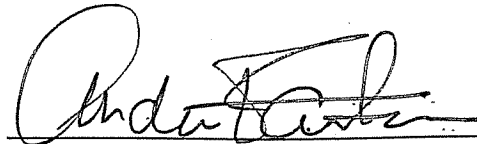


TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner, Development Officer

DATE: September 1, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application  
for a Variance – 5510-5514 Duffus Street, Halifax, Case No. 16855

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a variance from the side yard setback and lot size requirements of the Halifax Peninsula Land Use By-law to permit the conversion of a two (2) unit dwelling to a three (3) unit dwelling in the R-2, General Residential Zone,

**RECOMMENDATION**

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

## **BACKGROUND**

An enforcement investigation found the building at 5510-5514 Duffus Street contained a three (3) unit dwelling. HRM records indicate the authorized use is a two (2) unit dwelling. The property is located within the R-2 General Residential Zone of the Halifax Peninsula Land Use By-law. The zone permits the use with conditions.

Upon receiving notification of the by-law contravention, the owner applied for a variance on March 20, 2011 to authorize the additional dwelling unit. On May 31, 2011 the Development Officer refused the variance and the applicant subsequently appealed on June 9, 2011.

## **DISCUSSION**

The property owner has owned the building since the late 1970's. The owner states the building has not changed much since then, although he did believe he added the third unit in the 1980's or early 1990's. HRM records indicate that a building permit was issued in 1996 to change from hip roof to gable on rear extension, size 6' X 12'. Insulate and gyprock existing attic space and construct 2<sup>nd</sup> floor deck, size 7' X 12'. The application states there were two (2) units at the time. The applicant has stated the third unit is one big room in the attic with a bedroom partitioned off.

The present By-law requires a six (6) foot setback from the side property line for three (3) unit dwellings. The building is three (3) feet from the side property line. A three (3) foot variance from the right side lot line was therefore requested. The owner states it is impossible to acquire three (3) feet from the neighbouring property owner as that property would subsequently not meet the minimum lot size requirements.

Furthermore, lots having three (3) dwelling units are required to have a minimum of 8,000 square feet lot area. The lot only has 5,220 square feet. A variance of 2,780 square feet was requested.

The HRM Charter stipulates the criteria against which a variance must be evaluated. The variance may not be granted where the:

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

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

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

The variance for the setback does not violate the intention of the Land Use By-law. The intention of the side yard setback is to provide an aesthetic quality of property development, for safety reasons, to allow for other practical amenities on the property (parking, open space), and to allow access to the rear yard. However this lot has access on three sides, Duffus Street, Novalea Drive and Sebastian Back Lane. A three foot setback would have no effect on access to the property.

The intent of the larger lots is to maintain a certain density in the neighbourhood by requiring larger lots if a building has additional units. By allowing three units on a lot having 5,220 square feet violated the intent of the Land Use By-law as it increases the density of the neighbourhood.

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

Site inspection of the neighbouring area found that residential buildings had varying setbacks and lot areas. This was not a consideration for refusal.

**Does the difficulty experienced result from an intentional disregard of the by-law ?**

As the conversion of the building occurred over a decade ago we are unable to determine whether the violation was intentional. This was not a consideration for refusal.

**BUDGET IMPLICATIONS**

There are no budget implications related to this variance.

**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. If the Variance request is appealed a public hearing is held with is the opportunity for residents (within 30 meters) to speak to staff recommendation.

### ALTERNATIVES

Council can uphold the decision of the Development Officer and deny the Variance requested. This is the recommended action.

Council can overturn the decision of the Development and grant the Variance.

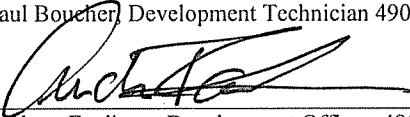
### ATTACHMENTS

1. Location map.
2. Site Plan
3. Refusal letter.
4. Appeal letter.

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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: Paul Boucher, Development Technician 490-4321

Report Approved by:   
Andrew Faulkner, Development Officer, 490-4416

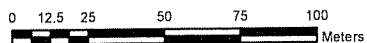
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## Attachment 1



Subject Property



**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services

HRM does not guarantee the  
accuracy of any base map  
information on this map

VEHICLE RIGHT OF WAY TO DUFFUS STREET

NOVALEA DRIVE

59'

PARKING  
AREA CAR

ENCLOSED  
STAIRWELL

DAVID COMEAU  
5510 5514 DUFFUS

8'

CIVIC 5510 - 5514  
ZONING R 2



- DUFFUS STREET -

Attachment 2  
Site Plan

**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services

HRM does not guarantee the accuracy of any base map information on this plan



COMMUNITY DEVELOPMENT - EASTERN REGION

May 31, 2011

Mr. David Comeau  
26 Kermit Lane  
Windsor Junction, NS  
B2T 1G7

Dear Mr. Comeau,

**RE: Variance # 16855 - 5510 & 5514 Duffus Street, Halifax, NS, PID - 00014837**

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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** as follows:

<b>Location</b>	5510 - 5514 Duffus Street, Halifax, NS, PID 00014837
<b>Project Proposal:</b>	Convert existing 2 unit building to 3 units.
<b>Required:</b>	6 foot side yard setback. 8000 square foot lot.
<b>Variance Requested:</b>	3 foot side yard setback. 5220 square foot lot.

Section 251 of the **HRM Charter** 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: (a) the variance violates the intent of the Land Use Bylaw

Pursuant to Section 251(4) of the **HRM Charter** 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 Erin MacIntyre, Development Officer  
Halifax Regional Municipality  
Development Services - Eastern Region  
P.O. Box 1749  
Halifax, NS B3J 3A5

Attachment 3

Your appeal must be filed on or before June 10, 2011.

If you have any questions or require additional information, please contact Paul Boucher, Development Technician at 490-4321.

Sincerely,



Erin MacIntyre  
Development Officer

cc. Cathy Mellett, Municipal Clerk  
Councillor Jerry Blumenthal, District 11



June 9 2011

To Emil Macdure  
Development officer

I am appealing the decision of  
the development officer on Varro 16855  
5510 & 5514 Dupas. I believe adding  
a third unit is in keeping with HRM's  
goals to increase density on peninsula  
providing affordable housing and not adversely  
affect neighborhoods. Also see sheet of information  
attached to original application.

Yours Truly  
David L. Coe

902-861-3739

Date: March 15, 2011

Attachment to Variance Application: To legalize existing third floor one bedroom unit in building.

5510 Duffus Street  
Halifax, Nova Scotia

An application for a variance request can not be avoided due to lot area being undersized.

This Hydrostone building was constructed in around 1918 just after The Halifax Explosion in December of 1917. From the way these stone block building have survived and grew into a unique city community says a lot for its planners and residence who have made it a wonderful residential community.

Over time our City Grew along with its population demands. This included roadways and a need for density developments. This subject property which is situated on a very busy street corner has been plagued with traffic problems as well as snow issues during winter. Duffus Street, Novalea Drive and Devonshire carry a high volume of traffic including a constant flow of heavy truck and bus traffic. It is a main downtown traffic route with wide very busy multi-lane roadways needed to accommodate large volumes of street traffic as well as pedestrians. This is one reason that makes this location less than ideal for families with children. It is therefore difficult to attract suitable tenants who would normally occupy a large flat with four bedrooms. For this reason it would be best if a third unit could be permitted. Addition of a third floor one bedroom unit would split existing second floor flat into two more much more attractive units. These units may be more favoured by single or adult professional working people. Building volume would not increase as space is already in place. Parking is ample and would not cause any problems for existing neighbourhood as things would remain the same as they presently are.

Page two

Until Halifax Regional Municipality started looking after street ploughing on major bus routes snow was a tremendous problem. Five lanes on five corners with sidewalks directly beside roadway meant that street ploughs constantly piled snow onto pedestrian sidewalks making walking difficult and clearing almost impossible. A backhoe-front end loader was required to remove snow accumulations caused by street ploughs on many occasions at tremendous cost.

Although renting to students would fill this large unit it is not my feeling that such a use for this building would best suit this residential area. It is my preference to keep units small compact and attract quiet long term residents in keeping with general neighbourhood style of living.

I have owned this build since late seventies and have grown up in north end Halifax so have a pretty good knowledge of how things progressed over time and the need for quality affordable housing within easy commute of work and downtown core.

Since everything presently exists no structural changes, building additions or major modifications should be necessary that would make any change to building's present use or looks. The building looks today pretty much as when it was built some 93 years ago with stone work still visible and in remarkable condition.

When you look at surrounding land use; across the road is a large commercial centre, a Drug Store, Doctors offices, shops grocery stores etc. To the south east on Nova Lea there is a mixture of single residential as well as four unit buildings located on small lots. An array of attached town houses make up a large part of Hydrostone city blocks. Most of these town house units have been modified and have added to especially to third floor attics including dormer build outs.

A recent proposal by HRM planner to create a "Round About" at Devonshire Ave, Novalea Drive and Duffus Street intersection created an anxious period. This roadway change may have resulted in expropriation of subject property as well as others to construct such a traffic flow system. Near by property owners and tenants who seek long term residency certainly don't want to hear possibilities of drastic construction noise and a threat of being forced to move. Certainly one can understand simply talking of a proposed round about with subject property on target would create some thoughts of moving out or not moving in.

Noise from a constant flow of vehicular traffic including heavy trucks and sirens from nearby fire, rescue and ambulance station are also a deterrent and certainly a detraction to would be tenants and property purchasers.

It is for these reasons that I hope to obtain an occupancy permit for third floor apartment. Smaller units appeal to a greater population especially singles or couples providing much needed safe affordable housing in a growing city.

5510-14 Duffus Street has been a rental property for at least 50 years perhaps longer. These units provide affordable rent, decent living accommodations being ideally located with easy commute to work and all amenities. Property location being right on an extremely busy intersection would not easily lend itself to an owner occupied dwelling as reduced marketability would definitely be an issue given many less than appealing factors mentioned here.

Subject property represents one of the four corners of Hydrostone district. Of these four two is Young St. which are already commercial in use. The other is on a much less busy intersection at Duffus and Ilsville leaving subject property on the busiest traffic corner of entire Hydrostone district.. Young St. is one way street across its commercial Hydrostone block.

Page four

5510-14 Duffus is much less attractive to families with children due to very busy traffic intersection. With all issues considered renting units and keeping long term tenants is sometimes difficult.

One other notable difference comparing this building with other Hydrostones is that it has no green boulevard. All the other places including Young Street commercial district have wide green areas which are attractive. A green treed park setting is much more appealing to look at than 16 lanes of noisy, smelly intersecting traffic, dark asphalt, constant truck and automobile tail pipe emissions and a commercial parking lot.

A property of this sort offers very little in outdoor privacy such as a yard or deck space for its residents. You can't even here yourself talk because of traffic noise, honking or car horns and amplifications of very loud music as vehicles wait for traffic signal change.

Due to difficulty with location, noise etc there is difficulty attracting long term tenants. Turn over is unusually high for reasons listed.

If you had a choice would you want to make your family home under these conditions?

A rental building it will likely stay.

I am just hoping to make the best of a difficult situation.

Thanks for your concerns and reviewing this matter.

David Comeau  
Property Owner