

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

Item No. 11.1.10

Halifax Regional Council

July 7, 2020

TO:	Mayor Sayage and Member	s of Halifax Regional Council

Original Signed by

SUBMITTED BY:

Kelly Denty, Acting Chief Administrative Officer

DATE: June 23, 2020

SUBJECT: Encroachment of a Rooftop Deck at 1732 Argyle St. Halifax

ORIGIN

Application 172604 was made Avondale Construction Limited for a renovation permit to an existing building that includes a rooftop deck for the Atrium Decks project, a portion of which is proposed to be constructed from the roof of the three-storey building over the HRM right-of-way at 1732 Argyle 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 of a deck that is proposed to be constructed from the roof of the three-storey building over the HRM street right-of-way at 1732 Argyle Street, Halifax. The location of the proposed rooftop deck encroachment is shown in Map 1, Attachment A, and Attachment B.

BACKGROUND

The Atrium Decks project at 1732 Argyle Street involves renovation to the building, commonly known as "The Dome", and includes the proposed construction of a deck that would extend over the HRM right-of-way by 6 ft (1.83 m) from the roof of the three-storey building.

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 by Regional Council.

In accordance with *Encroachment By-Law E-200*, deck type encroachments of this nature 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.

The proposed deck would encroach approximately 6 ft (1.83 m) over the HRM right-of-way, over a length of approximately 14 ft (4.27 m), with a total proposed encroachment area of 84 ft² (7.81 m²) over the Argyle Street right-of-way. The proposed deck would overhang most of the existing sidewalk at a height of 17 ft - 5 in (5.31 m) above the street level. Information provided by the applicant in support of the request, including an architectural plan, rendering and request letter are attached here as Attachments A, B and C respectively.

At ground-level, the existing right-of-way at this location consists of a 9.92 ft (3.02 m) 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 significant public safety risk.

Information received from the applicant indicates that the proposed encroachment is desired to contribute to the entertainment corridor on Argyle Street, and to promote visibility of their business. It is understood that the proposed deck is not intended for open use by the general public.

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

Conclusion

Staff do not recommend approval of the encroachment license request because it would encumber a 6 ft (1.83 m) area above a 9.92 ft (3.02 m) wide sidewalk. 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.

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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 \$78.14) 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:

- 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 was 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 metre (\$10 per square metre) of such encroachment, with a minimum fee of \$10.00. The encroachment area of the overhead deck that lies within the HRM right-of-way on Argyle Street would be 7.81 square meters. Therefore, the encroachment would be subject to an encroachment fee of \$78.14 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

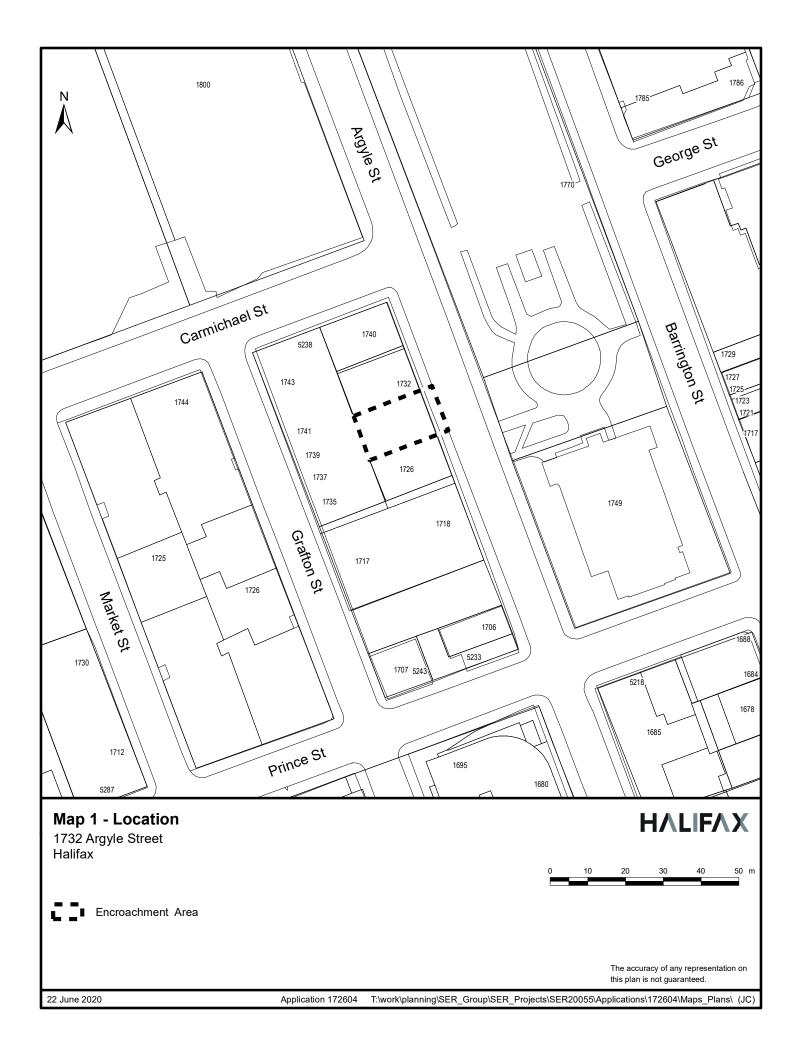
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

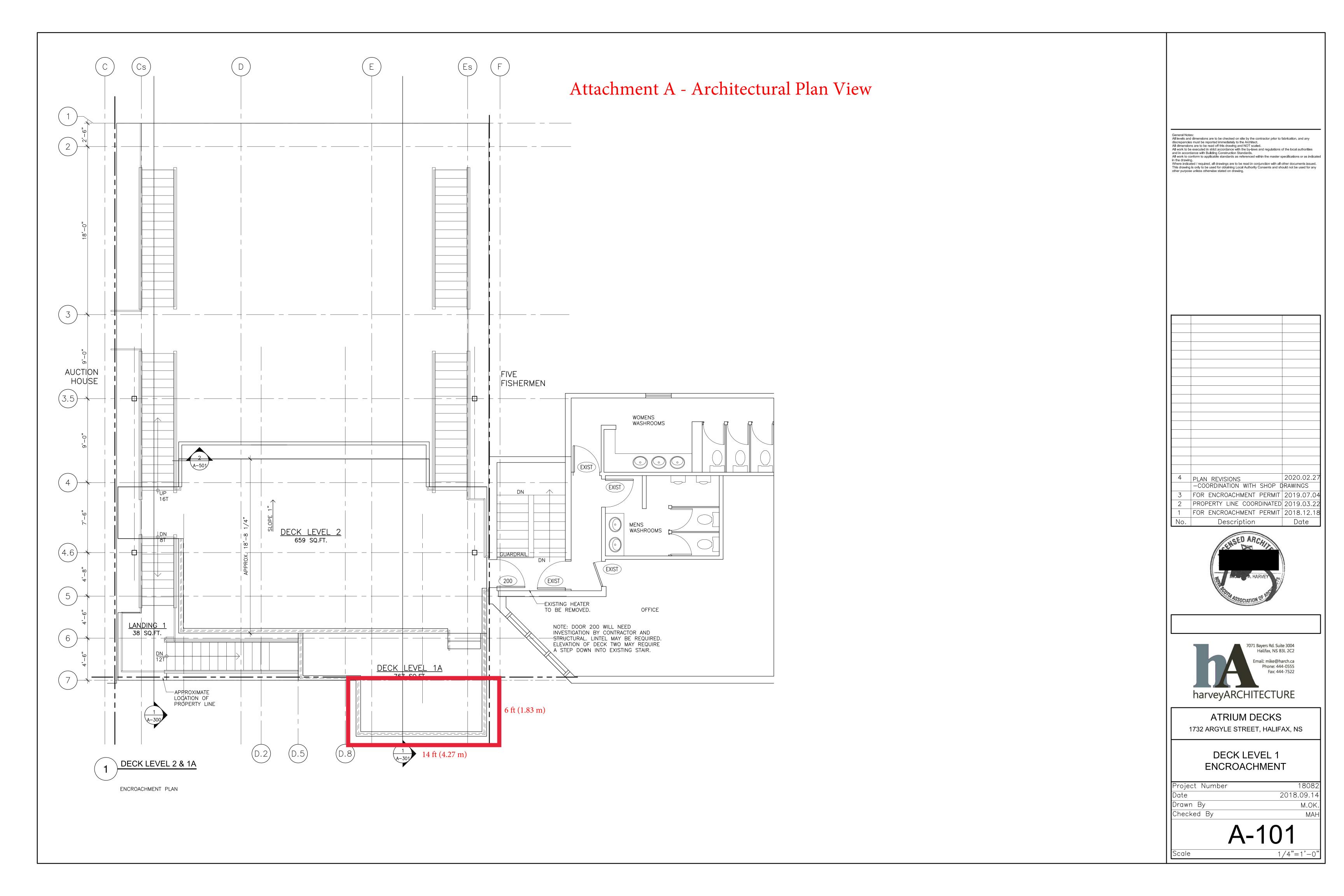
Report Prepared by: Brad Whalen, CET, Engineering Technologist II, 902.817.7362

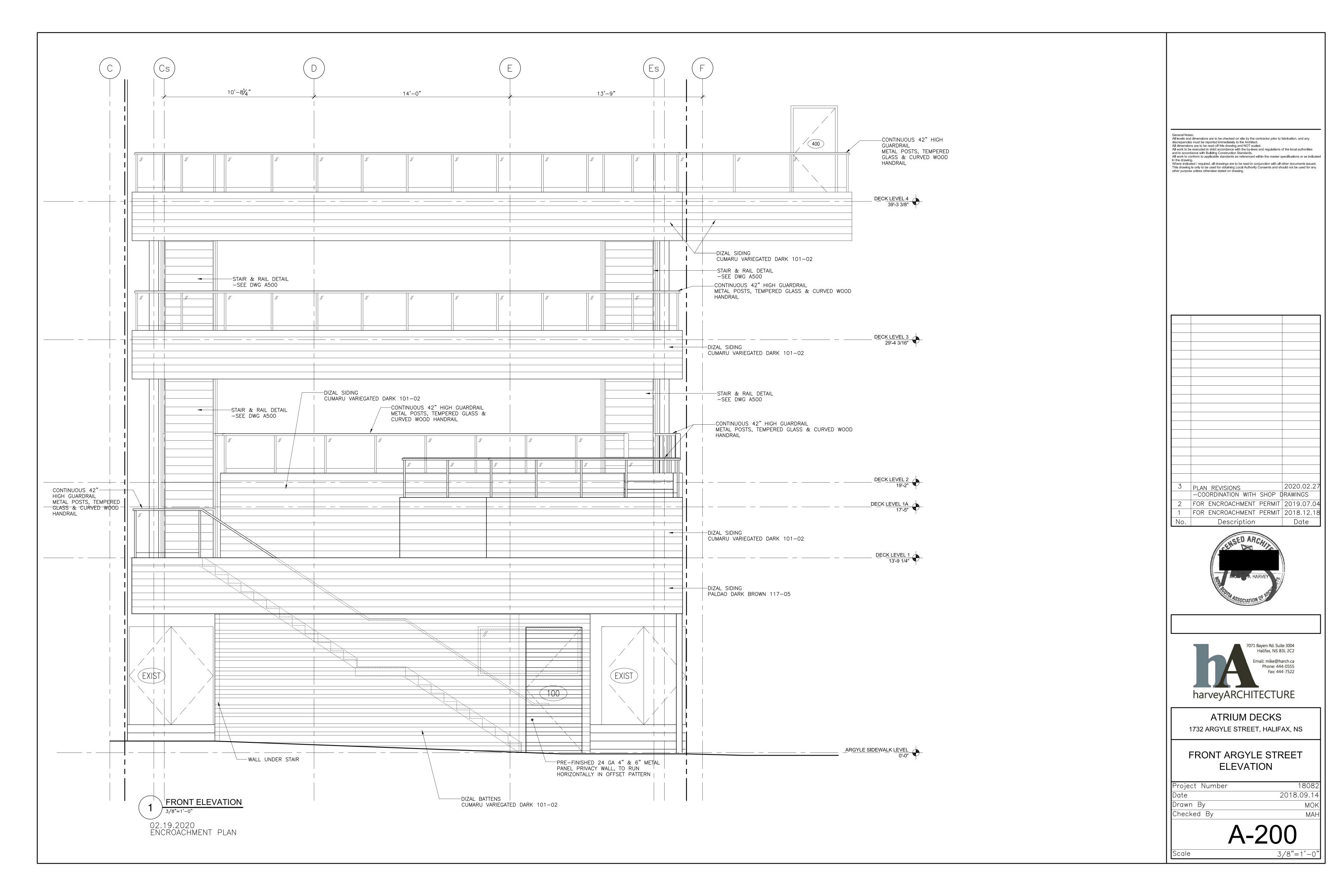
Report Approved by: Crysta Cumming, P.Eng., Program Engineer, Development Engineering, 902.292.3707

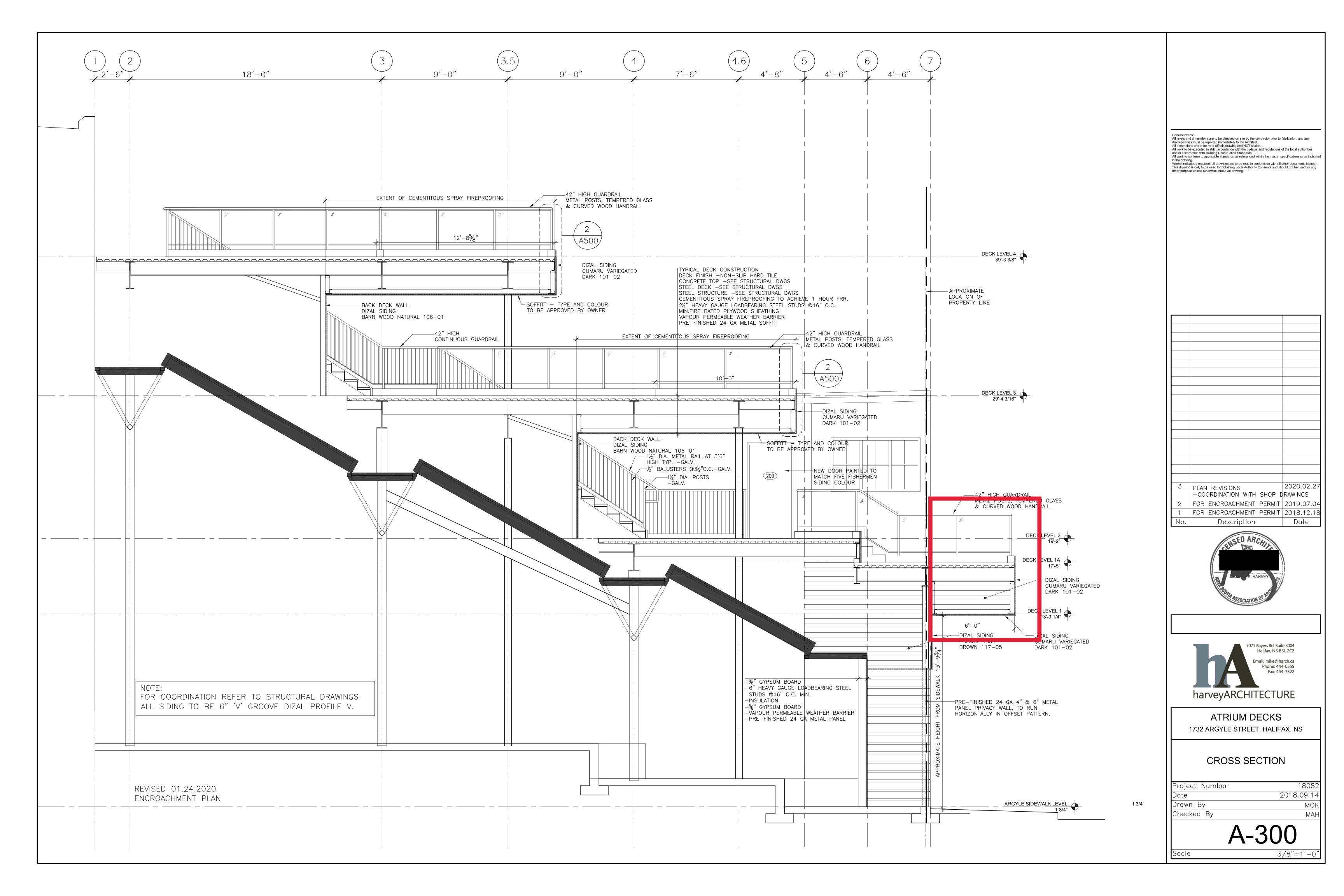
Financial Approval by: Jane Fraser, Director of Finance, Asset Management and ICT/CFO, 902.490.4630

Report Approved by: Steve Higgins, Acting Director, Planning & Development, 902.490.4382
















Attachment C - Applicant Request Letter

March 19, 2020

Halifax Regional Municipality
Development Engineering / Planning and Development
Halifax, NS

Attn: Brad Whalen

RE: Permanent Encroachment Application 172604

Dear Mr. Whalen

We are writing this letter to request approval for a permanent encroachment above the HRM sidewalk located in front of 1732 Argyle Street. This encroachment is required to accommodate the construction of a new 14'x 6' cantilevered patio extension at 17'5" above the existing sidewalk. This extension will be constructed so that there will be no obstacles and to provide clear passage to any pedestrians passing below.

The Atrium Decks will be key in the development of the Argyle-Grafton Entertainment District. The Decks will be a major focus for both Haligonians as well as tourists and will provide a great entertainment pathway from South Argyle to North Argyle and create a contiguous entertainment area for the entire street, including the Nova Center, the Scotiabank Center and the new Culture Link Project.

In addition, the Decks will create a unique concept of how to combine the Heritage properties of the Five Fishermen and Auction House with a unique design that will be instantly iconic while preserving the history of the city.

The "Decks". Will include 4 levels that provide the outdoor equivalent of the services available in the Grafton Entertainment Complex, including 4 decks and 3 bars, all associated with the elements that make "The Complex" a truly unique venue in the city. They will be a great addition to the 4 restaurants, multiple bars and night clubs that already exist in the Complex.

With the ability to morph from dining outside for the Five Fishermen and Auction House, to special events and receptions, the Decks will provide a great venue for both private and public functions.

The encroachment is a necessity for this project as the decks need to create this entertainment corridor for all of Argyle Street and **need the visibility from street level to ensure awareness and free flow of people** the entire length of Argyle connecting the bars and restaurants of the south end to the venues of the north end including some of the city's biggest entertainment centers.

We hope you are as excited as we are in creating a great new Halifax Icon

Sincerely,
Grafton Street Restaurant Limited
per: Gary Hurst