



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
June 12, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner - Development Officer

DATE: June 2, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 3667 Leaman Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the Gross Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit construction of an addition to a single unit dwelling.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

The subject property is located at 3667 Leaman Street in Halifax. The property is zoned R-2, General Residential Zone in the Halifax Peninsula Land Use Bylaw.

This Variance was refused by the Development Officer on May 9, 2006. Subsequently, the applicant appealed the Development Officers decision on May 18, 2006.

The review for this variance found that the proposed addition to the existing single unit dwelling at 3667 Leaman Street resulted in a Gross Floor Area Ratio (GFAR) of 1.27 (5,271 square feet). The permitted GFAR is 0.65 (2,800 square feet). The existing dwelling already has a Gross Floor Area of 3,066 square feet (a GFAR of 0.74) which already exceeds the requirements of the Land Use By-law.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

“A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”*

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw ?

In many cases, the intent of a specific regulation in a land use bylaw can be quite general in nature and determining the intent sometimes requires subjective judgement. However, in this case, due to the recent review and subsequent adoption of the affecting GFAR requirements staff believe the intent is clear.

It should be noted that the GFAR makes no distinction between “invisible mass”, that is sub-grade basement area and “visible mass” which would be floor area above the grade. In this case approximately 1,350 square feet of floor area is in the basement and not “visible mass”. Given the definition of Gross Floor Area which includes basement area this was not a consideration in the review.

The GFAR requirements were adopted to achieve two objectives. Firstly, to limit the size of dwellings which could be converted to create an excessive number of bedrooms. That is not an issue with this application.

Secondly; one of the goals in planning policies adopted for the established neighbourhoods of the

Halifax Peninsula is to maintain the character and stability of these areas through Municipal Planning Strategy (MPS) policies such as Policy 2.4 which states:

“... the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.”

In determining whether the proposed variance violated the intent of the bylaw to “maintain the character and stability” of the neighbourhood an assessment of the GFAR of housing stock in the immediate area was undertaken. Floor areas were determined using building permit records and HRM mapping. On those properties where no building permit record was available, the GFAR has been rounded upwards to the nearest denominator of 5% to address any potential errors in floor area estimations.

The following is a list of addresses and GFAR for nearby properties. It is noted whether the calculation is based upon permit information or estimations. The property subject to the variance is bold.

Civic Address	Floor Area (sqft)	Lot Area (sqft)	GFAR
3647 Leaman Street	2,720 (permit)	4,900	0.55
3654 Leaman Street	2,254 (permit)	5,000	0.45
3655 Leaman Street	2,700 (estimate)	4,960	0.55
3661 Leaman Street	2,200 (estimate)	4,900	0.45
3664 Leaman Street	1,800 (permit)	5,000	0.36
3667 Leaman Street	5,271 (proposed)	4,140	1.27
3675 Leaman Street	2,700 (permit)	4,200	0.64
3676 Leaman Street	3,000 (estimate)	5,000	0.60
3679 Leaman Street	2,300 (estimate)	4,300	0.55
3685 Leaman Street	2,100 (permit)	4,300	0.48
3658 Novalea Drive	2,000 (estimate)	4,100	0.50
3664 Novalea Drive	2,000 (estimate)	4,000	0.50
3672 Novalea Drive	2,500 (estimate)	4,000	0.65
3682 Novalea Drive	2,600 (permit)	4,291	0.61
3684 Novalea Drive	3,556 (permit)	4,006	0.89
3688 Novalea Drive	2,400 (estimate)	4,300	0.60

3692 Novalea Drive	3,800 (estimate)	4,300	0.90
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This table shows that the proposed addition at 3667 Leaman Street gives this property the highest GFAR in the area. As this violates the intent of the Land Use By-law the variance was refused.

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

The application of a GFAR is consistent across all low and medium density residential zones on the Peninsula. Therefore, the property at 3667 Leaman Street is subject to the same restrictions as all other parcels regardless of their size. This property has a consistent land area with the adjacent properties and therefore the difficulty experienced is general to the properties in the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

There has been no intentional disregard for the requirements of the Land Use Bylaw and this was not a consideration when refusing the variance application.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with construction.

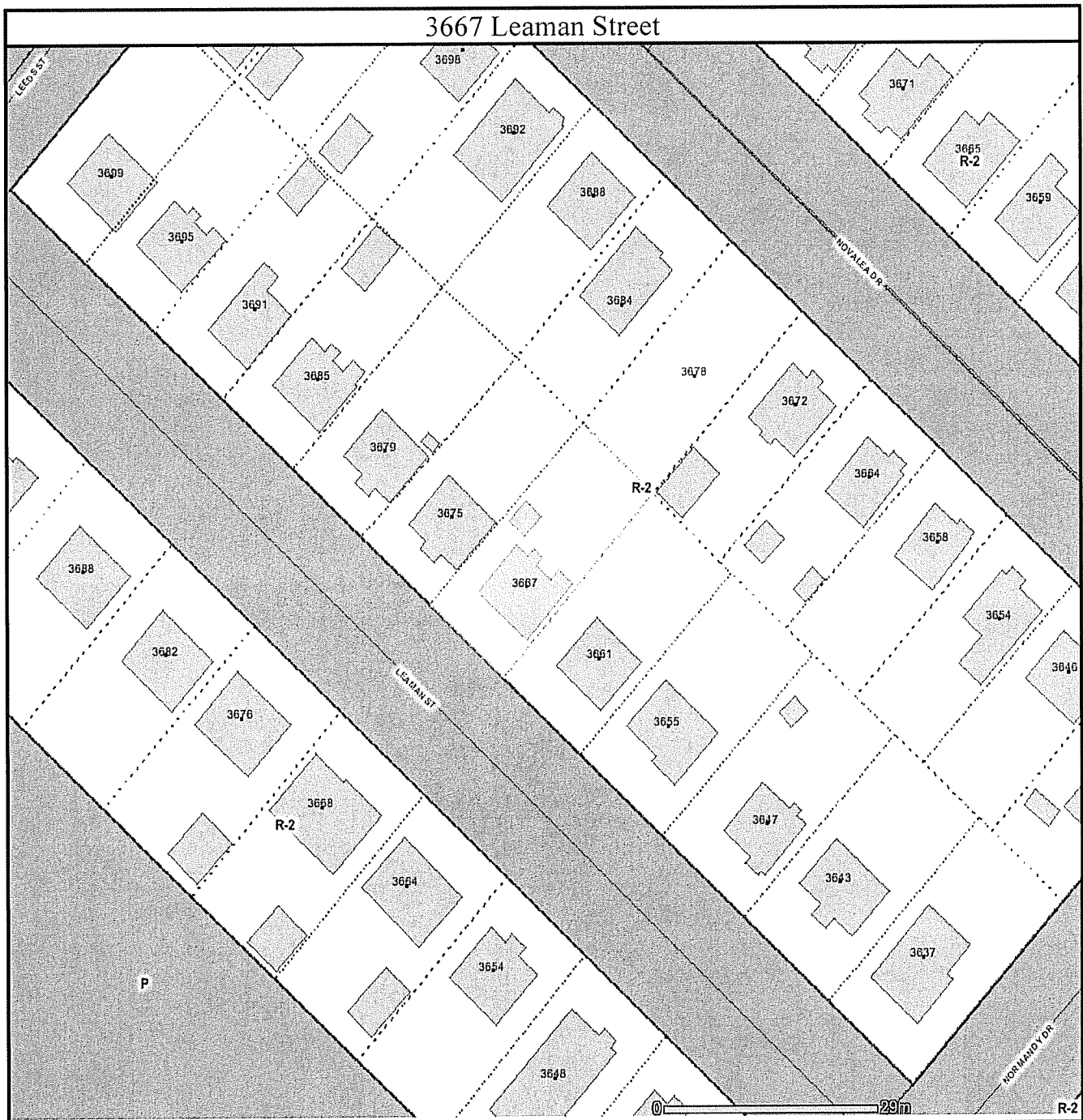
ATTACHMENTS

1. Site Plan and Elevations of proposed construction
2. Refusal Letter
3. Appeal letter from Joseph & Susan Lappin, 3667 Leaman Street

INFORMATION BLOCK

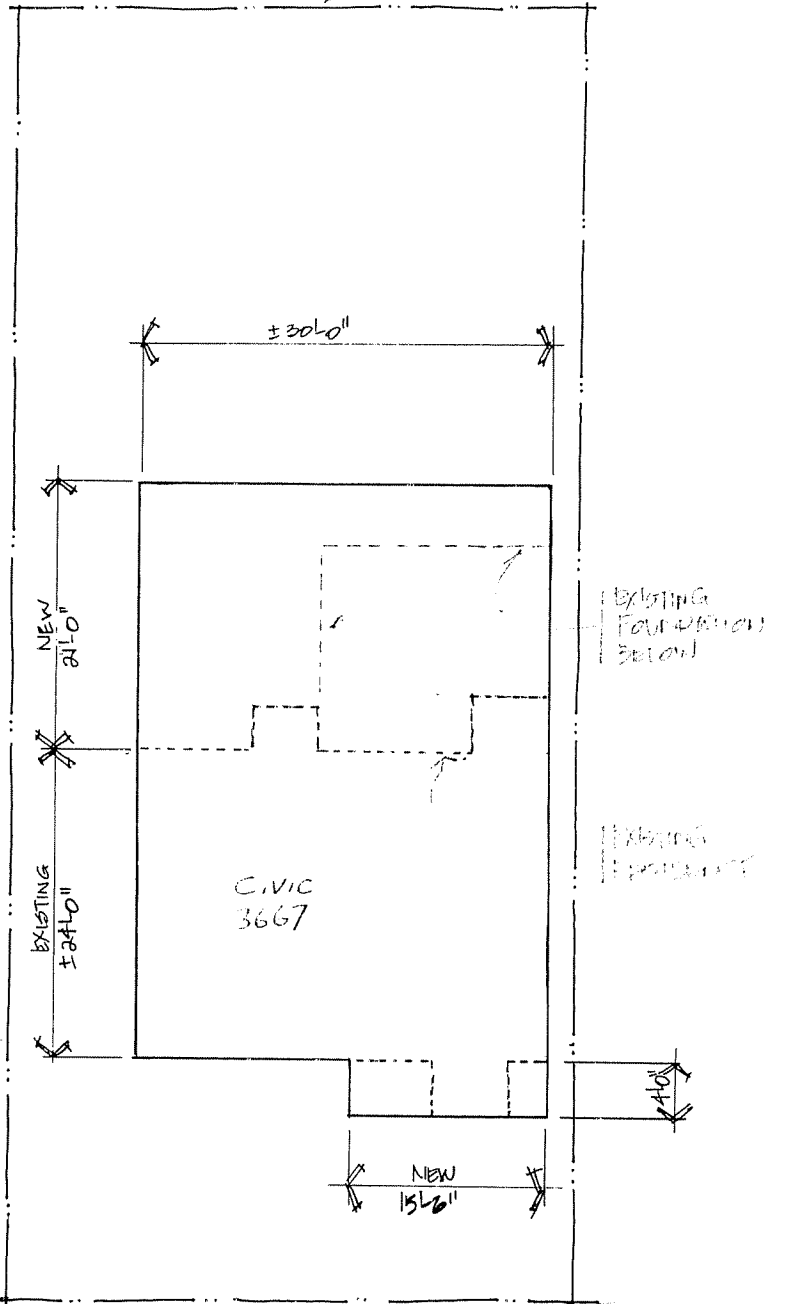
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andrew Faulkner - Development Officer (490-4402)



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data, please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation. User: geoinfo@halifax.ca

SITE PLAN



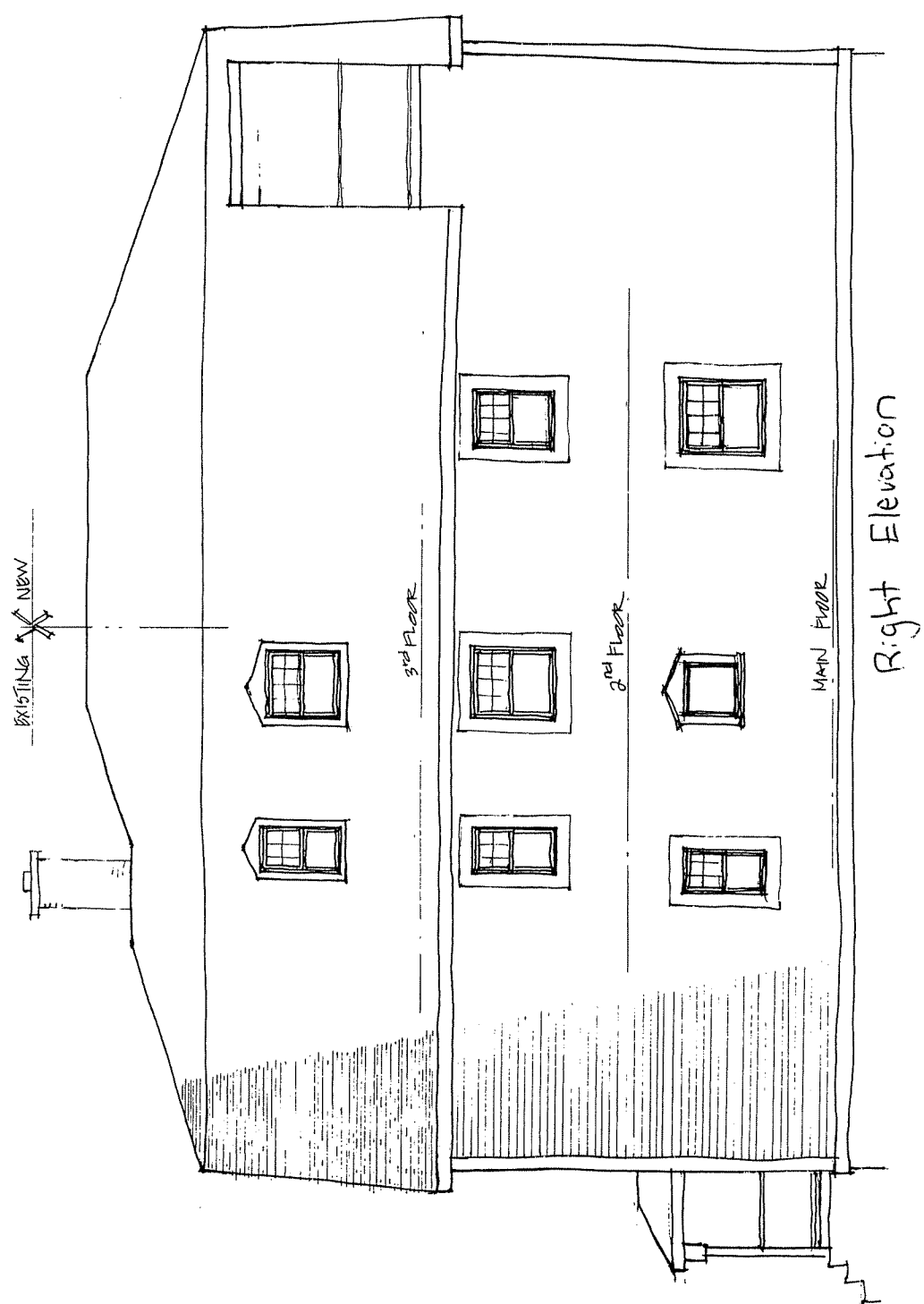
Existing Gross
Floor Area 3,066
Square feet.

Proposed Gross
Floor Area 5,271
Square feet

Leaman Street



Front Elevation



EXISTING X NEW

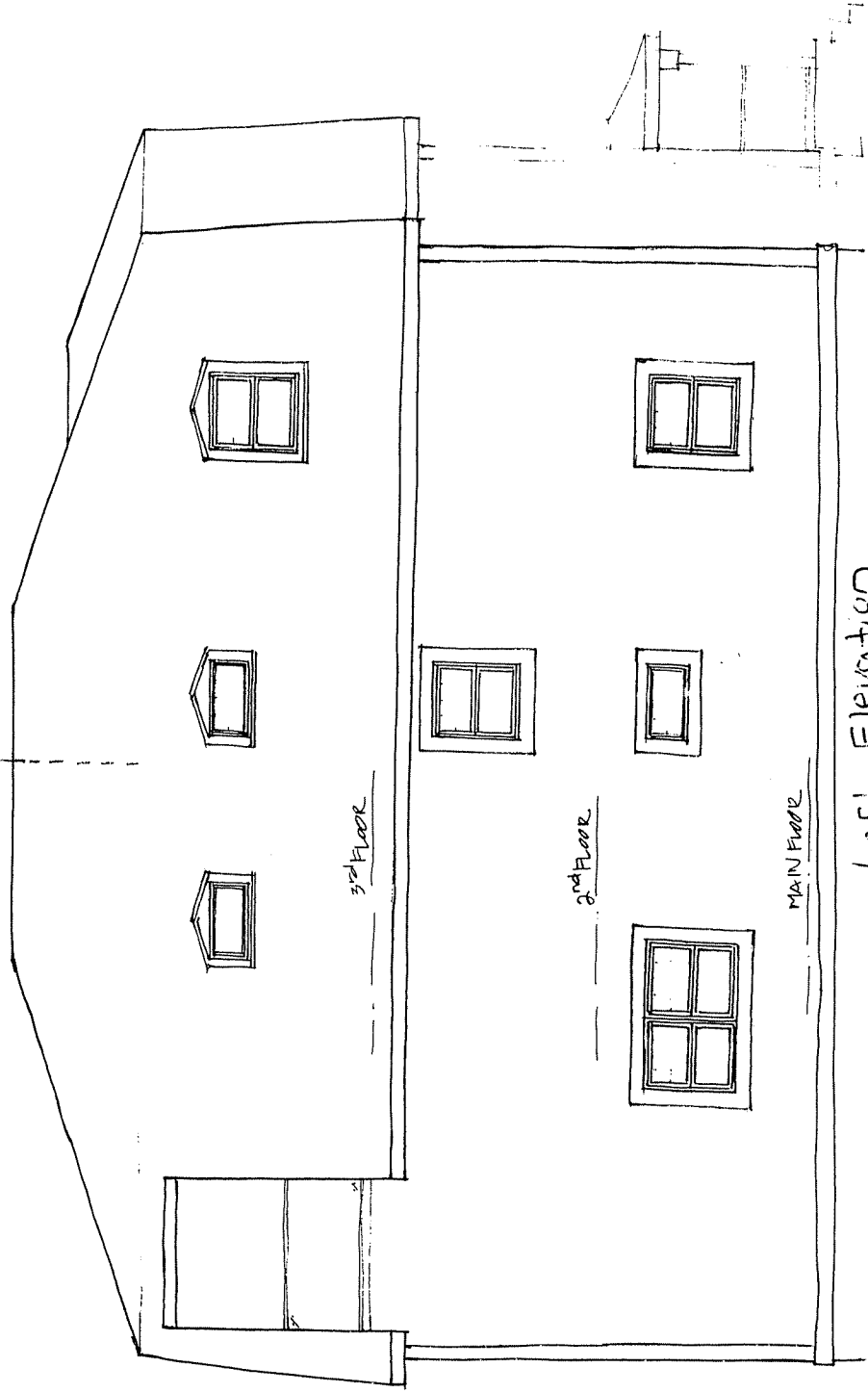
3rd FLOOR

2nd FLOOR

MAIN FLOOR

Right Elevation

New X Existing

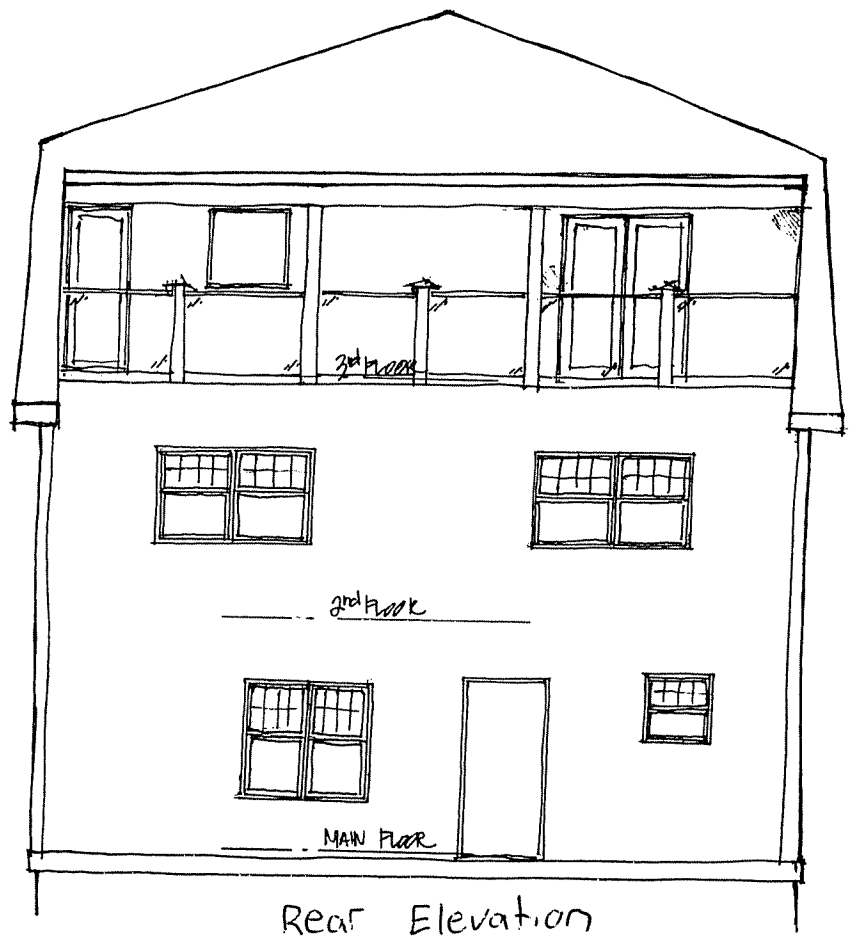


3rd FLOOR

2nd FLOOR

MAIN FLOOR

Left Elevation



Rear Elevation



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

May 9, 2006

Joseph & Susan Lappin

Dear Joseph & Susan:

RE: Application for Variance, File No. 12986 - 3667 Leaman Street, Halifax

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for *Halifax Peninsula Land Use Bylaw* as follows:

Location: 3667 Leaman Street, Halifax
Project Proposal: Addition to Single Unit Dwelling
Variance Requested: Vary Gross Floor Area requirements from 2,800 square feet to 5,271 square feet

Section 235(3) of the **Municipal Government Act** states that:

No variance shall be granted where:

- (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 the variance (a) violates the intent of the Land Use Bylaw, therefore your request for a variance has been refused.

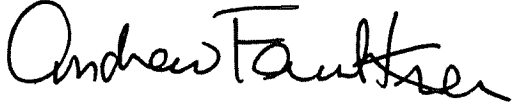
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before *May 18, 2006*.

If you have any questions or require additional information, please contact this office at **490-4402**.

Sincerely,

A handwritten signature in black ink that reads "Andrew Faulkner". The signature is written in a cursive, flowing style.

Andrew Faulkner
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Patrick Murphy

Joseph & Susan Lappin

Andrew Faulkner
Development Officer, HRM

BY FAX

May 18, 2006

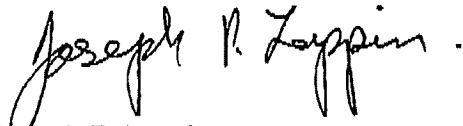
Dear Mr Faulkner,

Re Variance request for 3667 Leaman St.

We have received your reply denying our request for a variance from the by-law limiting the gross floor area of our house.

We wish to appeal this decision to Council and ask that you would arrange for our appeal to be placed before Council at the earliest possible meeting.

Thank You



Joseph P. Lappin
for myself and for
Susan F. Lappin

FAX



DATE:

May 18 / 06

A Faulkner

460-4645

J. Lappin

Post-It
Notes

Var. 12887/SC