

# CITY OF KELOWNA

## BYLAW NO. 9883

### Heritage Revitalization Agreement Authorization Bylaw HRA09-0001– 770 Bernard Avenue (Lois McCloskey)

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WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of property which Council deems to be of heritage value pursuant to section 966 of the *Local Government Act*,

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Heritage Revitalization Agreement with Lois McCloskey for the property located at 770 Bernard Avenue, Kelowna, B.C.;

THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Heritage Revitalization Agreement with Lois McCloskey for the property located at 770 Bernard Avenue Kelowna, B.C., and legally described as:

Lot 9, Block 12, District Lot 138, ODYD, Plan 202

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.

Read a first time by the Municipal Council this

Considered at a Public Hearing this

Read a second and third time by the Municipal Council

Approved under The Transportation Act this

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(Approving Officer - Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

**SCHEDULE "A"  
HERITAGE REVITALIZATION AGREEMENT**

DOCUMENT APPROVAL			
Document No. HRA09-0001			
Cir	Department	Date	Init.
DN	L.U.M.	Mar. 26/09	DN
✓	Dev. Eng.	09/03/25	DP
MB	Build. Serv.	MAR-25	MB
	City Clerks	MAR-25/09	SCF

THIS AGREEMENT dated as of the 26<sup>th</sup> day of March, 2009.

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at  
1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

AND:

McCloskey, Lois C  
874 Wellington Court  
Kelowna, British Columbia  
V1Y 8J2

(herein called the "OWNER")

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Owner of property identified as having heritage value, pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS the Owner owns certain real property on which is situated a building of heritage value (the "Heritage Building"), pursuant to the City's Heritage Register, which property and building are located at 770 Bernard Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 005-706-297

Legal Description: Lot 9, Block 12, District Lot 138, ODYD, Plan 202

(herein called the "Heritage Lands")

AND WHEREAS the Owner has presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 890 through 894 of the *Local Government Act* apply;

SCHEDULE "A" - Page 2.

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 977 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1.0 Heritage Revitalization**

1.1 The parties agree that the Heritage Lands has heritage value, deserving of protection and conservation and the Owner specifically agrees to restore, maintain, preserve and protect the heritage character of the heritage buildings located on the Heritage Lands in accordance with attached Schedules "AA", "BB" and "CC".

1.2 The parties agree that the Heritage Lands may, notwithstanding the RU6 – Two Dwelling Housing zoning on the Heritage Lands, be used for the following permitted uses within the Heritage Building on the identified Heritage Lands:

- (a) One Residential Unit.
- (b) Office Space Provided that:
  - (i) one residential dwelling unit is provided.
  - (ii) the number of staff operating from the Heritage Building is limited to a maximum of 4.
  - (iii) the house will be divided into office areas as shown on Schedule "AA" & "BB";
  - (iv) the business use is limited to opening hours between 8:00am to 5:00pm, Monday through Friday and 8:00am to 12:00pm Saturday, inclusive.
  - (v) one freestanding sign not exceeding 0.23m<sup>2</sup> (2.5 ft<sup>2</sup>).
- (c) The structure and form and character of the house will remain as shown on the site plan attached as Schedule "AA" and the Elevations attached as "BB";

1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the Heritage Lands.

**2.0 Proposed Development**

2.1 The parties agree that variances to the following subsections of **Section 6 – General Development Regulations** of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

**Zoning Bylaw No. 8000 - 6.4.2 Projections Into Yards:**

Section 6.4.2 – Projections into yards

Vary the projection into the side yard (west) from 0.6m permitted to 1.6m proposed as shown in Schedule "AA" attached to this agreement.

**3.0 Proposed Development**

- 3.1 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedules "C" and forming part of this agreement.

(herein after called the "Landscaping Works")

- 3.2 The Owner agrees to provide and pay for all servicing required by the proposed development of the Heritage Lands and to provide required bonding for same, including, but not limited to: domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedications and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting all as noted below - "Development Engineering Branch Requirements", and forming part of this agreement.

(herein after called the "Development Engineering Branch Requirements")

**Development Engineering Branch Requirements**

Development Engineering Services has the following requirements associated with this application.

**3.2.1 Domestic Water and Fire Protection**

This property is currently serviced with a 19mm-diameter copper water service that should be adequate for the proposed application.

**3.2.2 Sanitary Sewer**

The 100mm-diameter sanitary sewer service should be adequate for the proposed application. An inspection chamber (IC) is in place and no further upgrades are required.

**3.2.3 Site Related Issues**

Adequate, hard surface on-site parking must be provided. The parking modules must meet by-law requirements.

Direct the roof drains into on-site rock pits. This will help dissipate the roof drain water and prevent additional concentrated flows onto the lane.

**3.2.4 Electric Power and Telecommunication Services**

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

**4.0 Commencement and Completion**

- 4.1 The Owner agrees to commence and maintain the Landscaping Works, and Works and Utilities requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 9274 and to complete all such Works no later than July 27, 2005.

**5.0 Damage or Destruction**

5.1 In the event that the Heritage Building is damaged, the parties agree as follows:

- (a) The Owner may repair the Heritage Building in which event the Owner shall forthwith commence the repair work and complete same within one year of the date of damage;

OR, in the event that the Heritage Building is destroyed,

- (b) The City will, by bylaw and subject to conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

**6.0 Breach**

6.1 In the event that the Owner is in breach of any term of this Agreement, the City may give the Owner notice in writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time allotted by the notice, the City may by bylaw and subject to conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act* cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

**7.0 Amendment**

7.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:

- (a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;
- (b) By Heritage Alteration Permit (HAP), issued pursuant to Section 972 of the *Local Government Act*.

**8.0 Representations**

8.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

**9.0 Statutory Functions**

9.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

**10.0 Enurement**

10.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**11.0 Other Documents**

- 11.1 The Owner agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

**12.0 Notices**

- 12.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

- (a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

- (b) To the Owner:

McCloskey, Lois C  
874 Wellington Court  
Kelowna, British Columbia  
V1Y 8J2

Or, to such other address to which a party hereto may from time to time advise in writing.

**13.0 No Partnership or Agency**

13.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA  
by its authorized signatories

\_\_\_\_\_  
(Mayor)

\_\_\_\_\_  
(City Clerk)

Lois Constance McCloskey  
Signed by LOIS CONSTANCE MCCLOSKEY

In the presence of:

Maackett  
\_\_\_\_\_  
Witness (print name)

Lois Constance McCloskey  
\_\_\_\_\_  
Lois Constance McCloskey

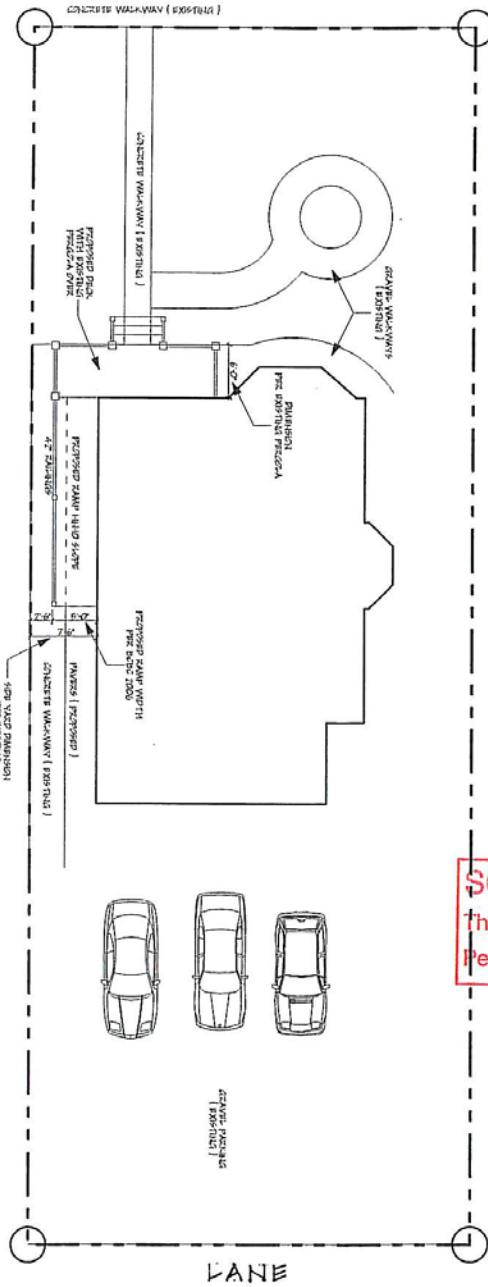
SAUNDRA A. CORBETT  
A COMMISSIONER FOR TAKING  
AFFIDAVITS FOR BRITISH COLUMBIA  
1435 Water Street, Kelowna B.C.  
1435 WATER ST  
Address KELOWNA BC

PLANNING TECHNICIAN I  
\_\_\_\_\_  
Occupation

BERNARD AVE.

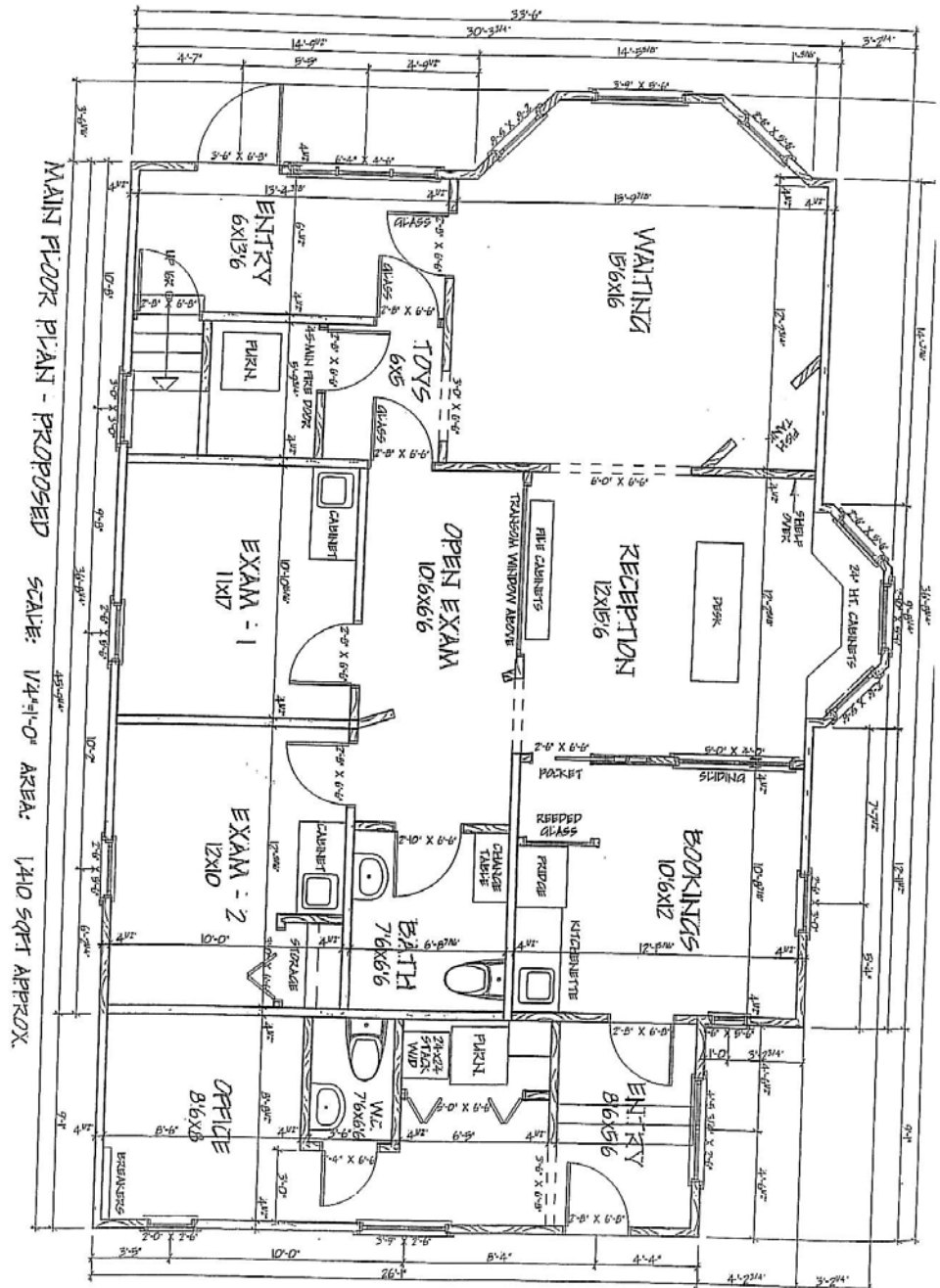
DATE

SITE PLAN #770 BERNARD - PROPOSED SCALE: 1/8"=1'-0"



SCHEDULE AA  
 This forms part of development  
 Permit # HRA09-0001

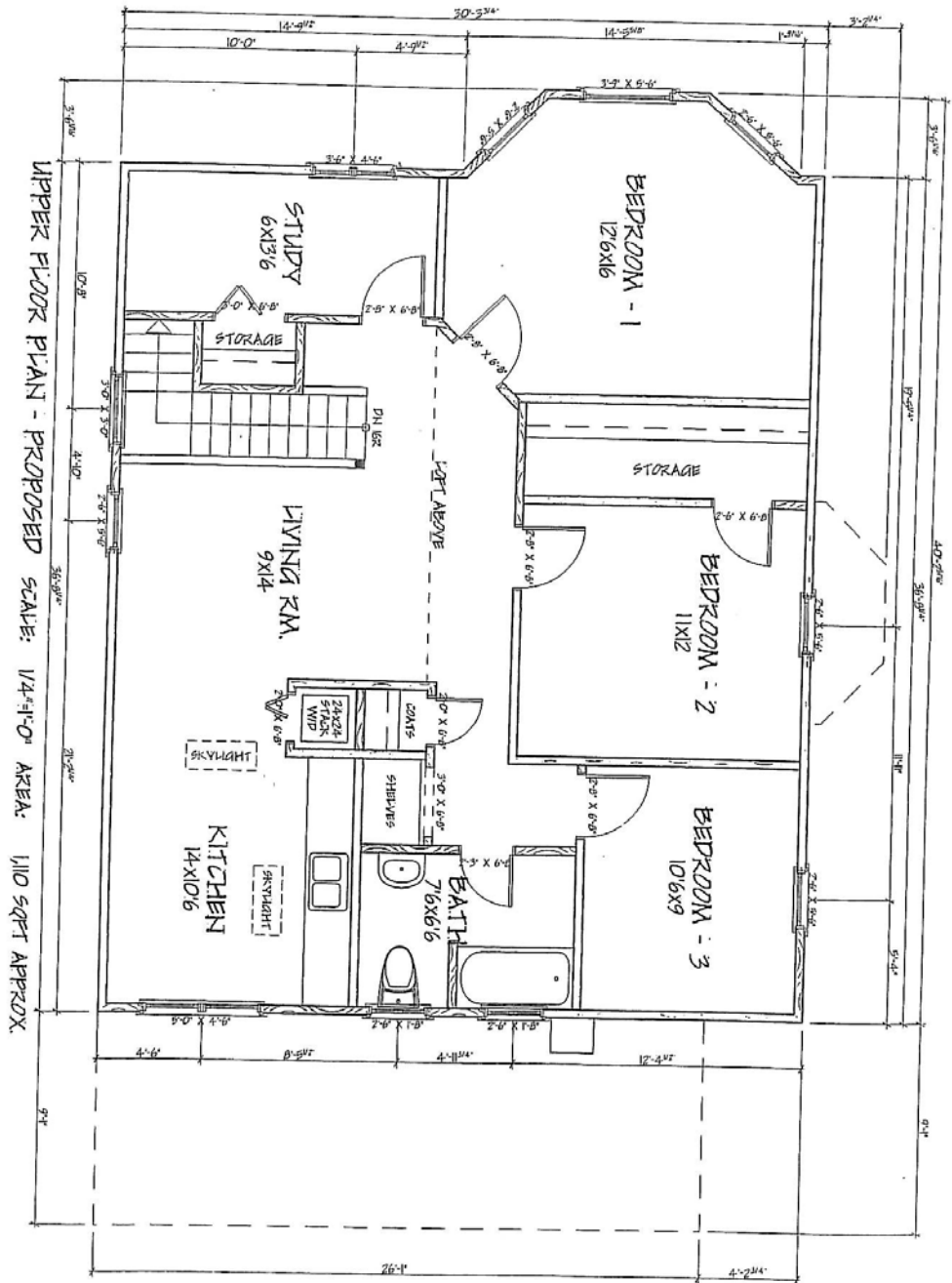




MAIN FLOOR PLAN - PROPOSED  
 SCALE: 1/4"=1'-0"  
 AREA: 1410 SQFT APPROX

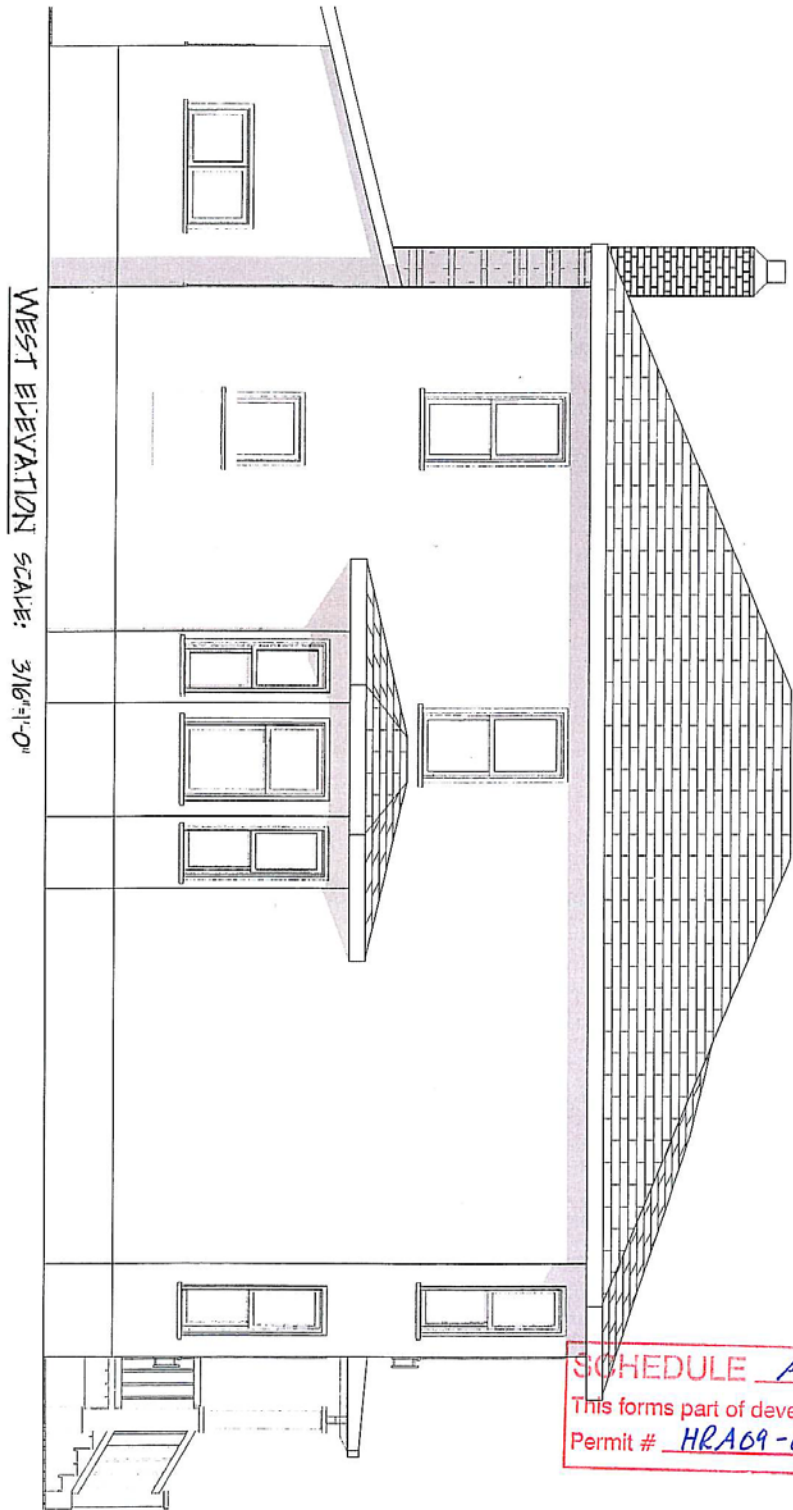
A2 SHEET NO.	DATE: FEB. 10, 2004 DESCRIPTION: FOR PERMIT	DESIGNED BY: NEWELL DESIGN STUDIO 120-146-0210	
		PROJECT: PROPOSED RENOVATION	

MAIN FLOOR PLAN - PROPOSED



ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE 2006 IBC. EXCEPT WHERE SHOWN OTHERWISE, ALL DIMENSIONS ARE TO BE REPORTED BACK TO THE OWNER. REFER TO ARCHITECT'S MARKINGS FOR EACH ELEMENT'S POSITION AND/OR QUANTITY.

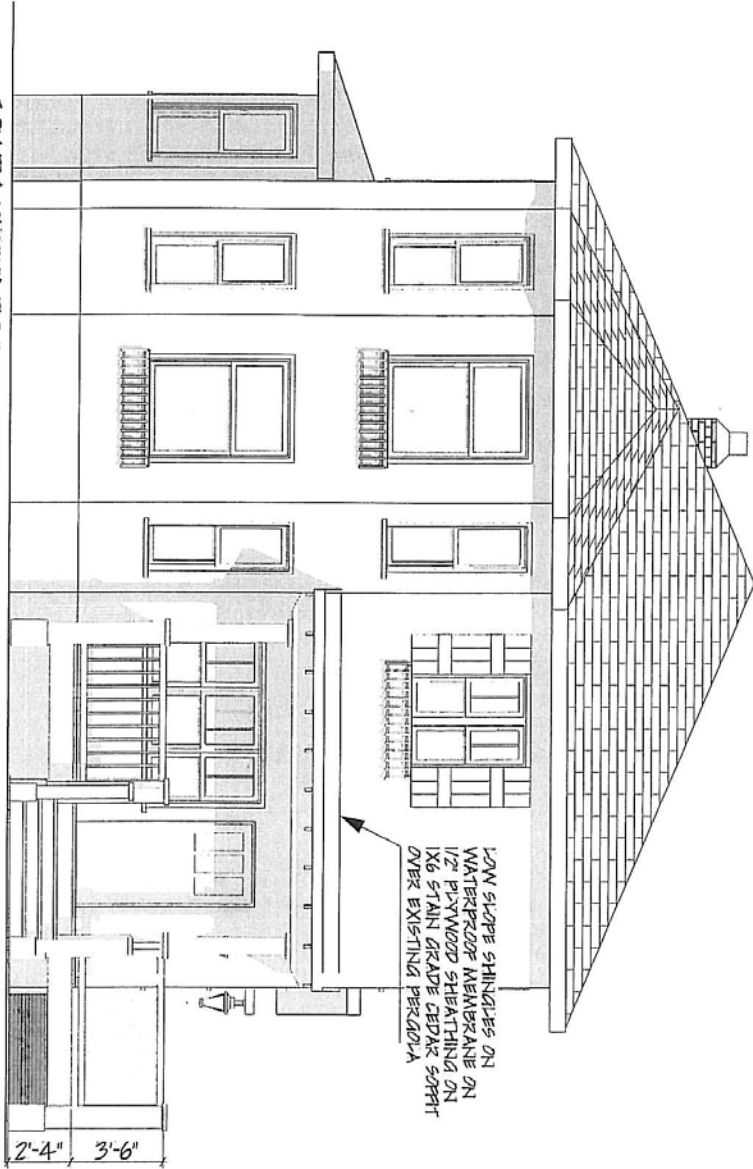
<b>A4</b> SCALE: 1/4"=1'-0" SHEET NO.	<b>PROPOSED RENOVATION</b>		DATE ISSUED: FEB. 20, 2008 FOR: PERMIT	DESIGNED BY: NEWELL DESIGN STUDIO 250-444-4220
	TO BE COMPLETED IN ACCORDANCE WITH THE 2006 IBC. EXCEPT WHERE SHOWN OTHERWISE, ALL DIMENSIONS ARE TO BE REPORTED BACK TO THE OWNER. REFER TO ARCHITECT'S MARKINGS FOR EACH ELEMENT'S POSITION AND/OR QUANTITY.		UPPER FLOOR PLAN - PROPOSED	



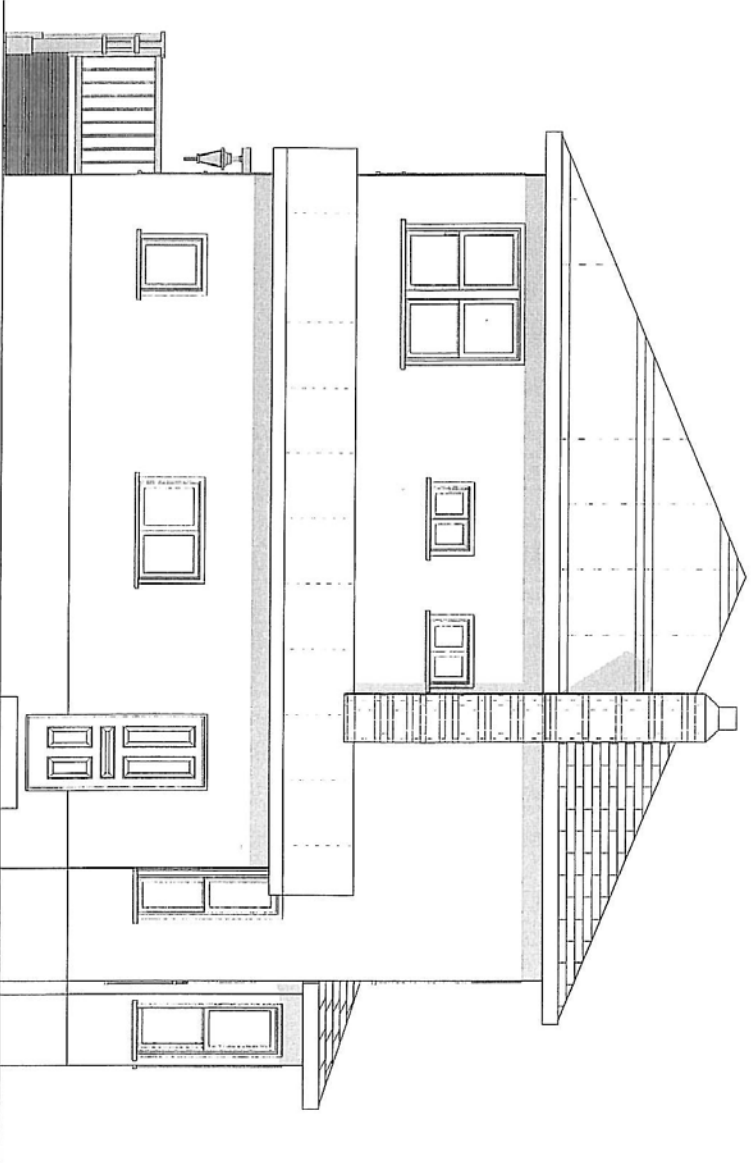
SCHEDULE AA & BB  
This forms part of development  
Permit # HRA69-0001

SOUTH ELEVATION

SCALE: 3/16"=1'-0"

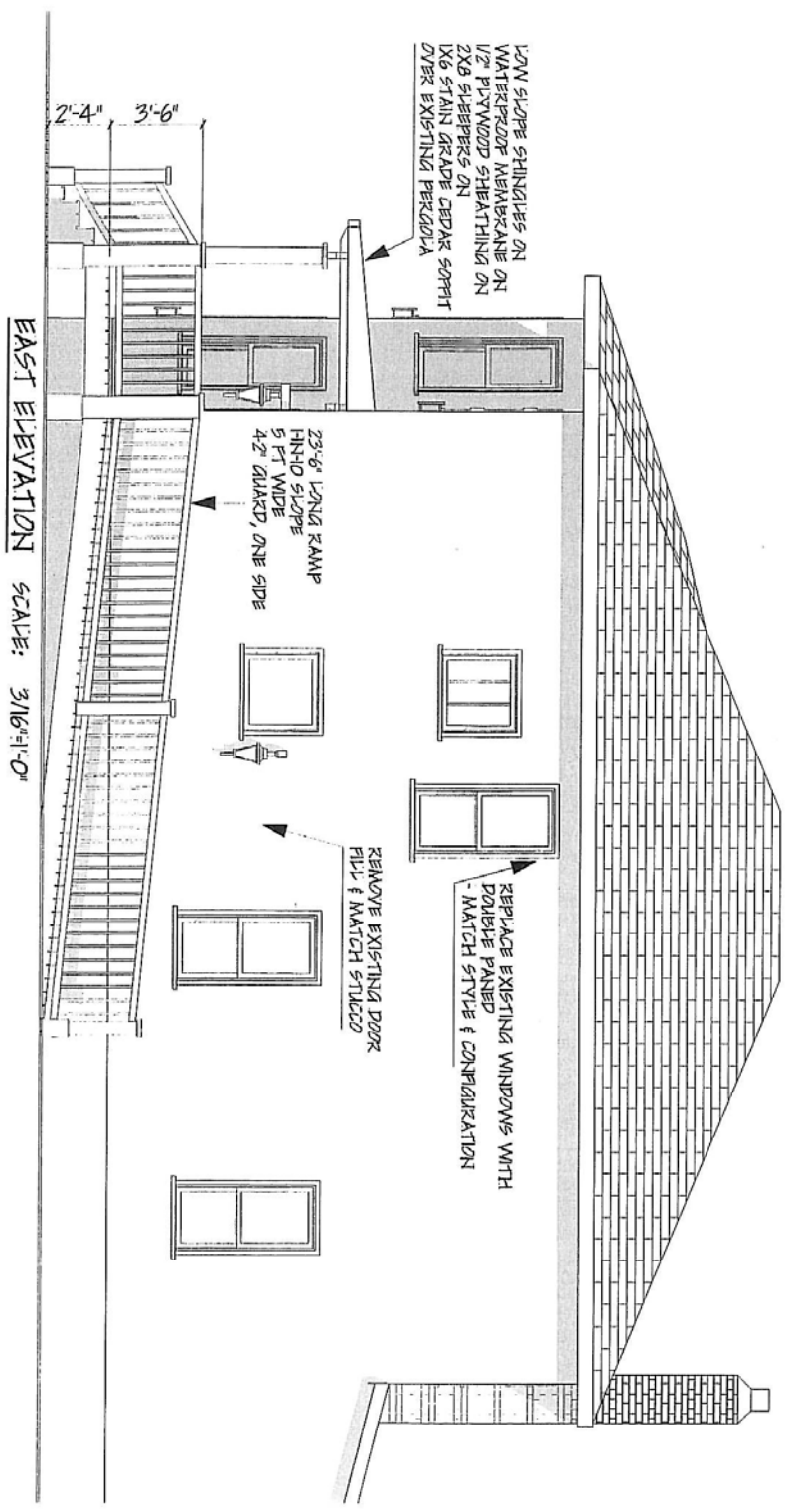


2'-4" 3'-6"



NORTH ELEVATION

SCALE: 3/16"=1'-0"



EAST ELEVATION SCALE: 3/16"=1'-0"

LOW SLOPE SHINGLES ON WATERPROOF MEMBRANE ON 1/2" PLYWOOD SHEATHING ON 2X6 SLEEPERS ON X6 STAIN GRADE CEDAR SOFFIT OVER EXISTING PERGOLA

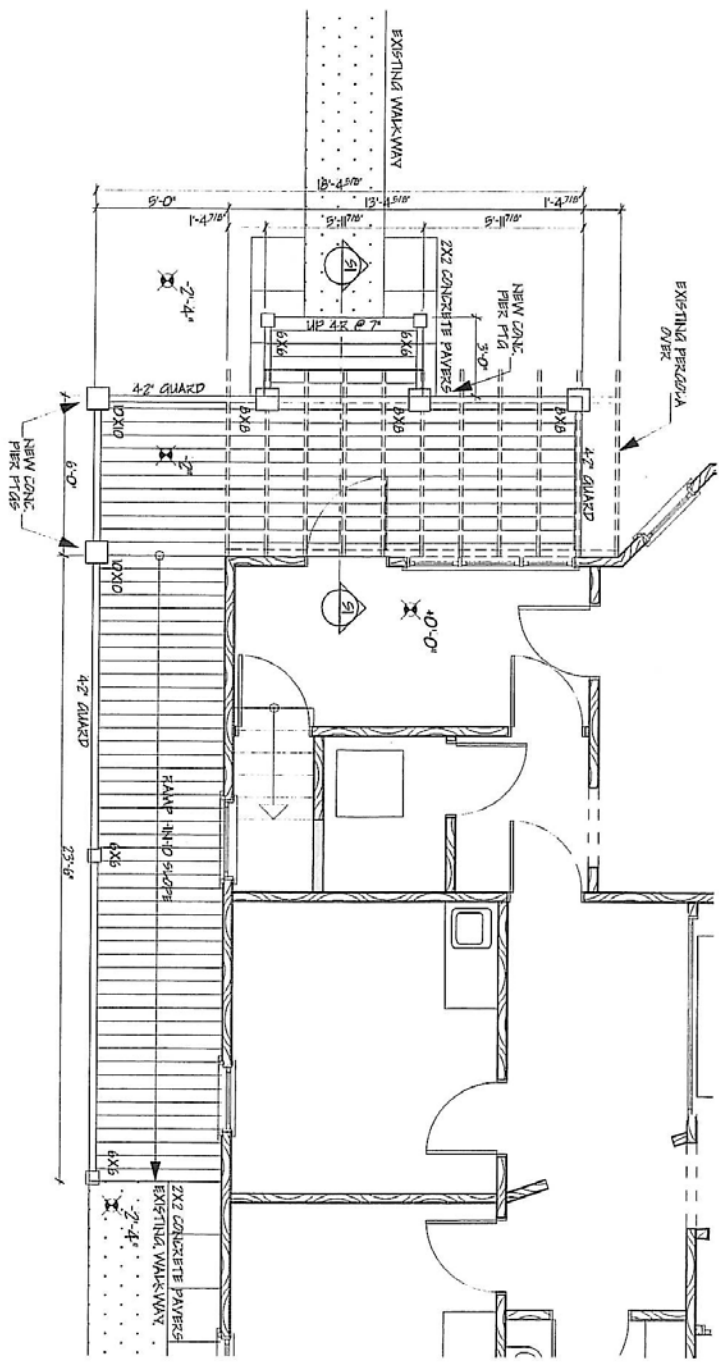
23'-6" LONG RAMP  
1/4" SLOPE  
5 FT WIDE  
4" WALK, ONE SIDE

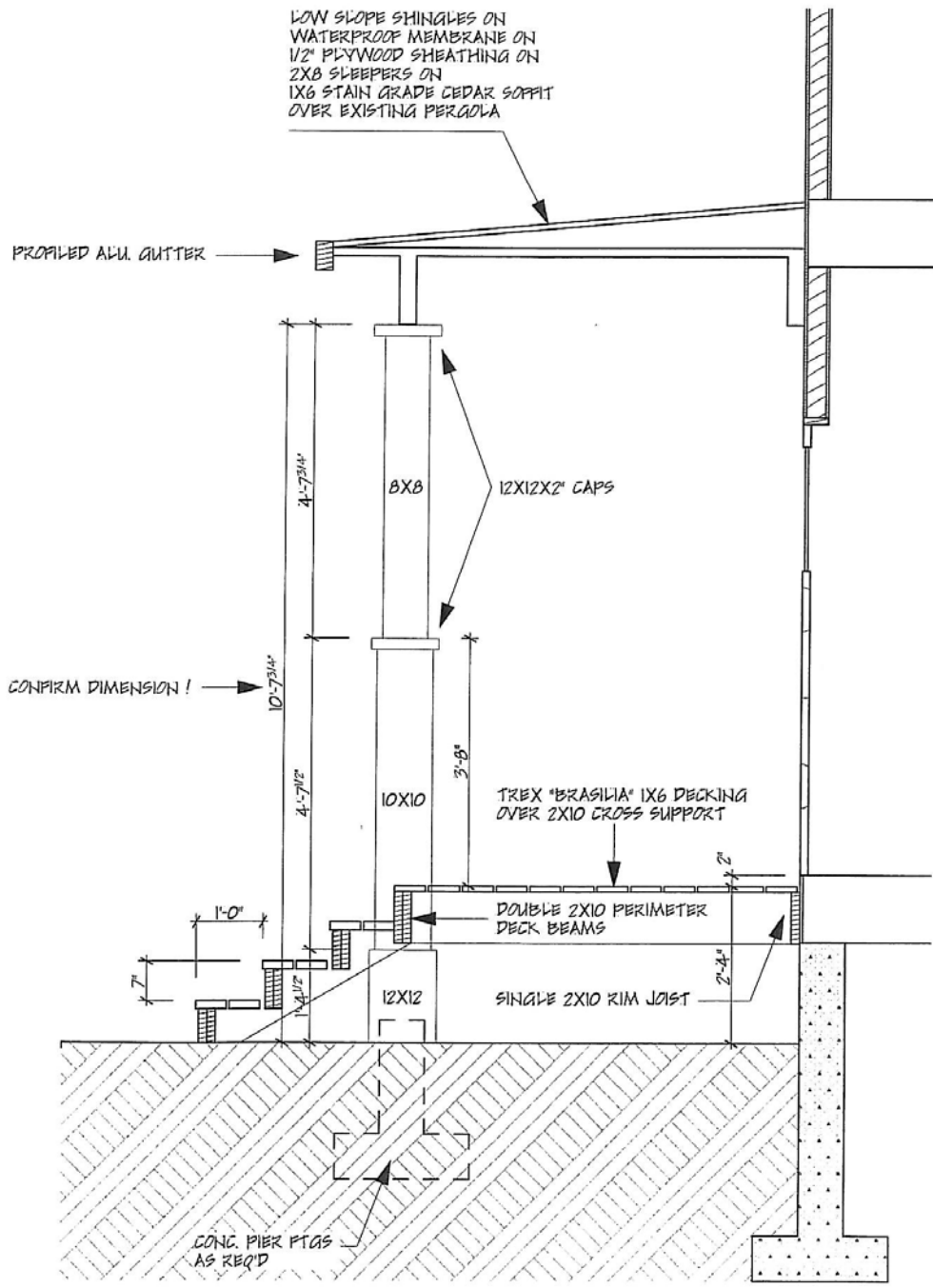
REPLACE EXISTING WINDOWS WITH DOUBLE PANELED - MATCH STYLE & CONFIGURATION

REMOVE EXISTING DOOR FILL & MATCH STILE

2'-4" 3'-6"

PORCH PLAN - PROPOSED SCALE: 3/16"=1'-0"

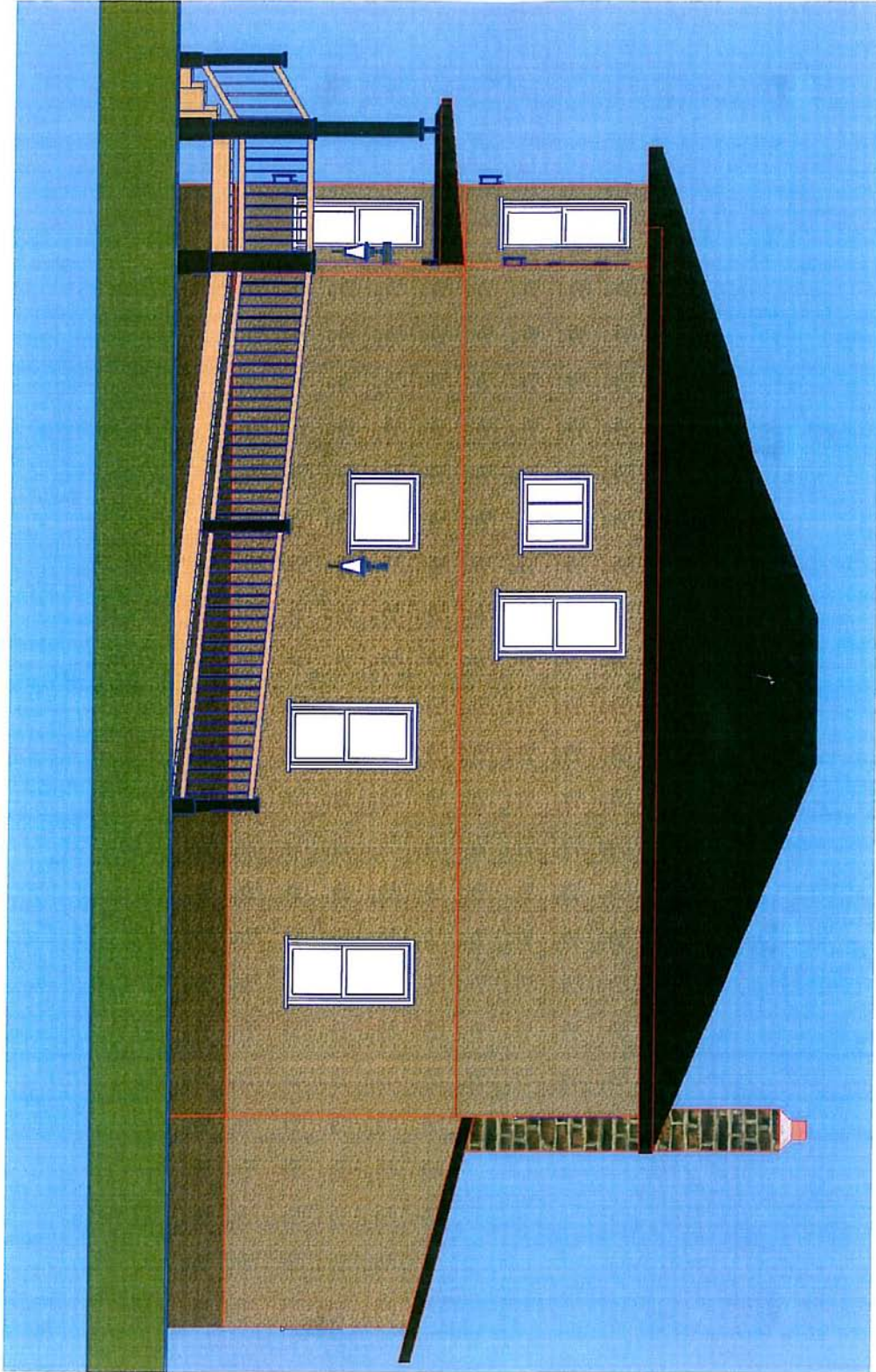


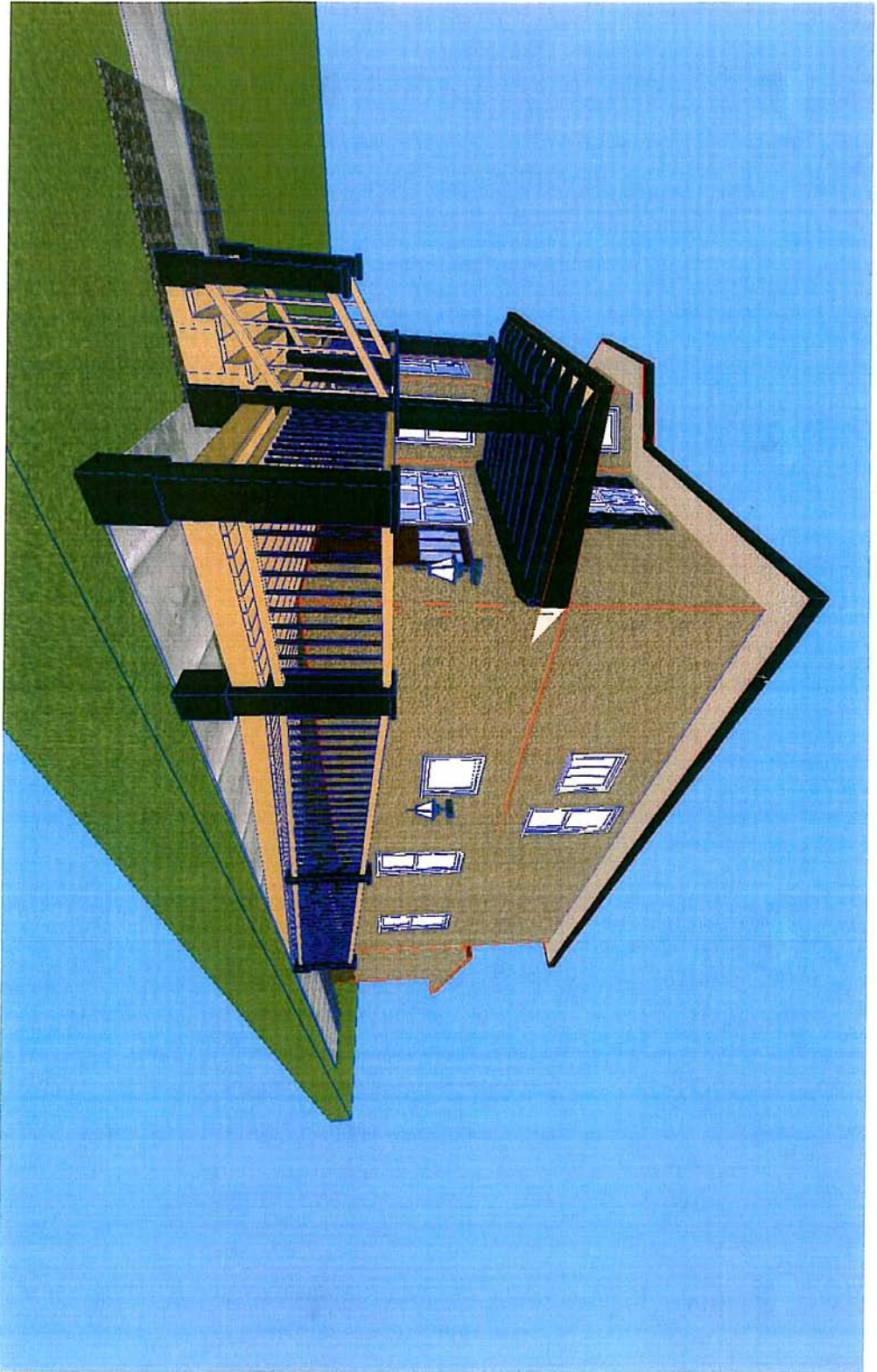


**PORCH SECTION** SCALE: 1/2"=1'-0"













LANDSCAPE PLAN #770 BERNARD - PROPOSED SCALE: 1/8"=1'-0"  
 NOTE: EXCEPT FOR NEW FRONT PORCH WITH RAMP, ALL LANDSCAPING & PARKING IS PER EXISTING!

SCHEDULE CC  
 This forms part of development  
 Permit # HRAD9-0001