

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE
FROM:	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	DEVELOPMENT CHARGE COMPLAINT 75 BLACKFRIARS STREET MEETING HELD ON TUESDAY, AUGUST 20, 2013

RECOMMENDATION

That, on the recommendation of the Managing Director, Development and Compliance Services & Chief Building Official, the complaint by Southside Construction Management Limited, the owner of the building situated at 75 Blackfriars Street, alleging an error in the application of Development Charges By-law C.P. 1473-212 **BE DISMISSED**.

BACKGROUND

A request for a development charge exemption was received on June 27, 2013 from Southside Construction Management Limited (hereafter referred to as “Southside”) and forwarded to our office for consideration, (See Appendix ‘A’).

Southside has confirmed that the letter submitted was to be construed as a complaint filed under section 27 of the Development Charges By-law C.P. 1473-212 (hereafter referred to as “the By-law”), on the grounds that there was an error in the application of the By-law.

A building permit application was received on May 7, 2013 for the construction to convert an existing church use to office use (floor plans attached in Appendix ‘B’). The gross floor area of the building is 2,278 sq.m. (24,523 sq.ft.). Southside’s letter identifies two concerns related to items that affect the amount of the development charge to be recovered under the City’s DC By-law 1473-212:

- i. The way in which the floor area has been determined for the purpose of calculating the development charges payable; and
- ii. contends that the new use of the building will require less municipal facilities and therefore not subject to a payment of development charges.

Is the conversion subject to payment of Development Charges?

In accordance with the By-law, *development*:

"means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of changing the size or usability thereof, and includes all enlargement of existing development which creates new dwelling units or additional non-residential space and includes work that requires a change of use building permit as per Section 10 of the Ontario Building Code ; and "redevelopment" has a corresponding meaning;"

Part II s.4 of the By-law, requires the owner of a building that develops or redevelops said building to pay development charges.

The By-law defines an institutional building as:

“Institutional Building” is a building used for or designed or intended for use by:
(a) a government entity, not in the nature of trade,
(b) an organized body, society or religious group promoting a public or non-profit purpose and shall include but not be limited to: public hospitals, schools, churches and other places of worship, cemetery or burial grounds, universities and colleges established pursuant to the Ministry of Colleges and Universities Act, other buildings used for not-for-profit purposes defined in, and exempt from taxation under, section 3 of the Assessment Act.

A commercial building is defined as provided in the excerpt below:

*‘...“Commercial Building” is a building used for:
(a) Office or administrative uses, including the practice of a profession, or the carrying on of a business or occupation or where most of the activities in the building provide support functions to an enterprise in the nature of trade, and for greater certainty shall include, but not be limited to, the office of a physician, lawyer, dentist, architect, engineer, accountant, real estate or insurance agency, veterinarian, surveyor, appraiser, contractor, builder, land developer, employment agency, security broker, mortgage company, medical clinic; or ...’*

According to the definitions, a church is defined as an institutional building and a building for office use is a commercial building.

It is the opinion of the Chief Building Official (Director of Building Controls) that the conversion (redevelopment) from church to an office building is a change in the usability of the building and meets the definition of “development” under the City’s DC By-law. The conversion is not exempt from payment of development charges.

Section 34 of the By-law provides for “Exemptions and Exceptions”. The proposed conversion does not fall under the provisions of this section.

Under section 5.(6)2 of the Development Charges Act 1997, as amended:

“...If the rules expressly identify a type of development they must not provide for the type of development to pay development charges that exceed the capital costs, determined under paragraphs 2 to 8 of subsection (1), that arise from the increase in the need for services attributable to the type of development. However, it is not necessary that the amount of the development charge for a particular development be limited to the increase in capital costs, if any, that are attributable to that particular development.”

As noted above, the charges imposed need not be limited to the increase in capital costs for services to the site of the particular development in question. In other words, the development charge rates recover costs from each category of development, based on the increase in capital costs for that category as a whole. The development charge is not, nor could reasonably be, based on the individual capital costs of a development, on a development-by-development basis. Rather, the DC rates reflect the costs of growth applicable to each category of development – Residential, Commercial, Institutional and Industrial.

How are the Development Charges calculated?

- a) DC credit for conversion of existing space

Section 14 of the By-law addresses the development charge amount to be paid when there is a conversion from one form of non-residential use to another form of non-residential use. Essentially, the amount due is calculated based on the rate for the proposed use after a “credit” is applied for the existing use. The “credit” is the development charge that would be payable at the current rate in respect of the lawfully existing former space being converted, as per s.14 of the By-law.

In this case, the amount calculated took into account a “conversion credit” for the existing church use. Churches benefit and are subject to a reduced Institutional rate (50% reduction on the City Services portion).

The current rate for a church is \$73.81 per sq.m. compared to \$111.97 per sq.m. for other institutional buildings. The commercial rate is \$173.75 per sq.m.

DCs for proposed office use (commercial rate @ \$173.75 per sq.m.):	\$395,802.50
DC “credit” for existing church @ \$73.81 per sq.m.:	(\$168,139.18)

Total net DCs due as a result of the conversion:	\$227,663.32

The above sets out how the current DC By-law rules apply to the conversion in question. The way the City determines the conversion credit applicable in the case of both institutional and industrial conversions is under review as part of the 2014 DC study.

b) Exemption for floor space below grade

It should be noted that Development charges are not imposed on floor areas below the first storey. The first storey is defined in the By-law as ‘...the storey that has its floor closest to grade and its underside of finished ceiling more than 1.8m above the average grade.’ The definition of first storey is consistent with that of the Ontario Building Code.

Southside’s letter makes reference to the lower level of the building as “its basement” in that its ceiling is 1.2m above grade and implies it should not have been used in the calculation of development charges.

Although the letter doesn’t refer to the average grade, staff calculated the development charges based on the gross floor area of 2,278 sq.m. as shown on the architectural drawings, which also indicate that the number of stories above grade are three (3) with no floor level labelled as a basement.

Furthermore, the drawings also refer to the floor levels as “first”, “second”, and “third” floors respectively. (See Building Code matrix in Appendix ‘C’)

Consideration of exempting the lower level from development charges was brought to staff’s attention only by means of Southside’s letter. As such, staff requested that the project’s architect clearly define and revise the Building Code matrix accordingly, and if it turns out that the “first” floor is indeed to be considered as below grade, the amount of development charges due would be reduced accordingly.


Revised drawings have not been submitted as of the date this report was prepared.

Accessory uses

“Non-church” uses have been referenced in Southside’s letter as an indication of historic uses. It is well established that a church could also be supplemented by accessory office space, multi-purpose rooms, kitchens, e.t.c. At the time of building permit issuance for a church, the development charges are calculated using the reduced institutional rate for the entire complex. For example, a multi-purpose room in a church, at or above grade used for luncheons or meetings, would not be considered as ‘commercial’ space and would still be assessed the reduced institutional rate. As such, it is this same reduced rate that is applicable to the DC conversion “credit” as well.

CONCLUSION

The complaint from Southside regarding an error in the application of the By-law was reviewed and it has been determined that this redevelopment is not subject to development charge exemptions from the provisions of the By-law. It is the Chief Building Official’s (Director of Building Controls) opinion that the By-law has been correctly applied based on the information submitted and that the complaint filed by Southside should be dismissed.

PREPARED BY:	RECOMMENDED BY:
	
P. KOKKOROS, P. ENG. DEPUTY CHIEF BUILDING OFFICIAL	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL

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PK:pk

Attach.c.c. Owen Clarke-Manager of Plans Examination, Jim Barber-City Solicitor, Janice Page-Solicitor II, Peter Christiaans-Director,Development Finance, Building File.

APPENDIX 'A'



358 HORTON STREET
LONDON, ONTARIO N6B 1L7
www.southsidegroup.ca

OFFICE OF THE
MAYOR

RECEIVED JUN 27 2013

Referred to CPC - Joe L. Rowe
Subsequent Referrals TEL: 519-433-8634
☐ For Action ☐ For Report
☒ For Information ☐ For File

Strategic Priorities & Policy Committee and/or Corporate Services Committee
City of London
City Hall
300 Dufferin Avenue, Suite 308,
London, Ontario N6A 4L9

Attention: Mayor Joe Fontana, Chair

DELIVERED BY COURIER

Chair & Members:

Re: **75 Blackfriars Street – Renovation – Development Charges Exemption**

As you know, *Southside Construction Management Limited* has applied for a Permit to renovate the southerly portion of the subject Building for use as its offices, and the Building Division has calculated Development Charges to be payable in the net amount of **\$227,663.32**, after subtraction of the 'Institutional' rate from the 'Commercial' rate stipulated in Development Charges By-law S.14 (for conversion of one non-residential use to another non-residential use) which stipulates "where...a lawfully existing building...is wholly or partially converted, the area for which a development charge is payable shall be calculated using the following formula...in respect of the use to which the space converted."

Development Charges for both Commercial and Institutional uses are to be calculated based "gross floor area" defined in By-law S. 1 as the "total floor space...of the first storey and all storeys or part of storeys... above the first storey" and "first storey" is defined as having "its floor closest to grade and its underside of finished ceiling more than 1.8m above the average grade." By this definition, the lower level of the subject Building (with its ceiling only 1.2m above grade) is its basement --- not its "first storey".

Contrary to the foregoing underscored provisions, the Development Charges were calculated on the total area of the Building --- including the gymnasium.

According to the preamble to the By-law, Development Charges may be collected by the City of London to recover increased capital costs suffered by the City to provide increased municipal services needed by a "development" defined in By-law S.1 as including "an addition or alteration to a building...changing the size or usability thereof..."

To determine whether the proposed use of the partially renovated building will reasonably need any increased municipal services, the historic uses of the building must be reviewed.

Randy Mills of *Stambler & Mills*, who acts for *Middlesex Presbytery of United Church of Canada*, has verified that the building has historically accommodated various office and other non-Church uses.

1. business offices, meeting rooms and ancillary spaces used by *Empress* personnel
2. business offices, meeting rooms and ancillary spaces used by *Middlesex Presbytery*.
3. 5000 s.f. on main level regularly used for non-Church meetings of up to 800 persons.
4. 5000 s.f. in gymnasium regularly used non-Church recreational and social purposes.
5. 500 s.f. kitchen regularly served large gatherings for non-Church dinners and banquets.

Considering *Southside Group* office staff totals less than 20, and including construction jobsite personnel, totals less than 60, the proposed use of the partially renovated Building will need less municipal services than its historic uses previously required.

We respectfully request exemption from Development Charges and the immediate issuance of the approved Permit for the proposed renovation.

Yours truly,

SOUTHSIDE CONSTRUCTION MANAGEMENT LIMITED

Per: Vito Frijia, President



APPENDIX 'B'

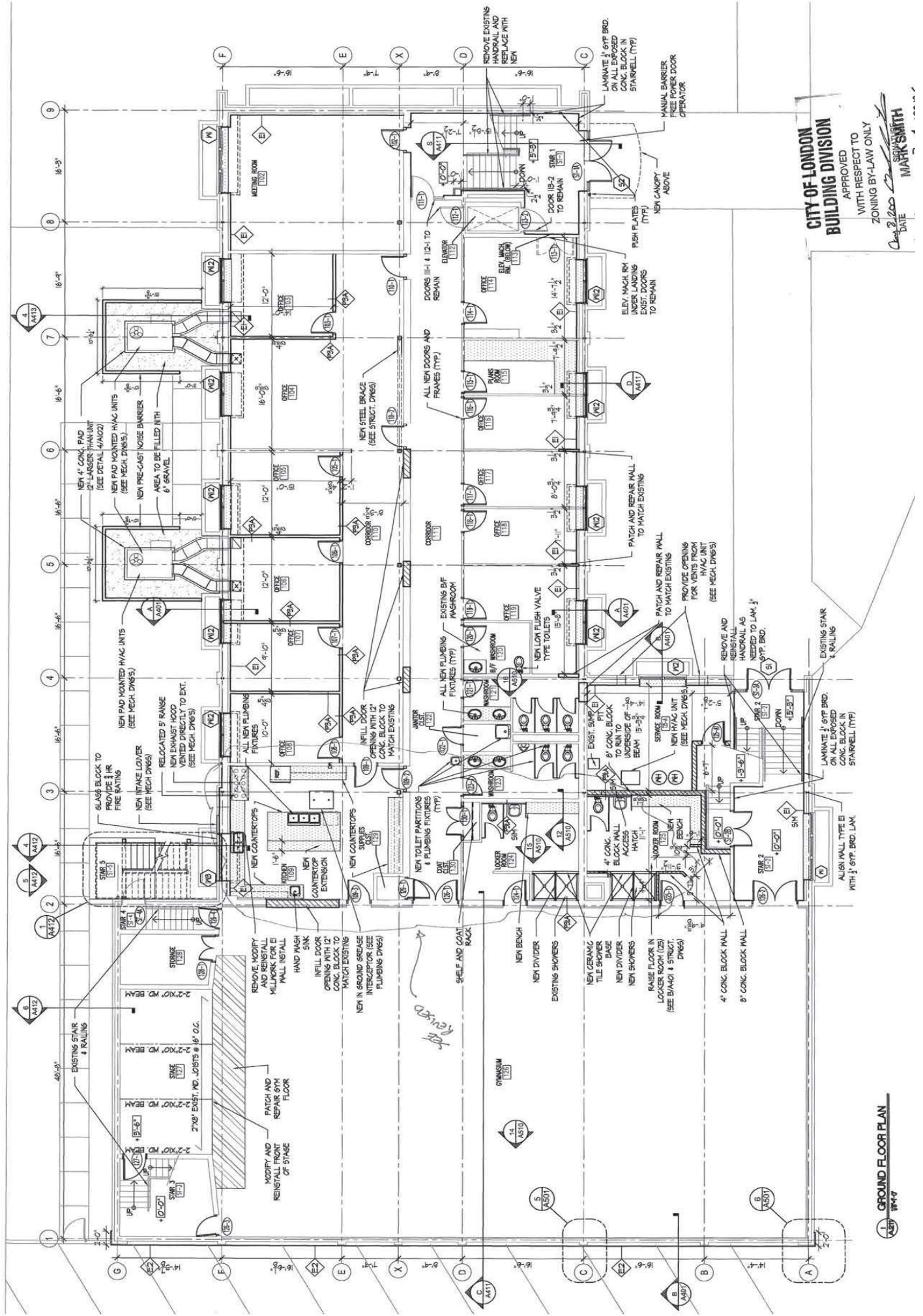


Figure 1. Proposed Ground Floor Plan



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A212
SECC
1/8-1-0

APPENDIX 'B' (cont'd)

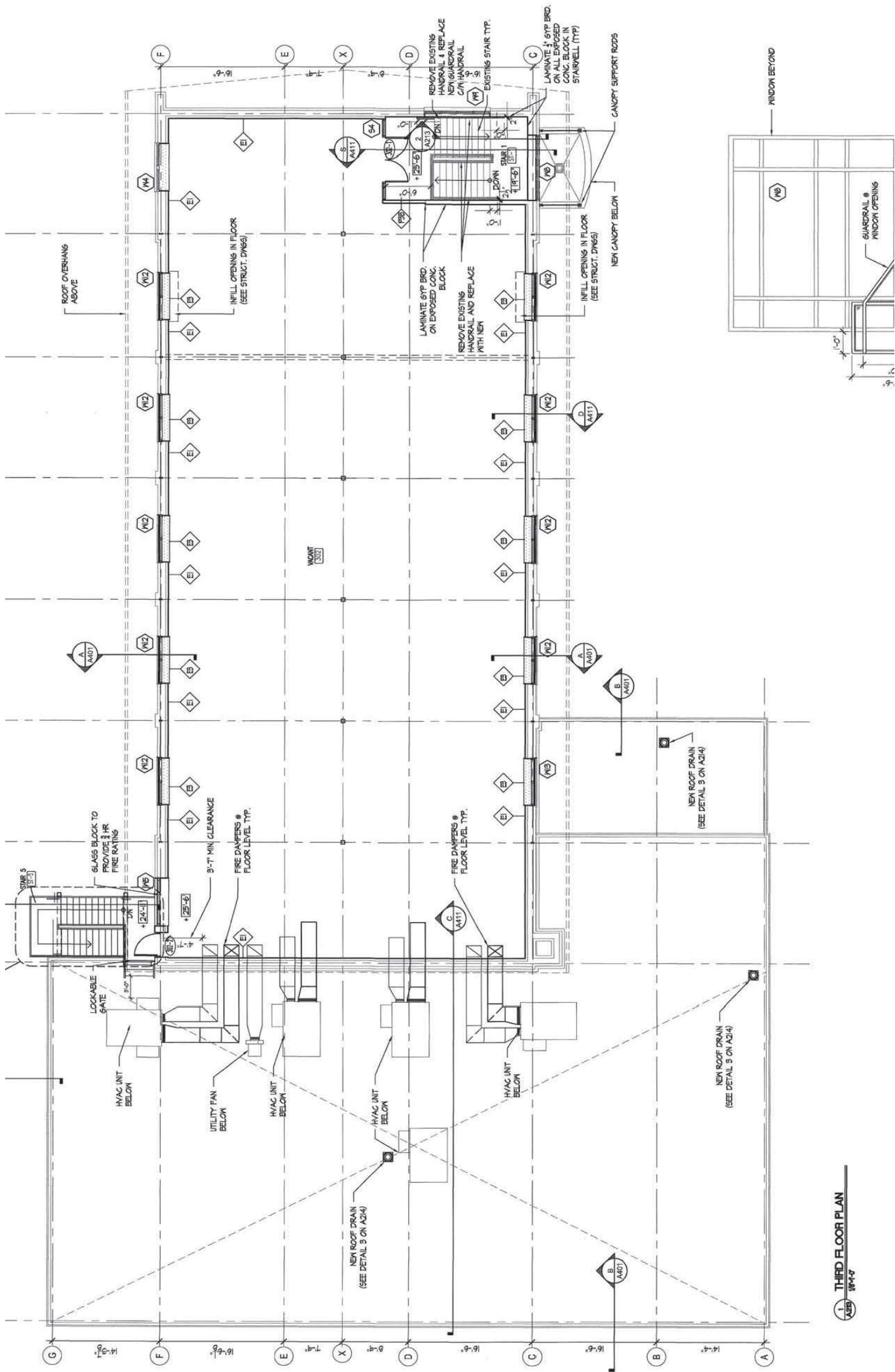
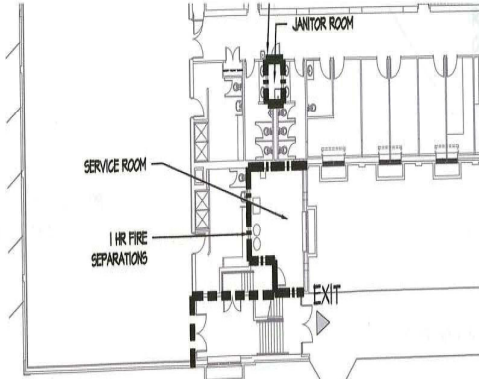


Figure 3. Proposed Third Floor Plan

APPENDIX 'C'

M202	SECOND FLOOR MECHANICAL - DUCTWORK
M203	THIRD FLOOR MECHANICAL - DUCTWORK
E101	LIGHTING GROUND FLOOR
E102	ELECTRICAL GROUND FLOOR
E201	LIGHTING SECOND FLOOR
E202	ELECTRICAL SECOND FLOOR
E202	ELECTRICAL SECOND FLOOR ²
E301	LIGHTING THIRD FLOOR
E302	ELECTRICAL THIRD FLOOR
E401	ELECTRICAL DETAILS



OBC DATA MATRIX		OBC REFERENCE OR COMMENTS	OBC DATA MATRIX	
1.	PROJECT DESCRIPTION: CHANGE OF USE, NEW THIRD FLOOR AND RENOVATIONS <input type="checkbox"/> NEW <input type="checkbox"/> ADDITION <input checked="" type="checkbox"/> ALTER <input type="checkbox"/> USE CHANGE <input checked="" type="checkbox"/> PART 3 <input type="checkbox"/> PART 9 <input type="checkbox"/> PART 11		19.	REQUIRED FIRE RESISTANCE RATING: OBC REQUIRE
2.	MAJOR USE AND OCCUPANCIES: GROUP D OFFICE	92.259	HORIZONTAL ASSEMBLIES	FLOORS 0 HR
3.	BUILDING AREA: 1,085 m ² / 11,682 sf		ROOF 0 HR	
4.	GROSS AREA: <div>THIRD FLOOR: 5,508 sf (508 m²) SECOND FLOOR: 6,989 sf (643 m²) FIRST FLOOR: 11,671 sf (1,085 m²) TOTAL GROSS BLDG. FLOOR AREA = 24,524 sf (2,278 m²)</div>		MEZZANINE -	
5.	NUMBER OF STOREYS: ABOVE GRADE: 3 BELOW GRADE: 0		SUP. FLOOR ASSEMBLIES	LOAD BEARING WALLS 0 HR
6.	BUILDING HEIGHT: 33'-5 1/4"		STEEL COLUMN PROTECTION 0 HR	
7.	NUMBER OF STREETS/ACCESS ROUTES: 1 STREET		BEAM PROTECTION 0 HR	
8.	BUILDING CLASSIFICATION: GROUP D, UP TO 3 STOREYS, UNSPRINKLERED, FACING 1 STREET, MAX AREA 1,600 m²	92.259	SUP. ROOF ASSEMBLIES	LOAD BEARING WALLS 0 HR
9.	SPRINKLER SYSTEM: <input type="checkbox"/> ENTIRE BUILDING <input type="checkbox"/> IN LIEU OF ROOF RATING <input type="checkbox"/> BASEMENT ONLY <input checked="" type="checkbox"/> NOT REQUIRED	92.259	STEEL COLUMN PROTECTION 0 HR	
10.	STANDPIPE REQUIRED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		BEAM PROTECTION 0 HR	
11.	FIRE ALARM REQUIRED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		SUP. MEZZ. ASSEMBLIES	LOAD BEARING WALLS -
12.	WATER SERVICE/SUPPLY IS ADEQUATE: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		STEEL COLUMN PROTECTION -	
13.	HIGH BUILDING: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		BEAM PROTECTION -	
14.	CONSTRUCTION: <input type="checkbox"/> COMBUSTIBLE <input checked="" type="checkbox"/> NON-COMBUSTIBLE <input type="checkbox"/> BOTH		VERTICAL ASSEMBLIES	PUBLIC CORRIDORS -
15.	MEZZANINE AREA: N/A		JANITOR ROOM 1 HR	
16.	OCCUPANCY LOAD: 152 PEOPLE BASED ON <input checked="" type="checkbox"/> AREA/PERSON <input type="checkbox"/> DESIGN OF BUILDING		SERVICE ROOM 1 HR	
17.	BARRIER FREE DESIGN: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		ELEVATOR MACHINE ROOM 3/4 HR	
18.	HAZARDOUS SUBSTANCES: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		ELEVATOR SHAFT 3/4 HR	
			EXITS 3/4 HR	
			20. SPATIAL SEPARATION - GROUP E, GROUND FLOOR	
			AREA OF EBF (sqm) L.D. (m) L/H OR H/L	
			NORTH - - -	
			SOUTH - - -	
			EAST - - -	
			WEST - - -	
			21. OTHER:	
			• 3.425(1/6) MAX TRAVEL DISTANCE FROM	
			• ALL BUILDING SERVICE PENETRATIONS TO E	
			• MAX PLANE SPREAD RATING OF 150 FOR	

philip agar architect inc.

263 pinedale street, london, ontario n6a 1a3 tel: 519 432-7388

SOUTHBIC GROUP

Figure 4. Partial Building Code Matrix