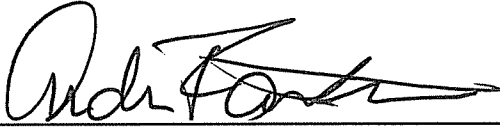




PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Peninsula Community Council**  
**June 12, 2006**

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** June 2, 2006

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a Variance - 5562 Falkland Street, Halifax

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**ORIGIN**

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

**RECOMMENDATION**

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

### **BACKGROUND**

The subject property is located at 5562 Falkland Street in Halifax. The property is zoned R-2 (General Residential Zone) under the Peninsula North Area 6 Secondary Planning Strategy of the Halifax Peninsula Land Use Bylaw. The subject property is a 2625 ft<sup>2</sup> lot which would permit a maximum Gross Floor Area Ratio of 0.75 (equal to a floor area of 1969 ft<sup>2</sup>).

The property currently contains a 3021 ft<sup>2</sup> single unit dwelling having a GFAR of 1.15, which existed at the time of the adoption of GFAR amendments. The applicant has proposed a two-storey addition over the existing main floor, left side bump-out and an extension of the rear wall of the structure to create additional attic space. This would involve an increase in the square footage of the home but would not change the building footprint as all additions are above the existing structure. The proposed additions would add 376 ft<sup>2</sup> to the floor area of the dwelling for a proposed GFAR of 1.29 (3397 ft<sup>2</sup> of floor area).

This Variance was approved by the Development Officer on May 17, 2006. Subsequent to the approval notification, one appeal was received.

### **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.

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, an assessment of the GFAR of the surrounding properties was undertaken. As there were few recent permits for adjacent properties; GFARs were determined using HRM mapping and visual assessments during inspection.

The following is a list of properties within the notification buffer detailing estimated floor area and GFAR of the dwellings. The property subject to the variance is in bold.

Civic Address	Floor Area (ft <sup>2</sup> )	Lot Area (ft <sup>2</sup> )	GFAR
2040 Creighton Street	2700	3400	0.8
2042-44 Creighton Street	2780	3400	0.82
2048 Creighton Street	3740	3500	1.07
2052 Creighton Street	1360	2148	0.63
2054 Creighton Street	1070	1586	0.67
2084-86 Creighton Street	4630	1855	2.5
2088-92 Creighton Street	1480	1334	1.11
2096 Creighton Street	2050	1840	1.11
<b>5562 Falkland Terrace</b>	<b>3397 (proposed)</b>	<b>2625</b>	<b>1.29</b>
5563 Falkland Terrace	1530	1566	0.98
5567 Falkland Terrace	2290	1484	1.54
5568 Falkland Terrace	1720	1402	1.23
5570 Falkland Terrace	2110	960	2.2
5571 Falkland Terrace	1350	2001	0.67
5572 Falkland Terrace	1920	840	2.3
5574 Falkland Terrace	1420	1129	1.26

5575 Falkland Terrace	2310	1840	1.25
5577 Falkland Terrace	3180	2475	1.28
5578 Falkland Terrace	3090	1590	1.94
2023-27 Maynard Street	4680	7518	0.62
2029 Maynard Street	1690	2500	0.68
2033 Maynard Street	2810	2100	1.34
2037 Maynard Street	2260	4478	0.5
		<b>AVG. GFAR</b>	<b>1.2</b>

The majority of properties in the surrounding area are quite small. Based on lot size, the GFAR average that would be allowed surrounding properties would be .73. However, historically the smaller lot sizes have resulted in a dense development pattern of relatively massive homes with little space between them. The average estimated GFAR for the 22 dwellings in the buffer area was calculated at 1.20. The applicants are proposing a GFAR of 1.29, which is much higher than the “allowed” GFAR but would be in keeping with the character of the neighbourhood. Based upon this, staff believe that the proposed variance does not represent a violation of the intention of the LUB.

**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. This lot is only 2,625 ft<sup>2</sup>, which makes it difficult to meet the GFAR requirements of the Land Use By-law. The GFAR requirements would permit a maximum GFAR of .75 (1970 ft<sup>2</sup>) if the lot was vacant. This is considerably less floor area than the majority of surrounding dwellings. Therefore this difficulty is not 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. The applicant applied for the additions under permit #74810. At the time of review, staff did not capture the additional proposed floor area and the permit was issued in error. When it was realized that the work involved an addition of floor area exceeding the permitted GFAR, the permit was revoked and the applicant applied for the variance to correct the situation.

### **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 approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

### **ATTACHMENTS**

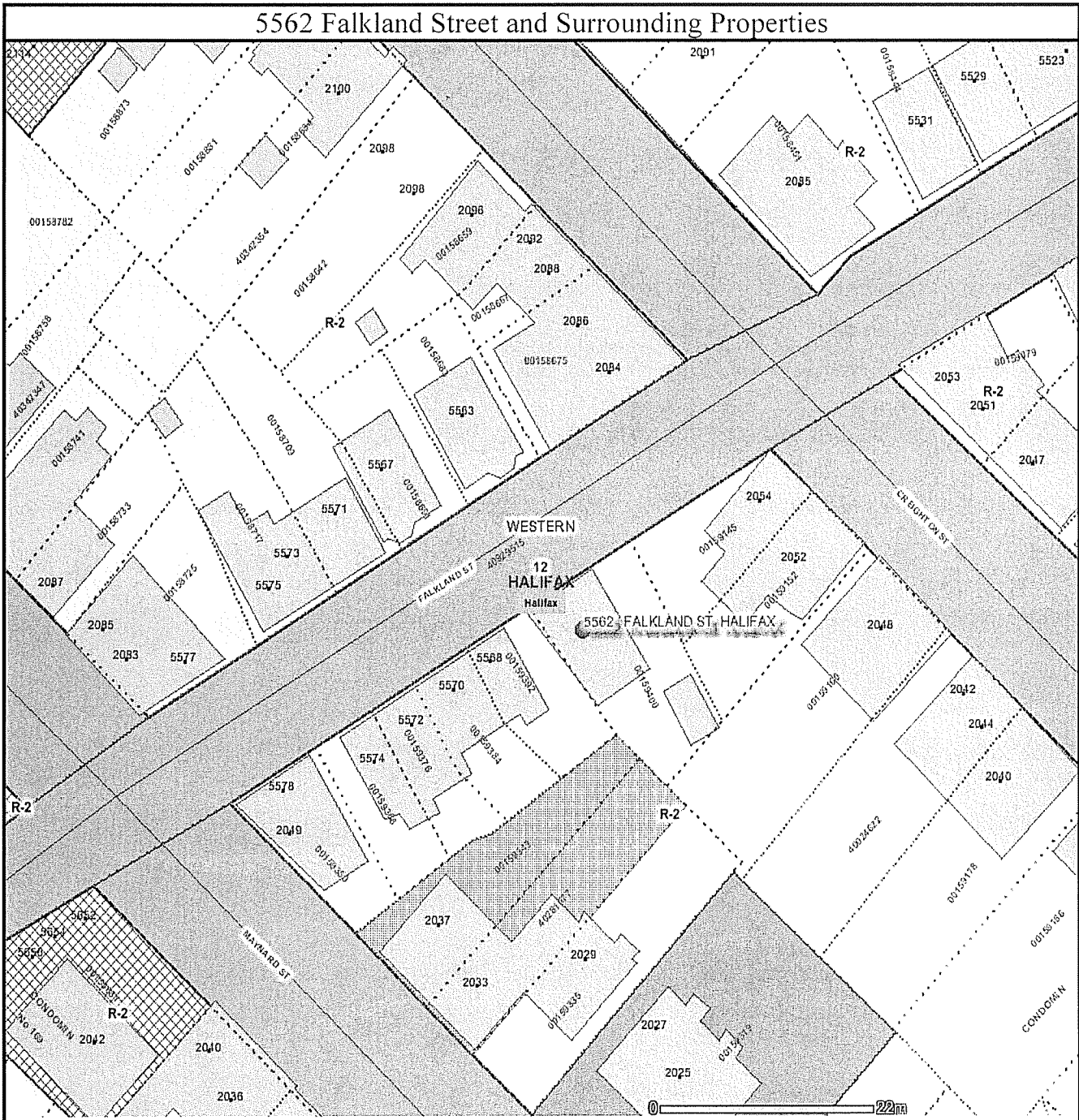
1. Location Plan
2. Approval Letters with Site and Elevation Plans.
3. Appeal Letter

### **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: Leticia Smillie - Development Technician (490-4046)

### 5562 Falkland Street and Surrounding Properties



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



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

May 17, 2006

Kiwi Construction

Dear Scott:

**Re: Case No. 12939 - Variance at 5562 Falkland Street, Halifax**

As the Development Officer for the Halifax Regional Municipality, I have approved your request for a variance from the requirement(s) of the land use bylaw as follows:

**Location:** 5562 Falkland Street  
**Project proposal:** Addition to existing single family dwelling  
**Required:** Maximum Gross Floor Area of 3021 ft<sup>2</sup> (existing house) which is equal to a Floor Area Ratio of 1.15.  
**Approved:** Gross Floor Area of 3397 ft<sup>2</sup> equal to a Floor Area Ratio of 1.29.

*Please Note: Gross Floor Area is the total square footage of all storeys of a home, including basements over a certain height and attics accessed by stairs. The Floor Area Ratio is the gross floor area divided by the area of the lot.*

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before **June 2<sup>nd</sup>, 2006**

PERMITS WILL NOT BE ISSUED UNTIL ANY APPEAL HAS BEEN DISPOSED OF OR THE APPEAL PERIOD HAS EXPIRED.

If you have any questions or require clarification of any of the above, please contact this office at 490-4046.

Yours truly,

A handwritten signature in black ink, appearing to read "Andrew Faulkner". The signature is written in a cursive, flowing style.

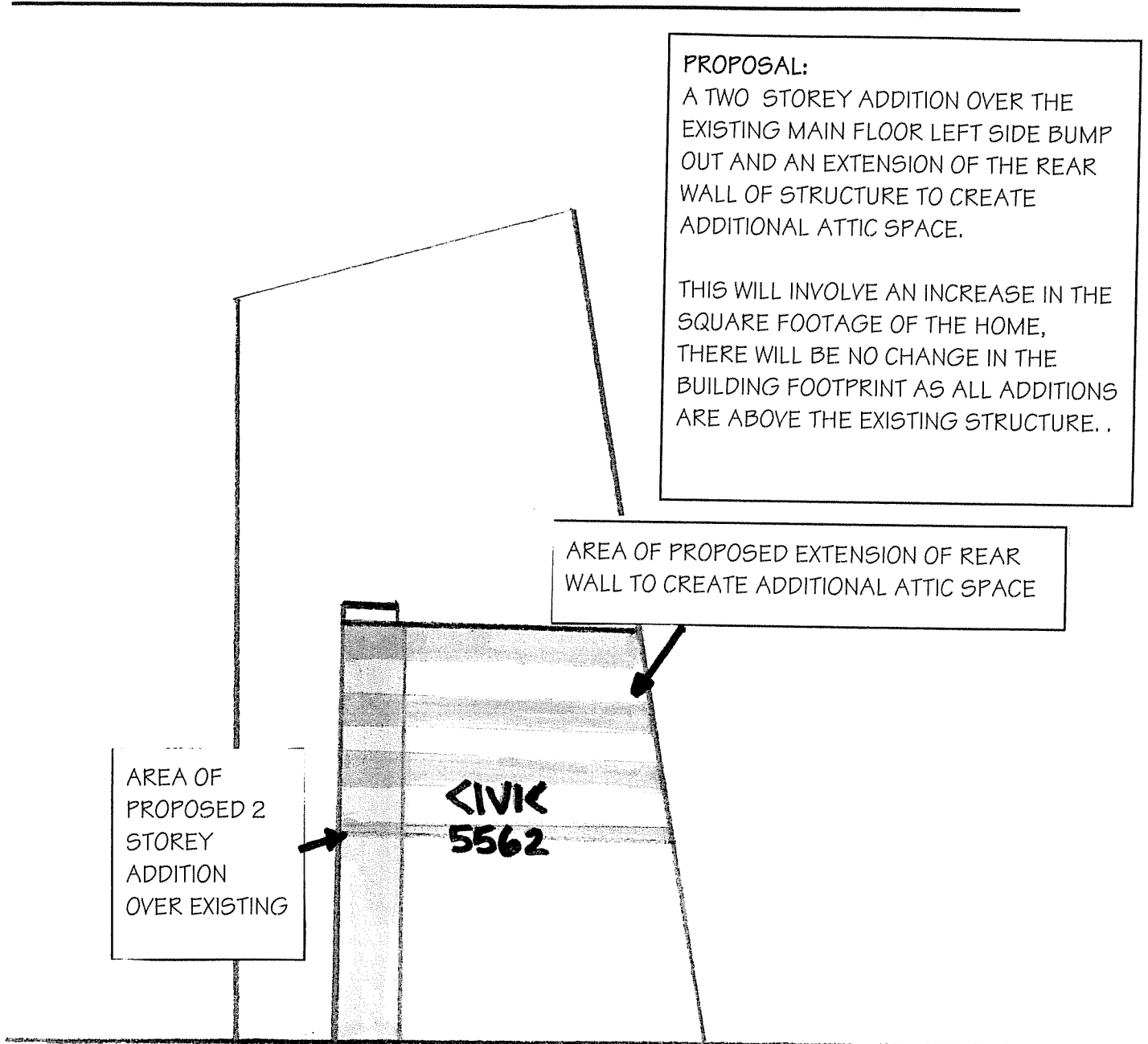
Andrew Faulkner, Development Officer  
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk  
Councillor Dawn Sloane, District 12

DATE: May 24, 2006

SUBJECT: Case No. 12939 - Variance at 5562 Falkland Street, Halifax

SITE PLAN



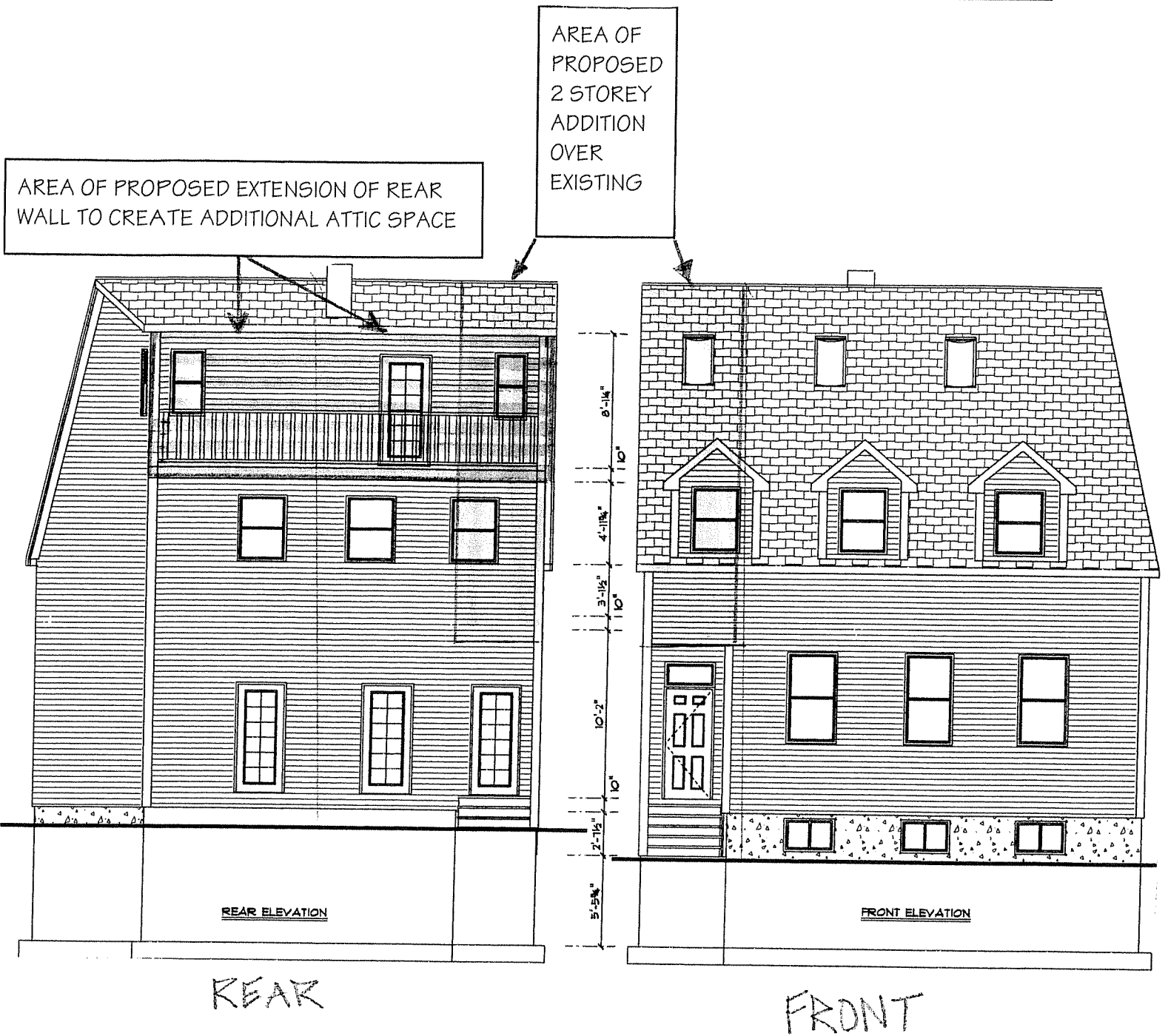
FALKLAND STREET



DATE: May 24, 2006

SUBJECT: Case No. 12939 - Variance at 5562 Falkland Street, Halifax

ELEVATION PLAN



June 1, 2006

Allison Strachan  
Peter Greer

Municipal Clerk  
c/o Andrew Faulkner  
P.O. Box 1749  
Halifax, NS  
B3J 3A5

**Re: Appeal of Case No. 12939 – Variance at 5562 Falkland Street, Halifax**

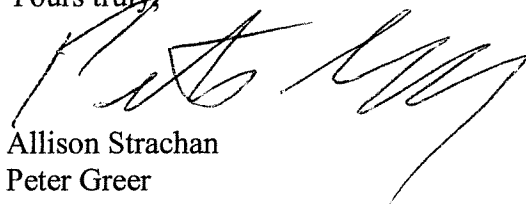
Dear Sir:

I am writing in reference to your letter of May 17, 2006, reference Case No. 12939 – Variance at 5562 Falkland Street, Halifax. We would like to appeal this Variance.

We are the owners of two properties abutting 5562 Falkland Street, 2052 and 2054 Creighton Street. Therefore, we respectfully request that this letter be given the weight equal to an appeal from each property, and in accordance with time limits or other protocol be considered as two separate appeals.

We look forward to meeting with Community Council to discuss our concerns.

Yours truly,



Allison Strachan  
Peter Greer