



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

8.2.1

Peninsula Community Council

March 5, 2012

TO: Chair and Members of Halifax Peninsula Community Council

SUBMITTED BY: Kaur Masaul
For: Brad Anguish, Director, Community and Recreation Services

DATE: February 6, 2012

SUBJECT: Case 17453: Appeal of Variance Refusal, 6289 Jubilee Rd., Halifax

ORIGIN

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

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance at 6289 Jubilee Road, Halifax.

BACKGROUND

The subject property at 6289 Jubilee Road, Halifax, is zoned R-2 (General Residential) and is located within the Peninsula Centre Secondary Plan Area under the Land Use By-Law for the Halifax Peninsula. The current authorized use of the property is a two unit dwelling.

In June 2008, a Minimum Standards (By-law M-100) complaint was received concerning this property and the complainant indicated there were three dwelling units present in the building. A review of HRM's permit records showed that the authorized use of the property is a two unit dwelling. A follow up site inspection by staff confirmed the building, in fact, contained three dwelling units and a land use compliance file was opened to investigate the unauthorized third unit. In August 2008, in response to an HRM Notice to Comply, a permit application was filed by Cygnet Properties to renovate a three unit dwelling.

The R-2 Zone allows residential properties to be developed for as many as four units, provided all requirements of the Zone are met. The permit application was reviewed and refused based on non-compliance with the Zone requirements as follows:

| | <u>Required</u> | <u>Proposed</u> |
|----------------------------------|------------------------|------------------------|
| Minimum Lot frontage: | 45 | 44 |
| Minimum Lot area: | 5,000 sq ft | 4,500 sq ft |
| Minimum Right Side yard setback: | 6 feet | 3.6 feet |

No appeal of the permit refusal was received. The land use compliance file has been open and unresolved since 2008. On December 12, 2011, a variance request was filed by the land owner, Cygnet Properties. The variance was refused by the Development Officer on December 29, 2011 (see Attachment 1), and an appeal of the refusal by the owner (see Attachment 2) was received on January 11, 2012.

DISCUSSION

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 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?

Throughout the Land Use By-law, density is directly or indirectly controlled by lot area requirements. Staff believe the intent of the regulations is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard requirements of the R-2 Zone for minimum lot area is 4000 square feet for single unit dwellings, 5000 square feet for duplexes, and 8000 square feet for three and four unit buildings. Side lot line setbacks are increased as density increased, from 4 feet to 6 feet. For low density residential development, it is clear the By-law intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas and greater open space between the buildings and the lot line. Within these standard requirements, there are also a number of exemptions that reduce these requirements based on the character of sub-areas throughout the peninsula area of the city. In the case of the subject property, the standard requirements have been reduced, through the Peninsula Centre Secondary Plan, to allow a minimum lot area of 5000 square feet with 45 feet of frontage for a three unit building. In every case, for low density residential development, it is clear the By-law intends to restrict higher number of dwelling units to lots with comparatively larger lot areas.

Given that the intent of the by-law in this case is clear, and noting that buildings in this area are already subject to reduced requirements, the Development Officer believes that further reduction to allow additional units would violate the intent of the By-law.

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

The difficulty experienced is general to the area. All of the lots in the notification area are similar in frontage, lot area and in established setbacks. Based on provincial mapping, 27 out of 32 properties in the immediate area have lot areas of less than 5000 square feet. Twenty-five of them would likely not meet the required side yard setback. Based on this, 84% of the 32 properties would require a variance to allow them to be converted from a single or two unit dwelling to a three unit dwelling. Therefore, the difficulty experienced is seen to be 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?

Cygnnet Properties purchased this property in 2002. HRM's records do not indicate that a zoning letter, confirming the authorized use of the property, was obtained by Cygnnet Properties. In June 2008, Cygnnet Properties was made aware of the violation and, as of this date, the land use compliance case remains open as the violation has not been corrected. As a permit was not sought for the third dwelling unit, some of the difficulty experienced can be attributed to intentional disregard for the requirements of the land use by-law.

Conclusion

In summary, staff has reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined that the proposal did not meet any of the three criteria for variance approval as set out in the *HRM Charter*.

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 has been appealed, a hearing is held by Community Council to provide the opportunity for the Council members to hear from the applicant and assessed land owners within 30 metres of the subject property.

ALTERNATIVES

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

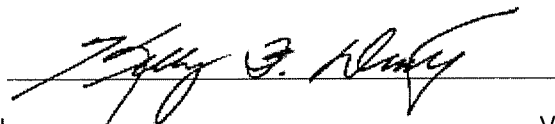
ATTACHMENTS

Map 1: Site plan
Map 2: Location Map
Attachment 1: Variance Refusal letter
Attachment 2: Applicant's Letter of Appeal

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

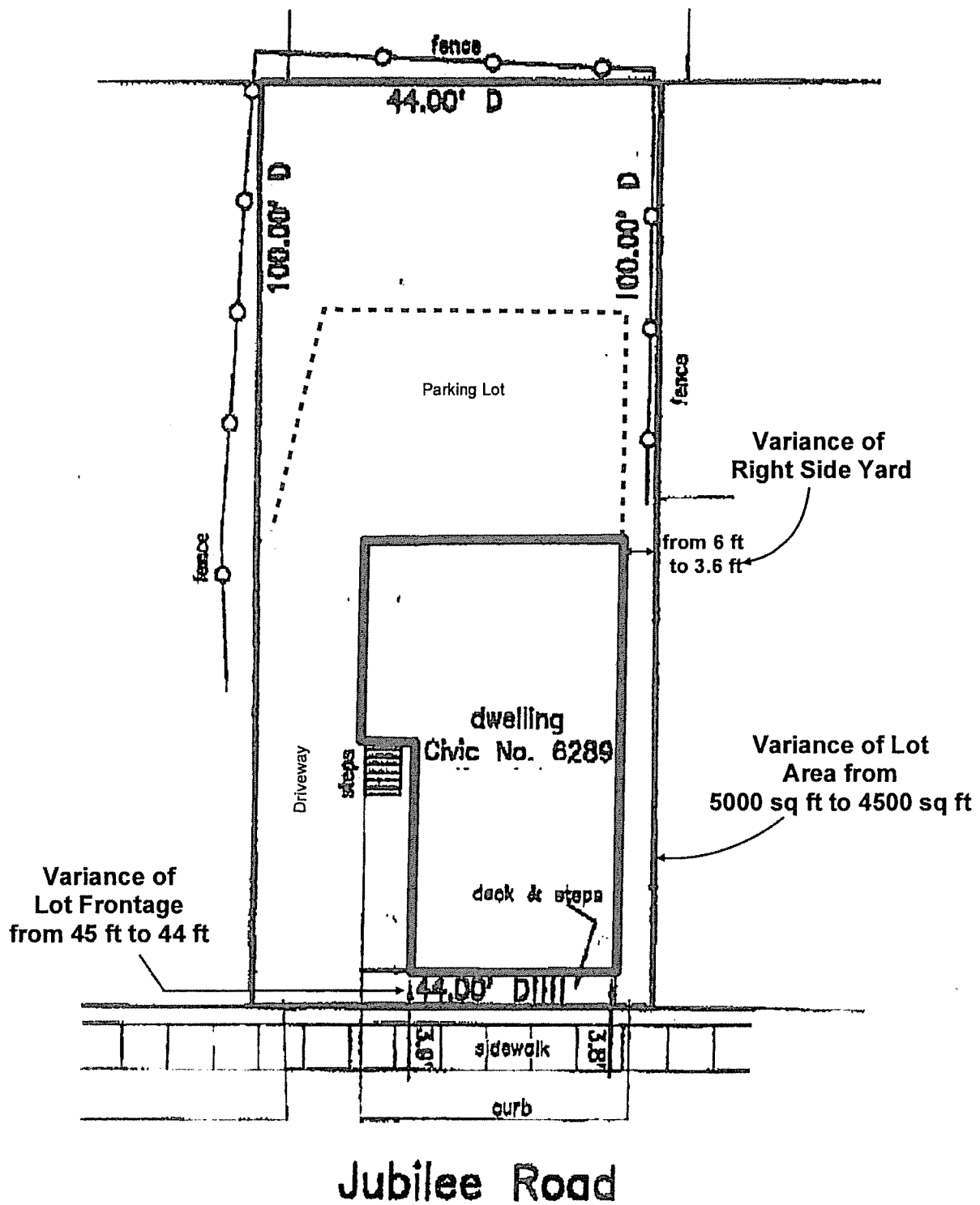
Report Approved by:



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- Variance 6289 Jubilee Road

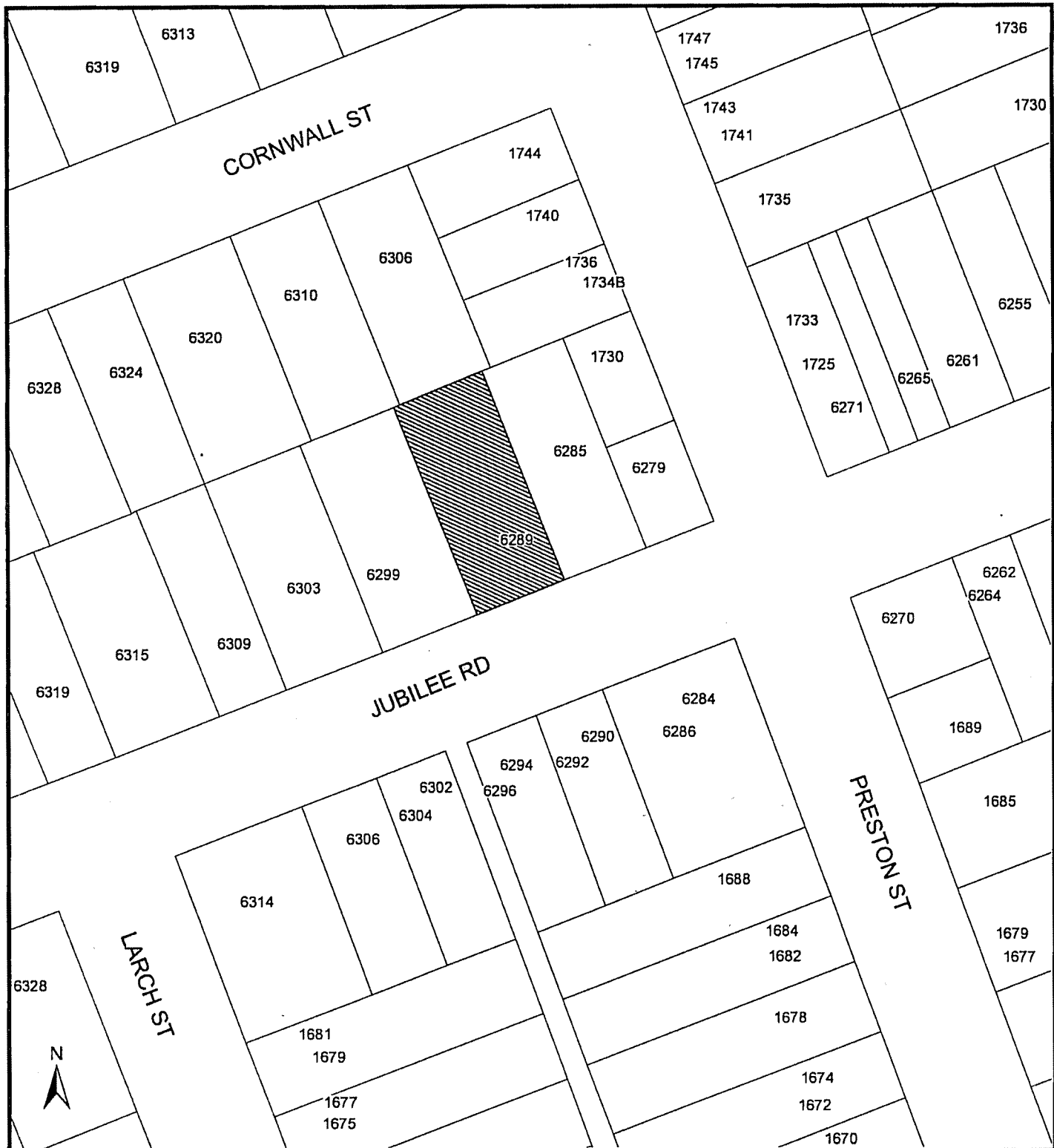
Kelly Denty, A/Manager, Development Approvals, 490-4800



Map 1
Site Plan

HALIFAX
REGIONAL MUNICIPALITY
Community Development & Recreation
Development Services

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



Map 2 Location Map



Subject Property

HALIFAX
REGIONAL MUNICIPALITY
Community Development & Recreation
Development Services

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

January 13, 2012

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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Attachment 1

December 29, 2011

Attention: Mr. J. Taylor
Cygnets Properties Limited
187A Bluewater Road
Bedford, N.S. B4B 1H1

Dear Mr. Taylor,

**Re: Variance Application No. 17453
Property at 6289 Jubilee Rd, Halifax**

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

| | |
|----------------------------|---|
| Location: | 6289 Jubilee Rd, Halifax |
| Project Proposal: | To convert a 2 unit to a three unit dwelling |
| Variance Requested: | Vary right side yard setback from 6 ft. to 3 ft. 6 inches |
| | Vary lot area from 5000 sq ft to 4,500 sq ft |
| | Vary lot frontage from 45 ft to 44 ft |

Section 250 (3) of the **Halifax Regional Municipality Charter 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; (b) the difficulty experienced is general to properties in the area, and (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw, therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter 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:

.../2

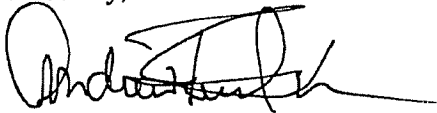
Page 2
December 29, 2011
Cygnets Properties

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

Your appeal must be filed on or before *January 11, 2012*.

If you have any questions or require additional information, you may contact Brenda Seymour at 490-3328.

Sincerely,

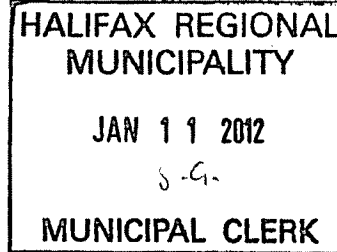


Andrew Faulkner
Development Officer

cc Cathy Mellett, Municipal Clerk
Councilor Sue Uteck (District 13)

Cygnet Properties

Mr. Andrew Faulkner, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Development Services – Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5
Dear Mr. Faulkner:



10 January 2012

Re: Variance Application No. 17453 – Property at 6289 Jubilee Road, Halifax

Thank you for your letter of December 29, 2011, providing your decision on my Variance application for 6289 Jubilee Road. I wish to appeal your decision. Please include the following information in your report to Community Council.

I have submitted an application that I believe is a reasonable request and is eligible to be approved. If you were going to test how well a particular land use complies with a neighbourhood, I would think that the fact that I have operated this building as 3 dwelling units for 9 years without complaint, and, beyond that, the two immediate neighbours have provided me with letters of support for this application to secure the 3 units, it appears to me that this building would pass that test with flying colours. What better test can there be than the opinion of the immediate neighbours?

However, I know that the Development Officer and Community Council are interested in the tests of the HRM Charter. I have provided my thoughts on these tests below:

1. Compliance with the intent of the land use bylaw
 - a. There are adequate side yards to provide an aesthetic quality of property development, contribute to safety, allow for other practical amenities on the lot (parking, open space) and allow access to the rear yard;
 - b. Both immediate neighbours have written letters(attached) in support of the application; and,
 - c. The lot frontage is only 1 foot deficient and the lot area is only 12% deficient and provides adequate rear yard open space and parking area. This is completely consistent with the intent of section 43E of the Land Use Bylaw to permit conversion of buildings to 3 units on lot areas and frontages well below the standard for much of the rest of Peninsula Halifax.
2. The difficulty experienced is not general to properties in the area
 - a. The neighbourhood is comprised of a variety of setbacks and lot areas and building sizes;
 - b. The two adjacent dwellings are well set back from the street versus the subject property that is built to the street line; this provides openness between buildings not common in the neighbourhood; and,

- c. The neighbourhood contains a mix of residential, local commercial and institutional uses and the local residential buildings have a variety of setbacks and lot areas and building sizes.
- 3. The difficulty experienced did not result from an intentional disregard for the requirements of the land use bylaw
 - a. I bought the building as a three unit building in 2002;
 - b. Prior to acquiring the building, I commissioned a property appraisal report which described it as a 'Three Unit Family Residential Property';
 - c. I operated the building for 9 years without incident; and,
 - d. Following an HRM inspection, I made one alteration to meet the National Building Code. The inspector subsequently told me I did not have a permit for the third unit. This is when I became aware of the status of the unit.

Here is some additional detail on the points above.

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

Side Yards

The variance for the side yard setback does not violate the intent of the Land Use Bylaw. Side yard setbacks provide an aesthetic quality of property development, contribute to safety, allow for other practical amenities on the lot (parking, open space) and allow access to the rear yard. In this case, there is a larger than normal setback on the west (left) side of the dwelling which provides more than adequate access to the rear of the property for parking and open space.

The subject building is sited right on the street line whereas the adjacent two dwellings are well set back from the street on the side nearest to the subject building. This creates openness between buildings at the side yard.

Lot Frontage and Area

The variance for the lot frontage and area do not violate the intent of the Land Use Bylaw. The minimum lot size is established to maintain a certain density in the neighbourhood. This has been detailed in the Peninsula Centre Planning Strategy and the Peninsula Bylaw. Sections 1.5, 1.5.1 and 1.5.2 of the Halifax Secondary Planning Strategy, Peninsula Centre Area (see below), provide for a mix of housing units including apartment accommodation through conversions or additions. This has been implemented in the Land Use Bylaw through the use of Halifax Peninsula Bylaw section 43E. This connection between Plan Policy and Bylaw implementation clearly shows the intent of the Bylaw to permit conversion of buildings to 3 units on lot areas and frontages well below the standard for much of the rest of Peninsula Halifax. The table below shows the differences in minimum lot area and lot frontage requirements between the Peninsula in general and Peninsula Centre specifically. The lot area and lot frontage of the subject property is very close to the reduced requirements for Peninsula Centre and meets the intent of the Plan and Bylaw.

Land Use Bylaw Comparison Table – R-2 Requirements

| Land Use Bylaw Control | R-2 Peninsula | R-2 Peninsula Centre | Subject Property |
|-------------------------------|----------------------|-----------------------------|-------------------------|
| Minimum Lot Frontage (ft.) | 80 | 45 | 44 |
| Minimum Lot Area (sq. ft.) | 8000 | 5000 | 4400 |

Excerpt from the Halifax Secondary Planning Strategy, Peninsula Centre Section

1.5 Areas shown as medium-density residential on the Future Land Use Map of this Plan shall be regarded as family-oriented neighbourhoods which provide a mix of predominantly family housing units in single-family dwellings, semi-detached dwellings, duplexes, and, where appropriate, rowhousing and buildings which, **through conversions or additions, provide apartment accommodation.**

1.5.1 In areas designated as medium-density residential areas, two family-type housing units shall be required for each non-family-type housing unit in each building, except as otherwise provided for by Policies 1.5.4 and 1.7 of this Plan.

1.5.2 For those areas designated as medium-density residential on the Future Land Use Map of this Plan, the City shall amend its zoning by-laws **to permit interior conversions of or additions to existing buildings to permit up to a maximum of four dwelling units**, provided that two family-type dwelling units are provided for each non-family-type dwelling unit, and provided that:

- (a) this provision shall apply only to buildings existing on the date of adoption of this By-law;
- (b) one unit shall be permitted where the lot size is less than 3,300 square feet; two units where the lot size is between 3,300 and 5,000 square feet; three units where the lot size is between 5,000 and 6,000 square feet; and a maximum of four units where the lot size is greater than 6,000 square feet;
- (c) 300 square feet of open space shall be provided per family-type unit and 50 square feet of open space per non-family-type unit;
- (d) for buildings with more than two units, one parking space shall be provided per family-type unit and one parking space shall be provided for every two non-family-type units;
- (e) no parking shall be permitted in front yards; and
- (f) no part of the addition, if any, shall exceed the height of the existing structure.

2) Is the difficulty experienced, general to the properties in the area?

The difficulty experienced is not general to the properties in the area.

1. From a review of the neighbourhood via Bing Maps (attached) and Explore HRM mapping (attached), local residential buildings have a variety of setbacks and lot areas and building sizes;
2. The neighbourhood accommodates a mix of land uses including a variety of residential uses, neighbourhood commercial and institutional; and,
3. As noted above the relationship of this building with its immediate neighbours, small versus large setbacks respectively, creates a great openness between the buildings which is unique within the neighbourhood.

3) Does the difficulty experienced result from an intentional disregard of the bylaw?

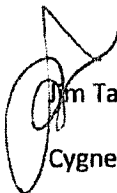
The conversion to three units occurred before Cygnet acquired the building; it was not done by Cygnet. Here is a brief history of events:

1. Cygnet acquired the building in 2002 as a 3 unit building;
2. Cygnet operated the building as a 3 unit building with no issues for 9 years;
3. One tenant, on termination of the lease, requested an inspection of the unit by HRM;
4. HRM inspected the unit and recommended an alteration to the ceiling height in one part of the unit to meet National Building Code and be eligible for a permit;
5. Cygnet completed the recommended work;
6. The inspector returned and advised that the building had a permit for two units and the third unit could not be approved; and,
7. Cygnet proceeded with the Variance application.

The Neighbourhood

Finally, as I noted above, Cygnet spoke with and received letters of support from the two immediate property owners. The letters are attached. I feel that this proves how the use as 3 units fits in with the neighbourhood and should be approved.

Sincerely,



Jim Taylor
Cygnet Properties

To whom this letter may concern,

I live at 6285 Jubilee Road. My family and I have lived here for over 13 thirteen years, my neighbours on both sides of my house are very respectful, and the tenants are quiet, no noise, no garbage, I do not object to the fact that there are 2 or 3 small apartments in the building beside me; please call me if you need confirmation of this letter.

Regards,

Elinor Egar Reynolds

Diane Ashworth

To Whom it may Concern,
Re: 6289 Jubilee Rd.

My family home has been
at 6299 Jubilee Rd. for
over 15 years. I have
not had an issue with
the property next door
to me in all these years.
They are very courteous
tenants and the landlord
has always kept the property
in great condition. I hope
this helps in rendering a
decision. Diane Ashworth

Bing Map view – 6289 Jubilee Road is in the centre of the image, immediately to the left of the marker



Explore HRM View showing the variety of setbacks, yards, building and lot sizes and land use; 6289 Jubilee Road is in the centre of the image and is indicated by the arrow.

