

Peninsula Community Council

August 13, 2012

TO: Chair and Members of Peninsula Community Council



SUBMITTED BY:

Brad Anguish, Director, Community and Recreation Services

DATE: July 5, 2012

SUBJECT: **Case 17594: Appeal of Variance Approval, 1813 Armview Terrace,
Halifax**

ORIGIN

Appeal of the Development Officer's decision to approve a variance request.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to approve the variance at 1813 Armview Terrace, Halifax.

BACKGROUND

Zoning and Land Use:

The subject property at 1813 Armview Terrace, Halifax, is zoned R-1 (Single Unit Dwelling Zone) under the Halifax Peninsula Land Use By-Law (LUB) and is located within the Northwest Arm Secondary Plan Area. The current authorized use of the property is a single unit dwelling with a detached, two car garage at the rear of the property.

The proposal is to demolish the existing garage and construct additions to the rear of the dwelling (see Map 2).

Variance Request & Permit History:

The property owners applied for a construction permit on February 23, 2012. The proposed lot coverage was 34% and the maximum permitted lot coverage in the R-1 Zone is 35%; however, the proposed Gross Floor Area Ratio (GFAR) exceeded the maximum permitted for the lot and the owner applied for a variance to relax the requirement.

The variance (see Attachment A) was approved by the Development Officer on March 12, 2012, and property owners within 30 metres of the subject property were duly notified. The approval has been appealed by neighbouring property owners within the legislated time frames and the matter is now before Community Council.

At the same time, the owner revised his construction plans to limit the scope of work proposed to interior renovations and to enable some work to commence as-of-right while the variance proceeded through the approval process. Part of this work included dropping the ceiling height in the basement to exclude that floor area from GFAR calculations thereby creating capacity for other floor area expansions to the residence. In June of 2012 the owner received a construction permit for a two storey addition to the residence within this capacity.

Should Community Council uphold the decision of the Development Officer to approve the variance, the owner will make another permit application to construct the second addition which will include a garage and living space.

Appeals:

Five appeals from the notified property owners were filed. The variance appeal letters raise a number of concerns about this project which are generally outlined as follows:

Concern	Staff Comment
There is a fence proposed which an appellant claims will violate a covenant condition of the subdivision.	The Municipality has no authority to administer a private covenant or agreement to which they are not party; as such, this is not a regulatory consideration.
There are concerns that the flat roofed design is not compatible with the neighbourhood built character.	This is a matter of building design and there are no design guidelines within the Land Use By-law for this area.
The additional space will be used for boarders and lodgers or converted to additional dwelling units.	The land use by-law permits any R-1 dwelling to accommodate up to three boarders and lodgers. Should the use change in the future to include additional dwelling units, such a violation of the by-law would be addressed through HRM's By-law Enforcement Program.
No notice was provided <u>before</u> the decision was made to approve the variance.	The <i>HRM Charter</i> dictates the procedure to follow in review of a variance application. The <i>Charter</i> requires that the Development Officer make a decision relative to the variance request and where approved, notify the neighbourhood of the decision and provide an opportunity for appeal to Council.
The time provided to launch an appeal is too short.	The <i>HRM Charter</i> states that the notified property owners must be provided 14 days to appeal an approval of a variance. A notice is deemed to have been served on the third day after it was sent. The notification was mailed on March 13, 2012, and the deadline for appeals was the end of the workday on March 30, 2012. The notification met the statutory requirements of the <i>Charter</i> .
The new development is covering almost the entire lot.	The land use by-law permits 35% lot coverage while this proposal will occupy 34%.
Approval of the variance sets a precedent binding the Development Officer and Council to approval of future applications for the same or similar GFAR variance applications.	Every application for a variance is tested against the three criteria of the Charter specified in the following section of this report. Past approvals or denials by Council or the Development Officer are not one of the three criteria and therefore not a consideration of that review.
Larger homes result in a neighbourhood for only the wealthy, as witnessed in neighbourhoods in other Canadian cities. Homes in those areas became unaffordable for the average citizen and resulted in strict	This is a statement of opinion and is not a consideration when determining whether a variance meets the Charter refusal criteria.

Concern	Staff Comment
lot to home ratios. The variance is major in nature and not minor.	Former planning legislation characterized variances as “minor” to indicate that relaxations of the LUB should be minor in nature. What constituted “minor” became difficult to quantify and that terminology has long since been removed from the statute. In its place, the test of whether a proposal is in keeping with the intent of a land use by-law or development agreement has been added. The Development Officer’s analysis of this criterion is provided in the Discussion section of this report.
It appears that some neighbouring houses are going to have their view of the Arm obstructed by this development.	There is no legislation protecting views of the Northwest Arm in this location. The R-1 Zone applies to this entire neighbourhood and the zone permits a residence 35 feet high covering 35% of the lot. The two storey addition does not exceed the height of the existing building, which is 26 feet high and lot coverage is 34%.

DISCUSSION

Variance Criteria

The *Halifax Regional Municipality Charter* sets out the following criteria by which the Development Officer may not grant variances to the requirements of the Land Use By-law:

250(3) *A variance may not be granted if*

- (a) the variance violates the intent of the development agreement or land-use by-law;*
- (b) the difficulty experienced is general to properties in the area; or*
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law*

In order to be approved, a proposed variance must not conflict with any of the statutory criteria. The Development Officer’s assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

The GFAR requirements were adopted in October 2005 to achieve two objectives: To prohibit the development of dwellings containing an excessive number of bedrooms; and, to limit the mass of dwellings relative to their lot size and dwellings on similar lot sizes in the same neighbourhood.

Section 26D of the Halifax Peninsula Land Use By-law states:

Lot Size	GFA Requirement
<=3,500	The maximum GFA shall be a FAR of 0.75
>3,500 to 4,000	The maximum GFA shall be 2,625 sq. ft. or a FAR of 0.70, whichever is greater.
>4,000 to 4,500	The maximum GFA shall be 2,800 sq. ft. or a FAR of 0.65, whichever is greater.
>4,500 to 5,500	The maximum GFA shall be 2,925 sq. ft. or a FAR of 0.60, whichever is greater.
>5,500 to 7,000	The maximum GFA shall be 3,300 sq. ft. or a FAR of 0.55, whichever is greater.
>7,000 to 9,000	The maximum GFA shall be 3,850 sq. ft. or a FAR of 0.50, whichever is greater.
>9,000 to 11,000	The maximum GFA shall be 4,500 sq. ft. or a FAR of 0.45, whichever is greater.
>11,000 to 13,000	The maximum GFA shall be 4,950 sq. ft. or a FAR of 0.40, whichever is greater.

Gross Floor Area is regulated by lot size. The property at 1813 Armview Terrace has a lot size of 9,750 sq. ft. which would permit a total gross floor area of 4,500 sq.ft. The existing dwelling has a Gross Floor Area of 5,495 sq. ft. which exceeds permitted GFAR by 995 sq.ft.. This is considered non-conforming GFAR and is being maintained with the issued permit.

The complete project, which would be enabled by the variance, includes a total proposed GFAR of 6,752 sq. ft., which exceeds the permitted GFAR by 2,252 sq.ft.

One of the goals in the 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.”

The R-1 Zone has adopted Gross Floor Area Ratio, setbacks, height and lot coverage as a means of maintaining residential character. No architectural requirements have been adopted. To consider approval of the addition, staff must take into account the impact on the surrounding

properties. In this instance, the proposed addition is to the rear of the dwelling, resulting in minimal visual impact on the streetscape of Armview Terrace.

The intent of the bylaw is to prevent the development of houses that are larger in mass than existing homes in the surrounding neighbourhood. The neighbourhood has a mix of medium to large sized houses. The Development Officer has determined that this proposal is in keeping with the mass of houses in the neighbourhood, and therefore, meets the intent of the Land Use Bylaw.

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

The subject property has a lot area of 9,750 sq. ft. The properties in the surrounding area range from 7,150 sq. ft. to 17,759 sq. ft. in area.

As lot areas and GFAR vary throughout the area, there is no general condition for comparison to determine whether the difficulty experienced is general to the properties in the area.

3. Is the difficulty experienced the result of intentional disregard for the requirements of the land use by-law?

The difficulty experienced is not a result of intentional disregard.

Conclusion

In summary, staff reviewed all the relevant information and the variance was approved as it was determined that the proposal does not conflict with any of the statutory criteria.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where the Variance request is appealed, a public hearing is held by community council to provide council members the opportunity for council to hear from the applicant and assessed owners within 30 metres of the subject property.

ENVIRONMENTAL IMPLICATIONS

No implications have been identified.

ALTERNATIVES

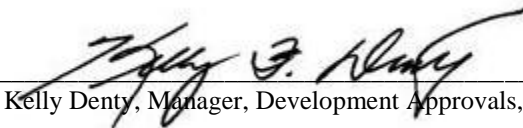
1. Council may uphold the decision of the Development Officer to approve the variance.
2. Council may overturn the decision of the Development Officer and refuse the variance request.

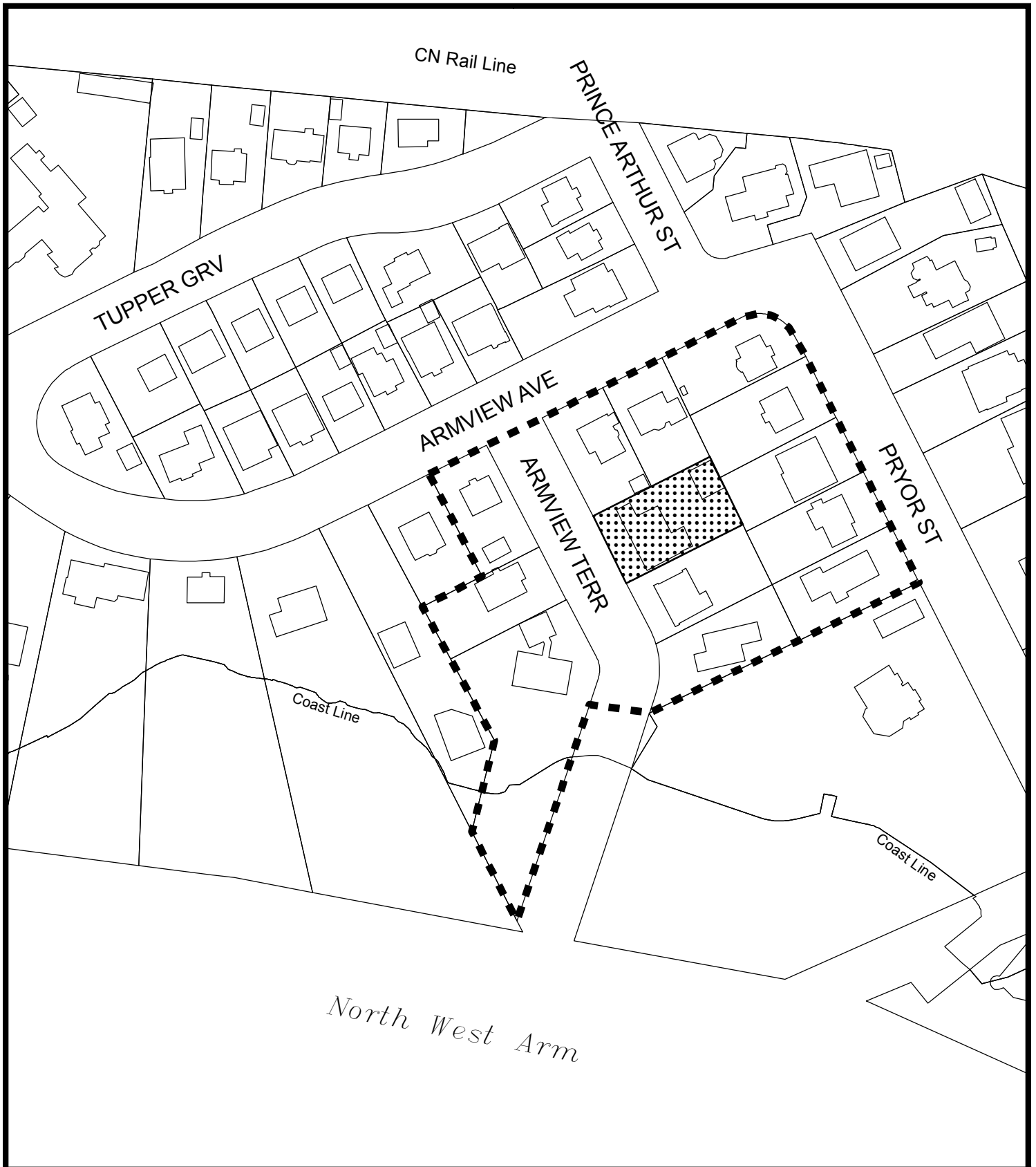
ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan
Attachment A: Building Elevations
Attachment B: Appeal Letters

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Brenda Seymour, Development Technician, 490-3328 and
Andrew Faulkner, Development Officer, 490-4341

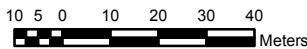
Report Approved by: 
Kelly Denty, Manager, Development Approvals, 490-4800

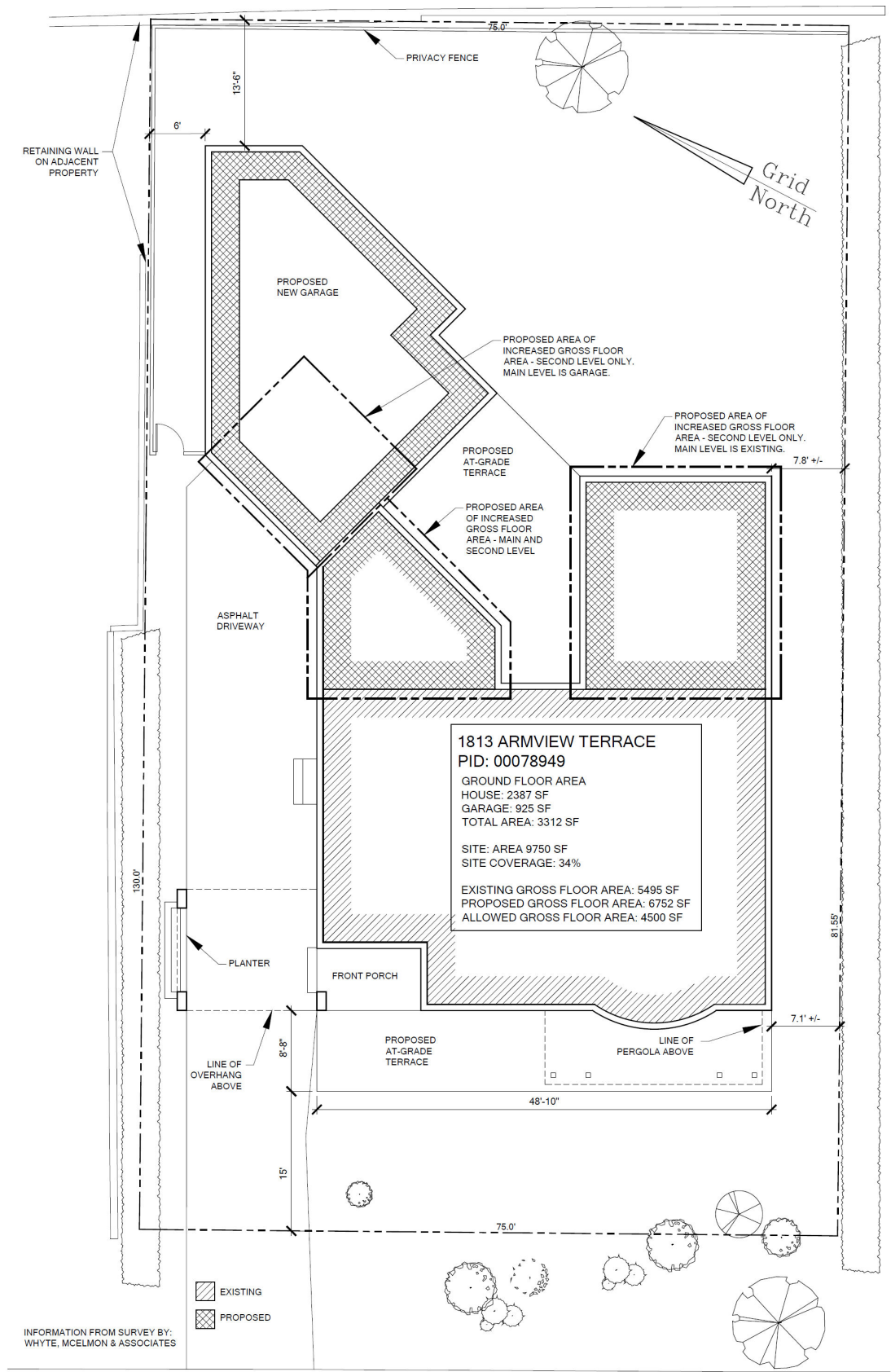


North West Arm

**Map 1
Notification Area**

- ■ ■ ■ Notification Area
- ▨ Subject Area

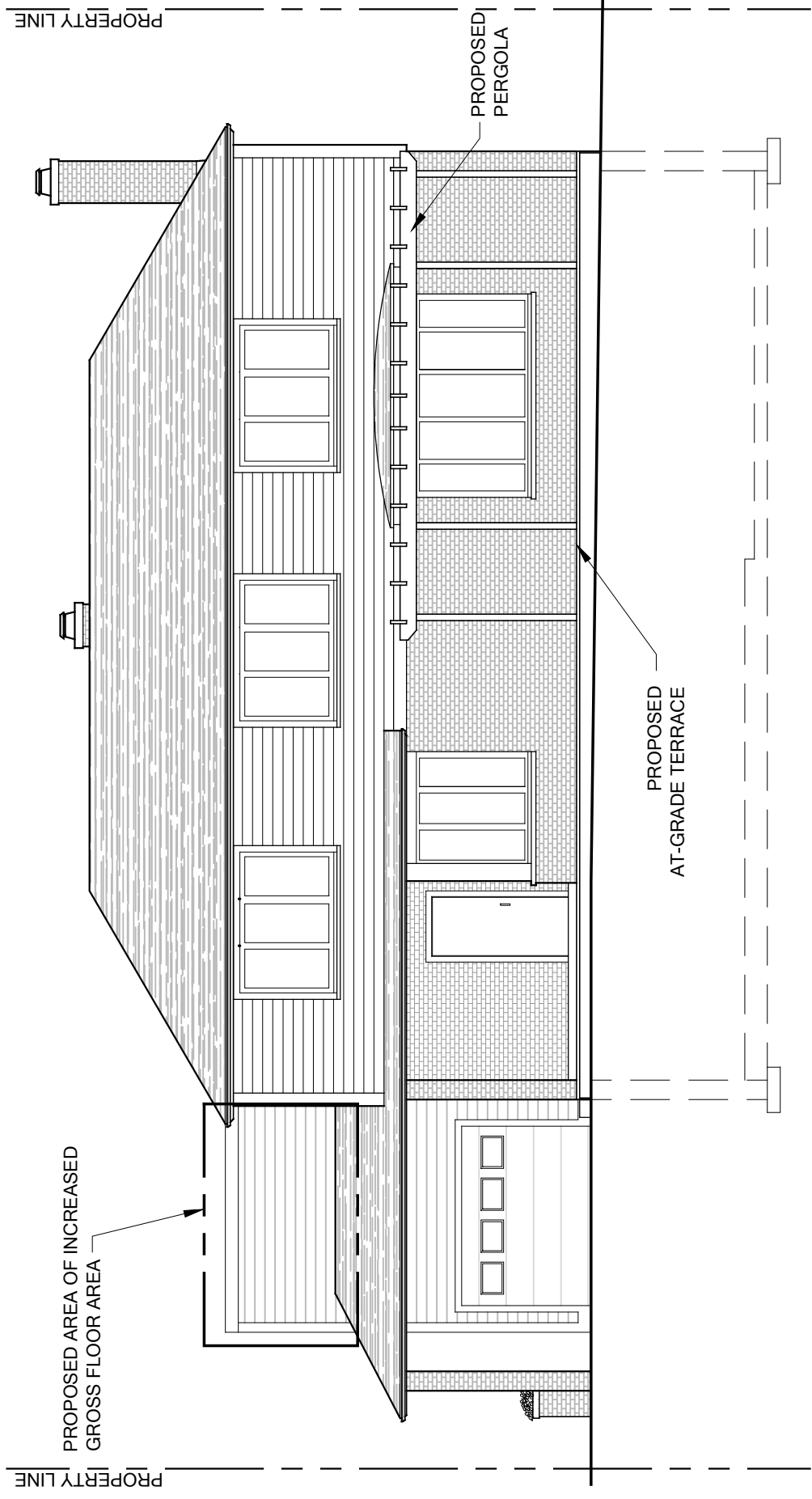




Armview Terrace

Map 2
 Site Plan





- CEILING 125'-9"
- SECOND FLOOR 117'-9"
- GROUND FLOOR 108'-0"
- BASEMENT 99'-0"

ALL CONSTRUCTION TO MEET
ALL APPLICABLE CODES, BY-LAWS,
STANDARDS, ETC.
APPROXIMATE DIMENSIONS
AND ROOF SLOPES

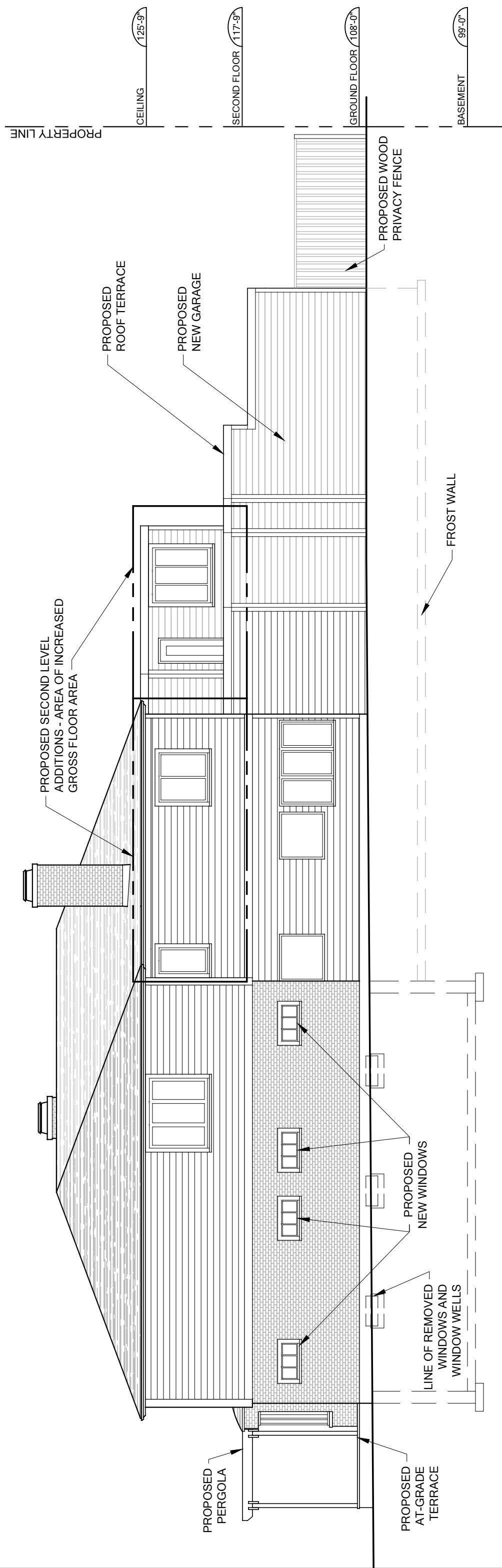


ICHAEL
APIER
ARCHITECTURE INC.

DRAWING
PROPOSED WEST ELEVATION
AND GARAGE ELEVATION
SCALE
1/8" = 1' - 0"

DATE
03 JULY 2012
DRAWING NO.
A-205

Attachment A - Elevations



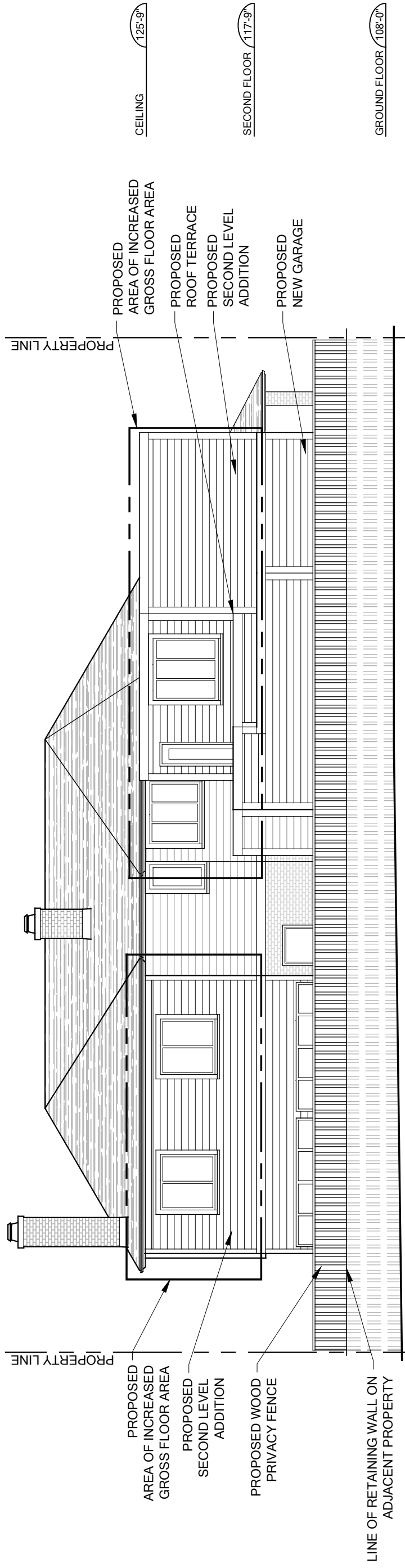
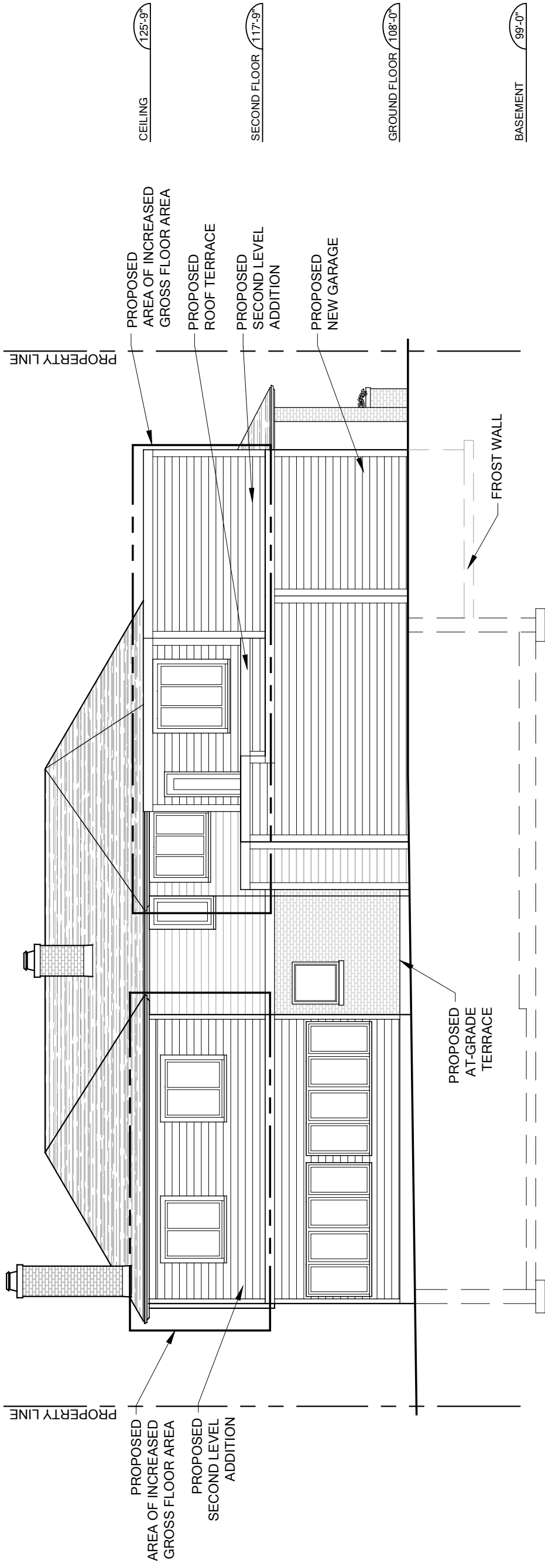
ALL CONSTRUCTION TO MEET
ALL APPLICABLE CODES, BY-LAWS,
STANDARDS, ETC.
APPROXIMATE DIMENSIONS
AND ROOF SLOPES

MZA
MICHAEL
APIER
ARCHITECTURE INC.


DRAWING
PROPOSED
SOUTH ELEVATION
SCALE
1/8" = 1' - 0"

DATE
03 JULY 2012
DRAWING NO.
A-206

ROUVALIS HOUSE
1813 ARMVIEW TERRACE
HALIFAX, NOVA SCOTIA



ALL CONSTRUCTION TO MEET
ALL APPLICABLE CODES, BY-LAWS,
STANDARDS, ETC.
APPROXIMATE DIMENSIONS
AND ROOF SLOPES



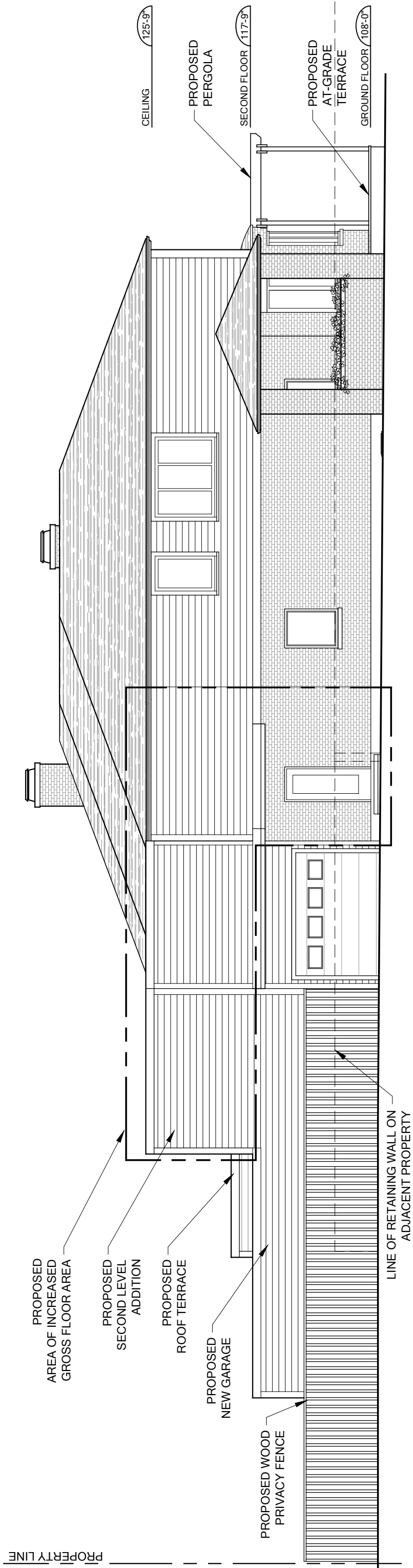
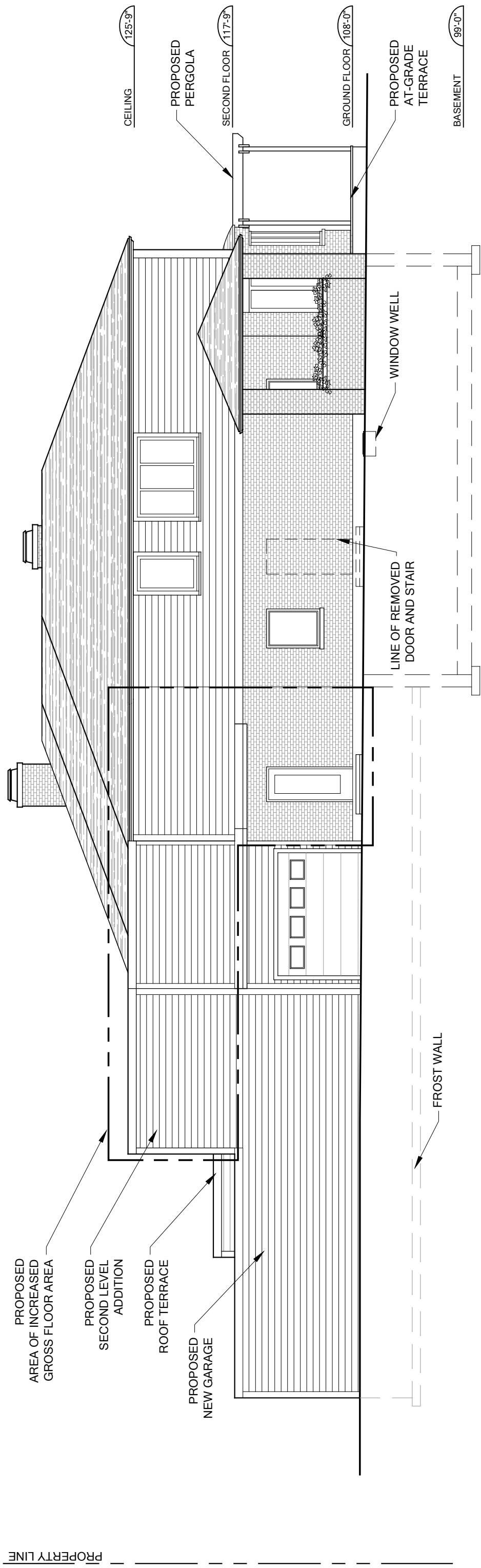
 ICHAE L
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 ARCHITECTURE INC.

DRAWING PROPOSED EAST ELEVATION
 AND PARTIAL ELEVATION
 SCALE 1/8" = 1' - 0"

DATE 03 JULY 2012
 DRAWING NO. A-207

ROUVALIS HOUSE
 1813 ARMVIEW TERRACE
 HALIFAX, NOVA SCOTIA

Attachment A - Elevations



PROPERTY LINE

PROPERTY LINE

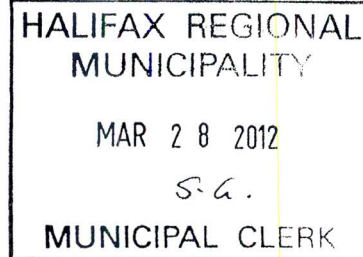
<p>ROUVALIS HOUSE 1813 ARNVIEW TERRACE HALIFAX, NOVA SCOTIA</p>	<p>ALL CONSTRUCTION TO MEET ALL APPLICABLE CODES, BY-LAWS, STANDARDS, ETC. APPROXIMATE DIMENSIONS AND ROOF SLOPES</p>	<p>MZA MICHAEL APIER ARCHITECTURE INC.</p>	<p>DRAWING: PROPOSED NORTH ELEVATION AND PARTIAL ELEVATION</p>	<p>DATE: 03 JULY 2012</p>
			<p>SCALE: 1/8" = 1' - 0"</p>	<p>DRAWING NO: A-208</p>

Attachment B - Appeal Letter

cc: Andrew Faulkner
Sheila Edmonds

Via email: faulkna@halifax.ca

Andrew Faulkner, HRM Development Officer
c/o Municipal Clerk
Planning and Development - Central Region
P.O. Box 1749, Halifax NS
B3J 3A5



Dear Mr. Faulkner

Re: Application for Variance, HRM File No. 17594-1813 Armview Terrace, Halifax

I understand from notification received from you last week that a variance has been granted to the new owner of the above-noted property to increase the floor area from 4500 square feet to 6752 square feet. I live at 1803 Armview Terrace, the abutting property on the south side. I wish to appeal said variance and to object to construction of the large privacy fence also proposed.

In my opinion the house which is already larger than the residences on neighboring properties would be grossly out of proportion. I understand that there will only be 3 occupants in the residence and I am concerned that the additions could give rise to an opportunity for multiple units which are obviously not within the R1 Zone regulations.

The proposed privacy fence is a clear violation of the original covenants of the subdivision stated on all deeds and precluding the construction of board or picket fences. The proposed building additions and fence would significantly change the character of the community and are contrary to the aesthetic of the neighborhood and wishes of the neighbors.

Yours very truly,

A handwritten signature in cursive script that reads "M. Joan McQuinn".

M. Joan McQuinn

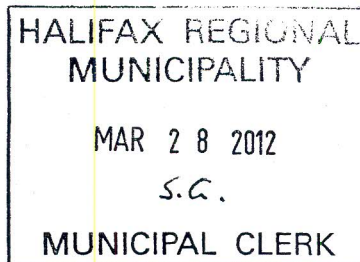
c. Councilor Sue Utech (District 13)

Attachment B - Appeal Letter

Planning and Development – Central Region,
P.O. Box 1749, Halifax, N.S.
Nova Scotia, B3J 3A5

March 25, 2012

Attn: Mr. Andrew Faulkner
Development Officer



Subject: Variance Approval – File 17594-1813 Armview Terrace, Halifax

Dear Mr. Faulkner,

Further to your letter of March 12th 2012 please accept this letter as our request for an appeal to rescind the approval to the variance for 1813 Armview Terrace.

The approved increase of the home size from the allowed 4500 sq ft to 6752 sq ft is 50% more than the allowed square footage. A practice of allowing houses to exceed the municipal maximum square footage in this fashion poses a real threat to the character and appearance of established Halifax communities.

Having lived in Vancouver, Calgary and Toronto before moving to Halifax I have a great appreciation for the beauty of this city. It has an historic and architectural heritage that is unparalleled in Canada except for perhaps old Quebec city. The backdrop of the second largest natural harbour in the World provides a setting that is to be envied. The established neighbourhoods on the peninsula are unequalled with the tall mature hardwoods, spacious and gracious gardens and with charming clapboard or brick homes, none of which are identical. There is much to be proud of with our communities, much to be treasured and we all have a responsibility to be progressive in a manner that is mindful of what can be lost if we are not diligent.

Lots have maximum house sizes in order to maintain a sense of proportion on the lot and in the neighborhood for a reason. I am advocating that in Halifax we have more to lose than most in not repeating the mistakes of others by allowing oversize house development on established lots.

I trust you will give this fair and thoughtful consideration.

Yours truly,

David & Elizabeth O'Carroll

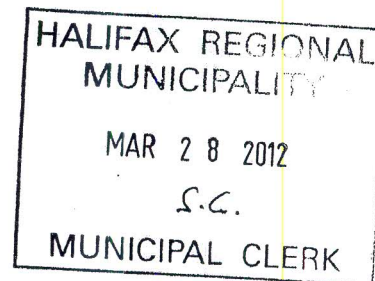
Cc Sue Uteck

cc: Andrew Faulkner
Sheilagh Edmunds

March 27, 2012

Andrew Faulkner,
Development Officer
Halifax Regional Municipality
Planning and Development - Central Region
P.O. Box 1749
Halifax NS B3J 3A5

FAX: 490 4661



Dear Mr Faulkner

Subject: Application for Variance - File 17594 - 1813 Armview Terrace, Halifax

I wish to appeal the Variance for 1813 Armview Terrace. The goal of my appeal is to maintain the character of our neighbourhood. Unless the planning office enforces its well thought out regulations our neighbourhood will be rapidly redeveloped into a collection of 6000+ sq ft modern homes with little to no yard.

As you are aware, both the by-laws and the HRM Charter stipulate that a lot between 9,000 and 11,000 square feet may have a home with a gross floor area of 4500 sq ft or an FAR of .45 * the square footage of the lot, whichever is greater. The proposed plan would increase the home size from the allowed 4500 sq ft to 6752 sq ft which is greater than twice the size of any of the surrounding homes. Clearly this is out of scale with the surrounding homes and will have a detrimental effect of the character of a HRM neighbourhood, known for its relatively modest traditional homes and open vistas.

My husband had called your office to discuss this variance. You emailed him back indicating your decision to approve was based on the notion that only 591 sq ft. was above grade. As you know, all livable area both above and below grade are included in the calculation of GFA. As well it is not clear how you defined above grade for your calculation. In reviewing the drawings for the proposed home, it appears all the new livable space will be either on the first or second floor and that no new basement structures will be added.

I ask that the planning committee uphold its regulations, refuse this variance and work to preserve the neighbourhoods of HRM that make this city such a desirable place to live.

Sincerely
Janna Ellsmere

Cc MLA Sue Ureck

Attachment B - Appeal Letter

Andrew Hamson

Mar 19, 2012

Re: Variance Approval, File No. 17594-1813 Armview Terrace, Halifax

Dear Mr. Andrew Faulkner:

Further to the letter notifying the adjacent landowners, dated March 12th of an approval to vary the above-noted property, and the ability to appeal said decision within 2 weeks, please accept this letter as my request for an appeal.

I have 4 primary concerns that I believe are sufficient to repeal this approval. They include the following:

1. I am somewhat perplexed why no notice was given to affected neighbours when such a request is made. It seems that in view of other development policies, there is ample opportunity for input by concerned citizens in advance of a major decision.
2. This variance request represents a drastic change that will impact, in a significant way, the style and character of the neighborhood. It has been documented that this neighborhood offers a nice balance of single-family homes with lovely gardens, trees and green space. I would argue that such a significant departure from the lot/home ratio currently permitted spells an end to this kind of neighborhood in Halifax. Currently there are no excessive monster homes dominating the streetscape. The move toward monster homes does not improve density or affordability and indeed seems to fly in the face of the prevailing wisdom within the Planning department at HRM.
3. The time span for appealing this decision seems unduly short and leaving the onus on the neighborhood to do this seems to be somewhat backward. Most neighbours are very understanding should a new homeowner wish to make reasonable improvements to their home but increasing one of the largest if not the largest home in the area by almost 50% using almost the entire lot seems completely out of sync with the rules of HRM. It just does not make sense.
4. This drastic change to the allowable square footage sets a dangerous precedent that will result in a neighborhood that will be for the uber rich. This kind of development in family-style neighborhoods in Vancouver made these homes and areas completely unaffordable to the average Vancouverite and ultimately resulted in much stricter lot/home ratios. I am not sure why we would want to repeat their mistakes.

I appreciate the opportunity to make this appeal and look forward to your response.

Best Wishes,

Andrew Hamson

Attachment B - Appeal Letter

Mar 26, 2012

Re: Variance Approval, File No. 17594-1813 Armview Terrace, Halifax

Dear Mr. Faulkner:

We would like to express our following concerns regarding the above request for a variance to 1813 Armview Terrace:

We live in a very unique neighborhood where all the backyards for 9 houses surrounding 1813 Armview Terrace are set up so that it is almost 1 common backyard being shared. 1813 Armview is in full view of all houses in this circle so that the addition will have a direct impact on all these houses.

The variance in living area is for 50% over the allowable as per HRM bylaws. We would not classify this as a minor variance. This is a major variance. We have a hard time understanding how HRM staff could recommend such a major change. Why is there HRM bylaws when staff approves a 50% increase in the living space area stated in the bylaws. This certainly cannot be within the intent of the bylaw. We are also in disagreement with the process at HRM where the onus is on the surrounding owners to appeal such a major variance in such a short amount of time.

This variance is setting a precedent for other houses in the future to do the same thing therefore the possibility of the neighborhood turning into a neighborhood of extravagant homes exists.

It appears to me that the houses on Armview Ave. to the north of the site are going to have their views of the Northwest Arm cut off as a result of this addition. In my opinion this is unfair not counting the fact that the value of their houses will be degraded as a result of the loss of this view.

Yours truly

Jim and Therese Francis



cc: Councillor Sue Uteck