure; installation of building equipment such HVAC and exhaust fans; underground conduit; public facilities; barrier free accesses; infrastructure that facilitates construction of a building; and decorative building features required by a by-law. Other than these types of encroachments, *Encroachment By-law E-200* requires that encroachments, other than temporary encroachments, in the HRM right-of-way be granted or refused on a case by case basis at the full discretion of Regional Council.

In accordance with *Encroachment By-Law E-200*, deck type encroachments over the HRM street right-of-way require Regional Council's approval, and if approved, are also subject to an annual fee as outlined in Administrative Order 15.

DISCUSSION

Encroachment license applications are reviewed by staff to determine whether they contribute to or hinder current and future use of the right-of-way for its typical purpose of establishing and maintaining infrastructure for use by the general public.

This proposed deck would encroach approximately one 1.03 ft (0.31 m) over the HRM right-of-way, over a length of approximately 27.6 ft (8.41 m), with a total proposed encroachment area of 28.43 ft² (2.61 m²) over the Salter Street right-of way. Information provided by the applicant in support of the request, including an architectural plan, rendering and request letter are contained within Attachments A, B and C respectively.

At ground-level, the existing right-of-way at this location consists of a concrete sidewalk. The proposed encroachment would not interfere with any existing public infrastructure. The proposed patio has been reviewed from a public safety perspective, and staff have confirmed that it would not present a public safety risk.

Information received from the applicant indicates that the proposed encroachment is desired to provide additional exterior space for a commercial restaurant that would be used as a patio seating area. The proposed patio is a request that the applicant deems beneficial to the business for comfort of seating on their patio, and for visual appeal of the building. It is understood that the proposed patio is not intended for open use by the general public.

The proposed patio would not be easily removable as it would be constructed of concrete and would be integral to the building structure. Because it is not easily removable, the proposed patio would impede future use of the right-of-way for its typical purpose of establishing and maintaining infrastructure for use by the general public.

Conclusion

Staff do not recommend approval of the encroachment license request. Encroachments such as this are approved at the sole discretion of Council and are considered on a case-by-case basis. In the absence of policy direction to the contrary, encroachments of this nature in the right-of-way that are not easily removed, and that do not provide a clear public benefit, are not supported by staff.

FINANCIAL IMPLICATIONS

This report recommends that the encroachment application be denied. However, if Regional Council chooses to approve the encroachment, Cost Centre R112-4912, Right-of-Way Approval – Signs and Encroachments would be used to record the annual revenue.

RISK CONSIDERATION

There are no risks associated with the staff recommendation.

If Council chooses to approve of the encroachment license, the impact resulting from the encroachment potentially obstructing future uses of the right-of-way is minor, and the likelihood that the encroachment will conflict with other public infrastructure is possible, but unlikely. There is a potential risk with respect to general liability regarding use of the deck which would need to be addressed in any encroachment agreement. An insignificant impact that is unlikely, is measured as a low risk to the Municipality.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications have been identified.

ALTERNATIVES

Regional Council may choose to approve the encroachment application, in which case an Encroachment Agreement would be formed between HRM and the Property Owner, and an annual encroachment license fee as set by AO #15 (currently \$26.10) would be collected.

Encroachment Agreement

If Regional Council approves of the encroachment, an Encroachment Agreement would be executed between the property owner and HRM in the format similar to other encroachment agreements previously drafted and approved by HRM Legal Services. Typical conditions that would be considered for inclusion in the Encroachment Agreement include:

- a) construction and maintenance of the encroachment must comply with all applicable legislation including, Streets By-law, S-300, Encroachment By-law, E-200, and Administrative Order, ADM-2016-003;
- b) the Encroachment is required to meet current HRM Municipal Design Specifications;
- c) the Applicant would be responsible for third party liability, ownership and maintenance of the approved encroachment;
- d) if requested by Regional Council, the encroachment would be removed or relocated by the property owner(s) and the area within the HRM right-of-way reinstated at their expense; and

- e) record as-built drawings of the patio and related information must be provided to HRM.

Annual Fee

If an Encroachment Agreement is reached, the property owner would be subject to an annual fee for the encroachment as outlined in Administrative Order 15.

Administrative Order 15 states that all encroachments of this nature within the HRM street right-of-way shall be subject to an annual rental fee of \$1.00 per 0.1 square metres (\$10 per square metre) of such encroachment, with a minimum fee of \$10.00. The encroachment area of the patio that lies within the HRM on Salter Street would be a total area of 2.61 square meters. Therefore, the encroachment would be subject to an encroachment fee of \$26.10 per year.

ATTACHMENTS

Map 1 – Location

Attachment A – Plan View Architectural Drawings of Proposed Encroachment

Attachment B – Proposed Encroachment Renderings

Attachment C – Encroachment Request Letter from Applicant

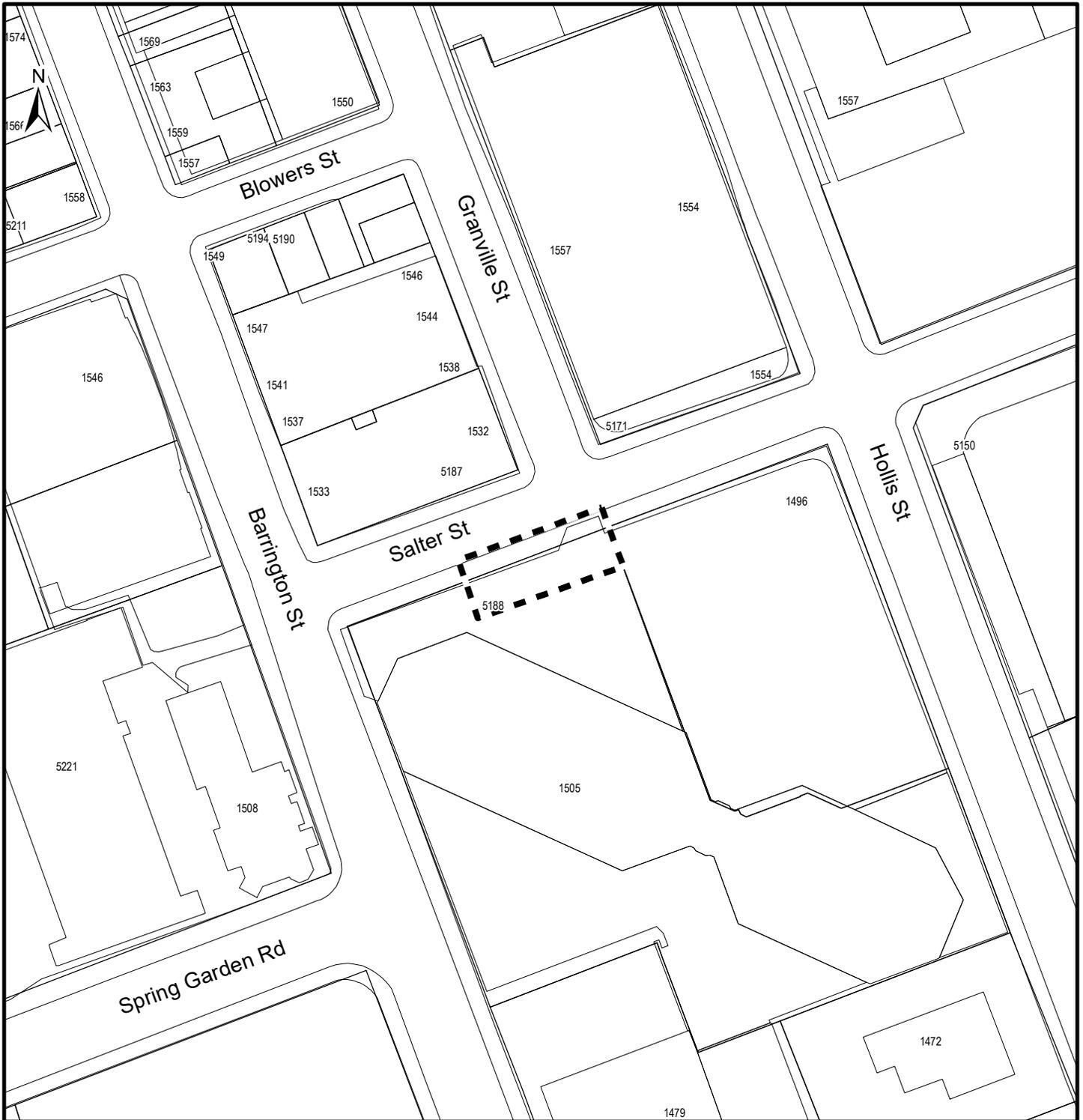
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Brad Whalen, CET, Engineering Technologist II, 902.871.7362

Report Approved by: Crysta Cumming, P.Eng., Program Engineer, Development Engineering, 902.292.3707

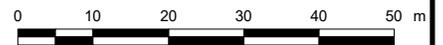
Financial Approval by: Jane Fraser, Director of Finance, Asset Management and ICT/CFO, 902.490.4630

Report Approved by: Steven Higgins, Acting Director, Planning and Development, 902.490.4382



Map 1 - Location
 1505 Barrington Street
 Halifax

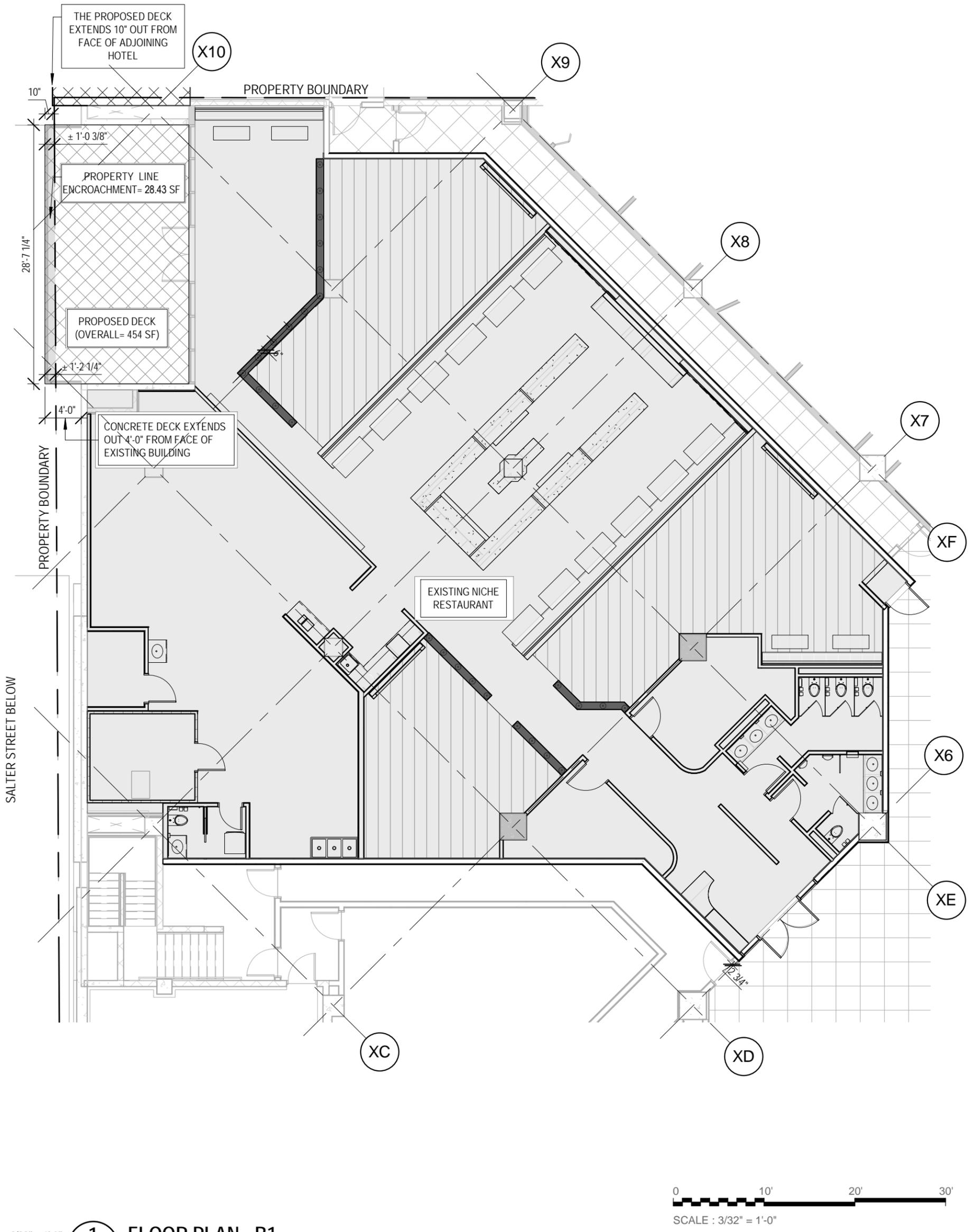
HALIFAX



 Encroachment Area

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

Attachment A - Plan View Architectural Drawings of Proposed Encroachment



3/32" = 1'-0" **1** FLOOR PLAN - B1
ASK-01rev1

ARCHITECTURE 49 1640 Market Street, Halifax, Nova Scotia, Canada, B3J 2C8 T: 902.429.5490 F: 902.429.2632 www.architecture49.com	Title:	NICHE - PROPOSED DECK EXTENSION	Drawn:	-	Approved:	-
	Project:	MARITIME CENTER - LEVEL B1 NICHE RESTAURANT RELOCATION	Date:	09/06/2020	Scale:	AS NOTED
			DWG NO.:	ASK-01rev1		

Attachment B – Encroachment License Application 176633 Rendering





Attachment C - Encroachment Request Letter From Applicant

October 22, 2019

(Revised – original application letter July 11, 2019)

Mr. Brad Whalen
Development Engineering
Halifax Regional Municipality
7071 Bayers Road, 2nd Floor Towers
Halifax, NS
B3L 4P3

Subject: HRM File No. 22458: Application for Encroachment Licence for a second storey patio, Maritime Centre, 1505 Barrington Street, Halifax (PID: 00076232)

On behalf of our client, Slate REIT, please accept this revised letter as requested on October 8, 2019. This letter is to request a permanent encroachment for a new exterior patio to the recently completed Niche space within the Maritime Centre Building, 1505 Barrington Street (PID 00076232).

The patio will be a second level projecting structure overlooking Salter Street. The face of the patio will project no further than 4 ft. from the face of the existing building and will encroach approximately 1 ft. over the existing property line. The total area of the encroachment is 32 sq. ft. (2.97 sq. m.). To gain a patio of an appropriate size for the commercial restaurant tenant, an additional foot within the right-of-way is required.

The former Niche deck, previously located within the lower plaza along Barrington Street, was removed to allow for the construction of a new lobby to the Maritime Centre, which has been approved through Site Plan approval. This permanent encroachment application is consistent with the Maritime Centre expansion Site Plan approval as the Niche deck relocation was indicated as part of the project.

Locating the restaurant's deck on a second level projecting structure overlooking Salter Street is the only practical location and also offers several advantages to the vibrancy of the street:

- Conveys a sense of activity that will provide, where currently lacking, visual interests from Granville and Salter streets;
- Access to natural light for the patio increasing its usability; and
- Adds visual interest above the exit from the B2 parking garage (as required in in the approved Site Plan approval).

The design team feel that to make the proposed outdoor deck as useful and impactful as possible, it is important to extend the deck out towards the face of the adjacent hotel. This extension will offer a seating space several feet deeper than the property line restriction will allow. The extra foot makes it possible to comfortably allow several tables within the proposed deck area while still accommodating and allowing for proper circulation space accessible from the proposed sliding glass doors to the restaurant.



We feel the encroachment requested is required to design and construct a space that is not only visually appealing to the public but also necessary to allow the space to function properly. We trust this letter to be satisfactory. Please feel free to contact me should you require further information.

Yours sincerely,

Christina Lovitt, MCIP, LPP
Manager, Planning - Atlantic Canada

WSP Ref: 159-00286-800-002

Cc: Craig Mosher, Architecture49

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May 01, 2020

RE: Proposed Niche Deck Extension, Maritime Centre

Architecture | 49 believes this deck extension will serve the public good, help satisfy View Terminus requirements and will provide a newly opened restaurant a viable business opportunity, that will benefit its patrons at a time when this sort of activity will be much needed.

It should be noted that the proposed deck extension does not impede the passage of pedestrians or vehicles along Salter Street. It does not protrude out any further than the face of the existing adjacent hotel street front (and therefore does not overhang the sidewalk proper) and also has no columns or other obstructions that impact movement underneath. It is also on the north side of the building so will not cast any shadows that may impact the sidewalk environment.

This deck also insures that there are people present at a point where there are currently none. This relationship with the street is an important aspect of providing some visual interest and natural draw towards the view terminus. The treatment along Salter Street, including an LED traced steel canopy structure and the presence of patrons dining on this deck, both day and night, will bring some needed visual interest and activity to this part of Salter Street.

The restaurant itself (Niche) has lost its outdoor dining area as a result of the new Barrington Street entry pavilion and requires an adequate replacement to insure viability of the business. The extended deck provides an extra row of tables, which greatly improves the seating area and the business prospects for the newly created restaurant.

Please feel free to contact the undersigned with any questions or concerns.

Sincerely,

CRAIG MOSHER FRAIC, NSAA, B.Arch., LEED AP
Principal