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Peninsula Community Council
April 12, 2010

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: March 31, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 6266 Lawrence Street, Halifax, NS

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot area, lot coverage and Gross Floor Area requirements of the Halifax Peninsula Land Use Bylaw to permit the construction of a single family dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 6266 Lawrence Street in Halifax (see Attachment 1 - Location Plan). The property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use By-law. The property is located within the Peninsula North Secondary Plan Area 1.

The applicant visited Development Services on several occasions in late January of this year, inquiring as to the legal status of the lot. He had a copy of a retracement plan of the old Halifax Riding Grounds (see Attachment 2- 1898 Retracement Plan), that showed the lot at that time. It had at some point since been consolidated with the neighbouring property at 6262 Lawrence Street, but there was no evidence of the instrument that achieved this consolidation in the recorded documents on the title of the property. The applicant contacted the Land Registration Office, and they assigned a property identifier and recognized the lot as an existing one. The lot sits vacant now, with its original area of 2,700 square feet and original frontage of 30 feet. The Peninsula Land Use Bylaw allows construction of single unit dwellings on lots with a minimum area of 3,000 square feet. The applicant was made aware that a variance would be required for the lot area, and told a permit review was advisable to be sure the rest of the land use bylaw requirements would be met by their proposal.

On February 8, 2010, the applicant made a construction permit application for a single family dwelling on the lot. The proposed single family dwelling did not meet the minimum lot area requirement, the maximum lot coverage requirement and the Gross Floor Area requirement, as follows:

	Requirement	Proposed
Minimum Lot Area	3,000 sq ft	2,700 sq ft
Maximum Lot Coverage	35%	35.2%
Maximum GFAR	2025 sq ft	2435 sq ft

DISCUSSION

The *Halifax Regional Municipal Charter* sets out guidelines under which the Development Officer may consider variances to Land Use By-law requirements. Those guidelines are as follows:

“A variance may not be granted where the:

- (a) variance violates the intent of the land use by-law;*
- (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 by-law.”*

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.

Lot Area

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

The applicant is proposing to construct a single family dwelling on a lot that does not meet the area requirements of the land use bylaw. The reduction is from the required 3,000 square feet to the 2,700 square feet. The lot area sizes are reduced to 3,000 square feet for construction of single family dwellings to provide for the smaller lot sizes typically found within the Peninsula North Area 1, in order to prevent undevelopable lots. While it's boundaries have only recently been reinstated by the Province, it's really recognition of the fact that the lot should always have existed. This lot was in existence pre-1898 and requires the same consideration as other lots within Pen North Area 1. Further, the lot area reduction is by 300 square feet, to 2,700 square feet, which is not excessive. The requested variance to the lot area requirement does not violate the intent of the land use bylaw.

Is the difficulty experienced general to properties in the area?

The lot is the only vacant lot in the neighbourhood, and as such, the difficulties experienced in meeting the lot area requirement are specific to this lot only. Any other buildings are existing and their repair, enlargement and reconstruction are covered by the HRM Charter.

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

There is no intentional disregard for the requirements of the land use bylaw.

Lot Coverage

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

The lot coverage is set at a maximum of 35%. The applicant is proposing a lot coverage of 35.2%, representing an additional 5.4 square feet of the lot covered by structure. This is so minimal that it is not considered a violation of the intent of the lot coverage requirement.

Is the difficulty experienced general to properties in the area?

The requested relaxation of the lot coverage requirement is very minimal. Other properties in the neighbourhood may request a variance to the lot coverage requirement if they were to add to their structure, but it is unlikely that they would be requesting to increase it by such a small amount.

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

There is no intentional disregard for the requirements of the land use bylaw.

Gross Floor Area

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

The applicant is proposing to increase the GFA of the home from the 2025 sq ft permitted (0.75 of the lot area) to 2435 sq ft. The GFA is intended to be a control on the mass and volume of the building. While the height requirement is being adhered to (34.94 feet), and is not in question as part of the variance, the home will be three full storeys above grade; ½ storey to 1 full storey larger

(increase in mass) than the adjacent homes in the neighbourhood. (See Attachment 3 - Adjacent Homes). It is a far stretch to reduce the lot size and increase the GFA of the home. And while for the lot coverage the difference requested is marginal, for the GFA an increase of 410 sq ft is a lot, especially when one considers the intention of the regulation and the relative mass and volume of the adjacent buildings. **The proposed increase in the allowable Gross Floor Area of the proposed single family dwelling violates the intent of the land use bylaw.**

Is the difficulty experienced general to properties in the area?

If any of the current homes were to renovate to lower a basement floor, or add a storey, they may encounter the same difficulty. As the housing stock is currently, the homes are either under the Gross Floor Area requirements, or are over and considered non-conforming. Any additions or renovations that increased the Gross Floor Area would be subject to the same scrutiny as that proposed in this variance.

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

There is no intentional disregard for the requirements of the land use bylaw.

As the application to increase the Gross Floor Area requirement violates the intention of the Land Use Bylaw, the application has been **refused**.

The applicant filed an appeal of the refusal on March 18, 2010 (see Attachment 7 -Appeal Letter).

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.

ALTERNATIVES

1. Council could overturn the decision of the Development Officer and approve the variance.
2. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.

ATTACHMENTS

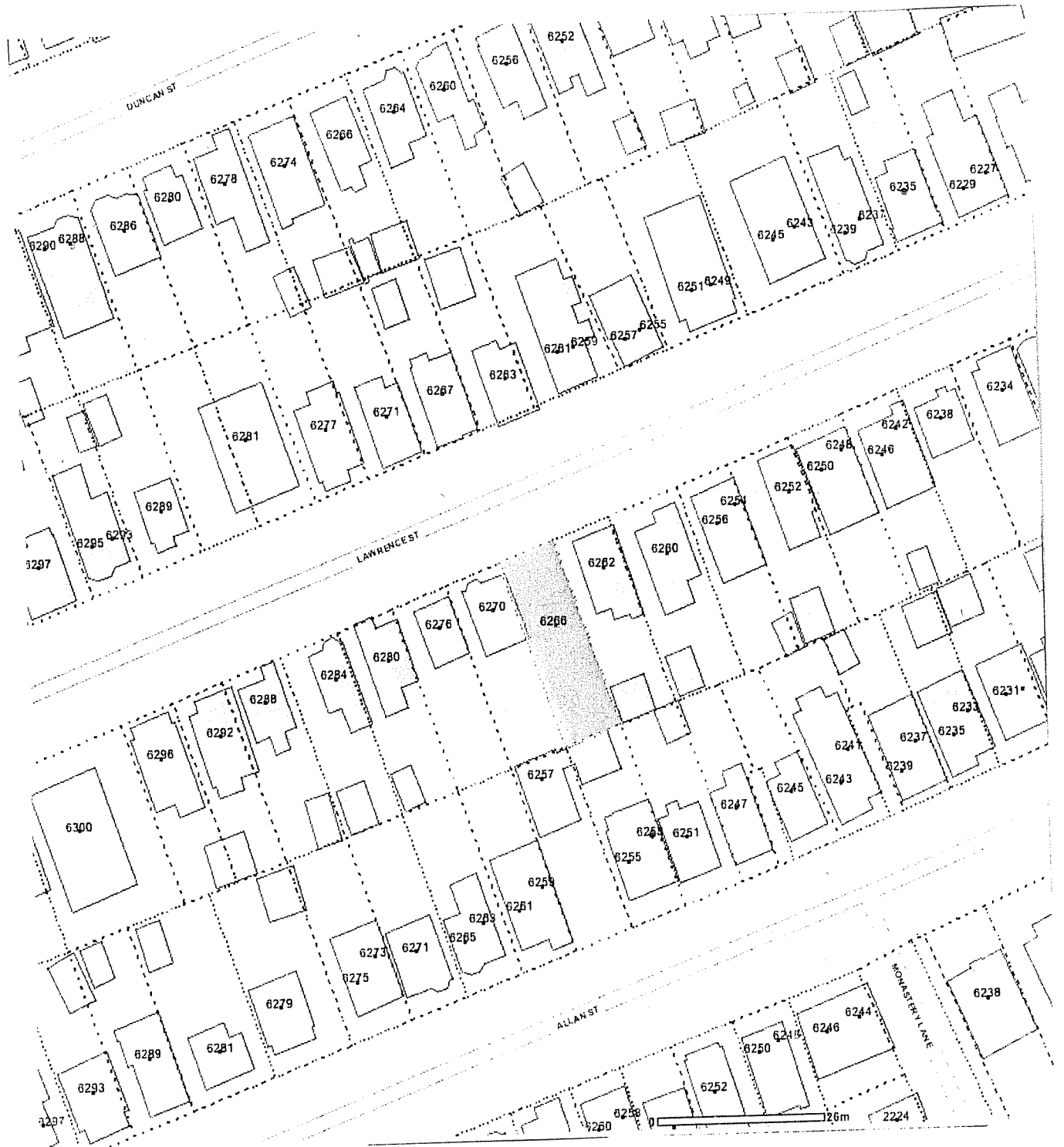
1. Location Plan
2. 1898 Retracement Plan
3. Adjacent Homes
4. Site Plan
5. Elevations (Front & Rear)
6. Elevations cont. (Sides)
7. Appeal Letter

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: Steven Higgins - Development Officer (490-4402)

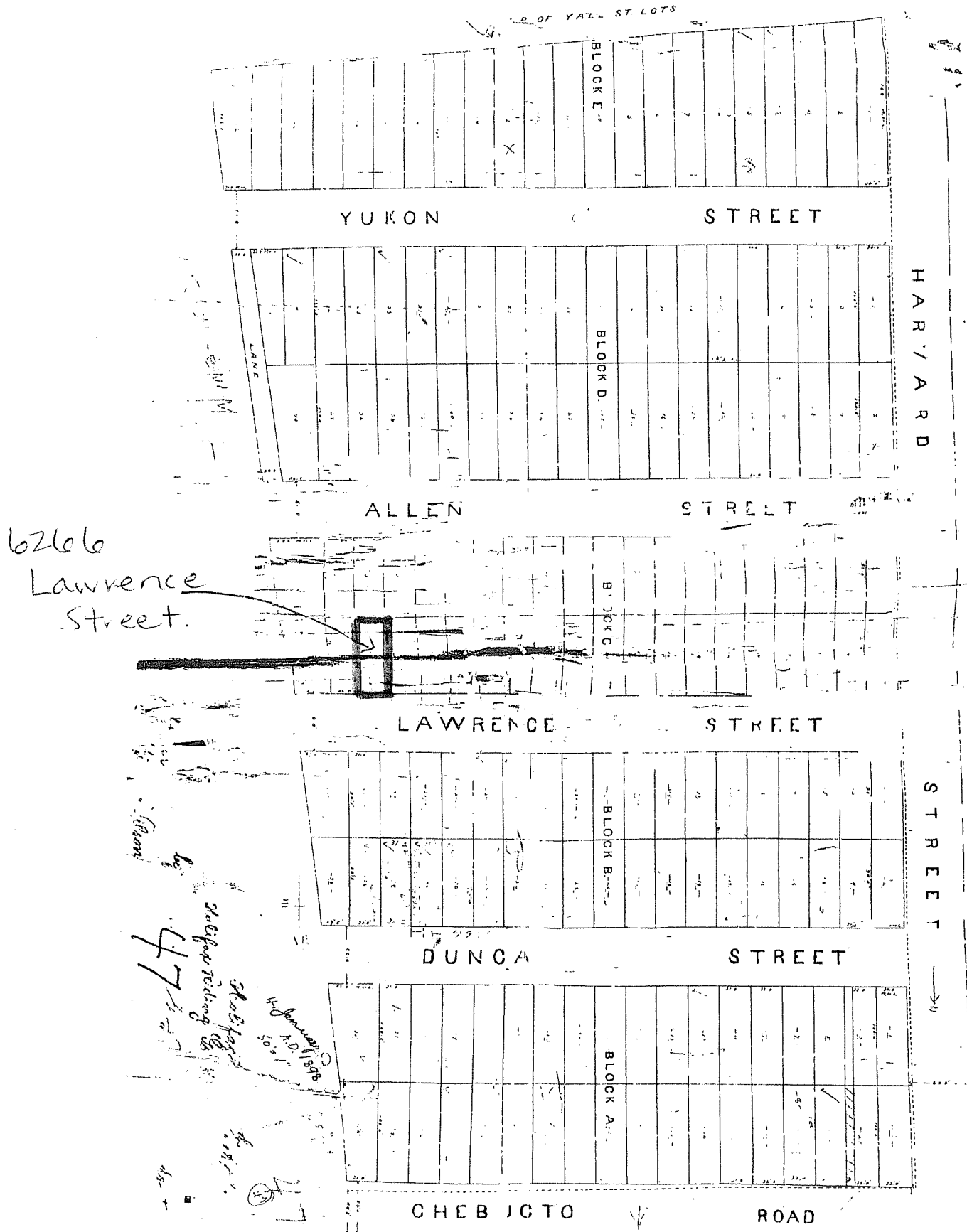
Case No. 15941- Variance at 6266 Lawrence Street

Attachment 1- Location Plan



Case No. 15941- Variance at 6266 Lawrence Street

Attachment 2- 1898 Retracement Plan



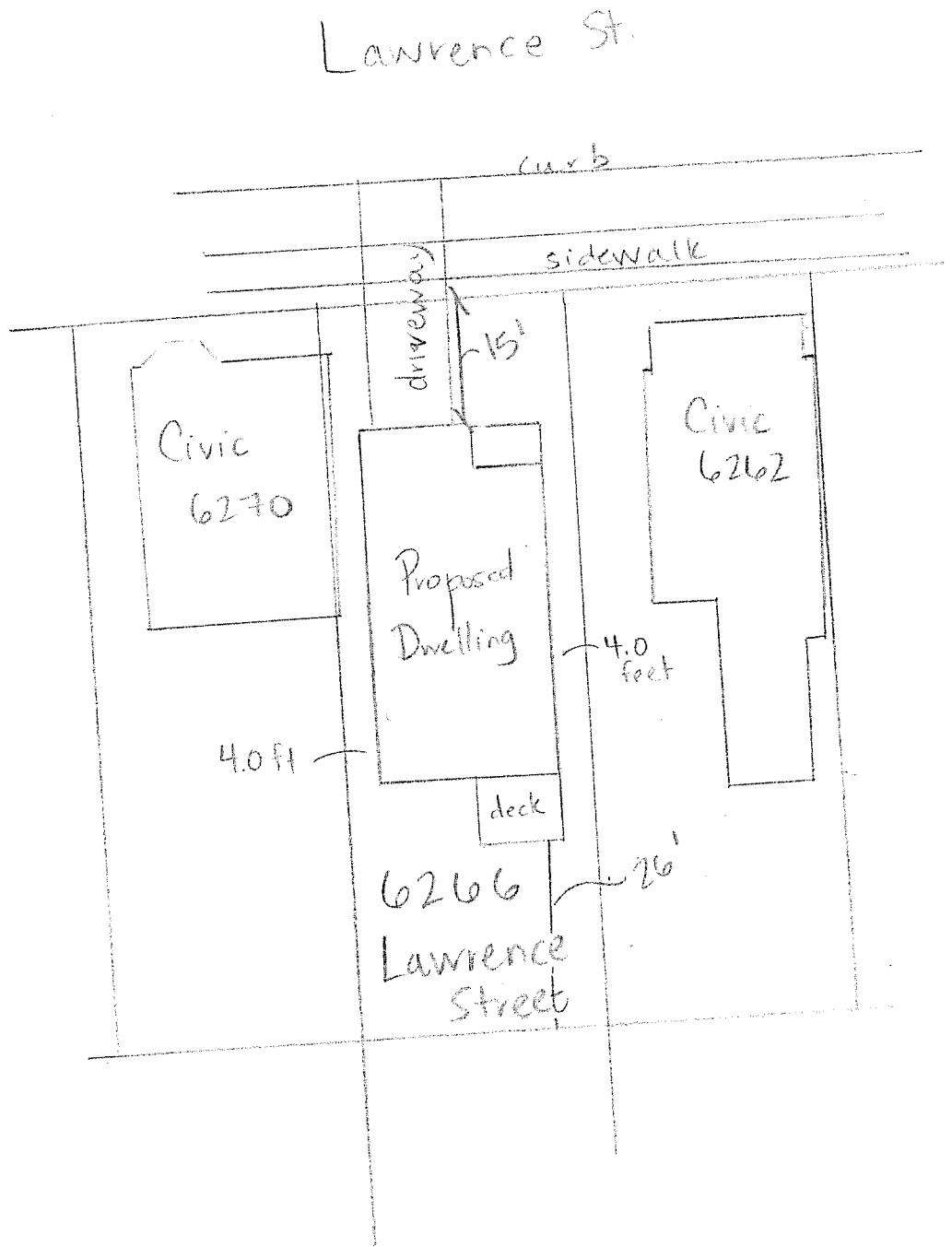
Case No. 15941- Variance at 6266 Lawrence Street

Attachment 3- Adjacent Homes



Case No. 15941 - Variance at 6266 Lawrence Street

Attachment 4 - Site plan



Case No. 15941- Variance at 6266 Lawrence Street

Attachment 5 - Elevations



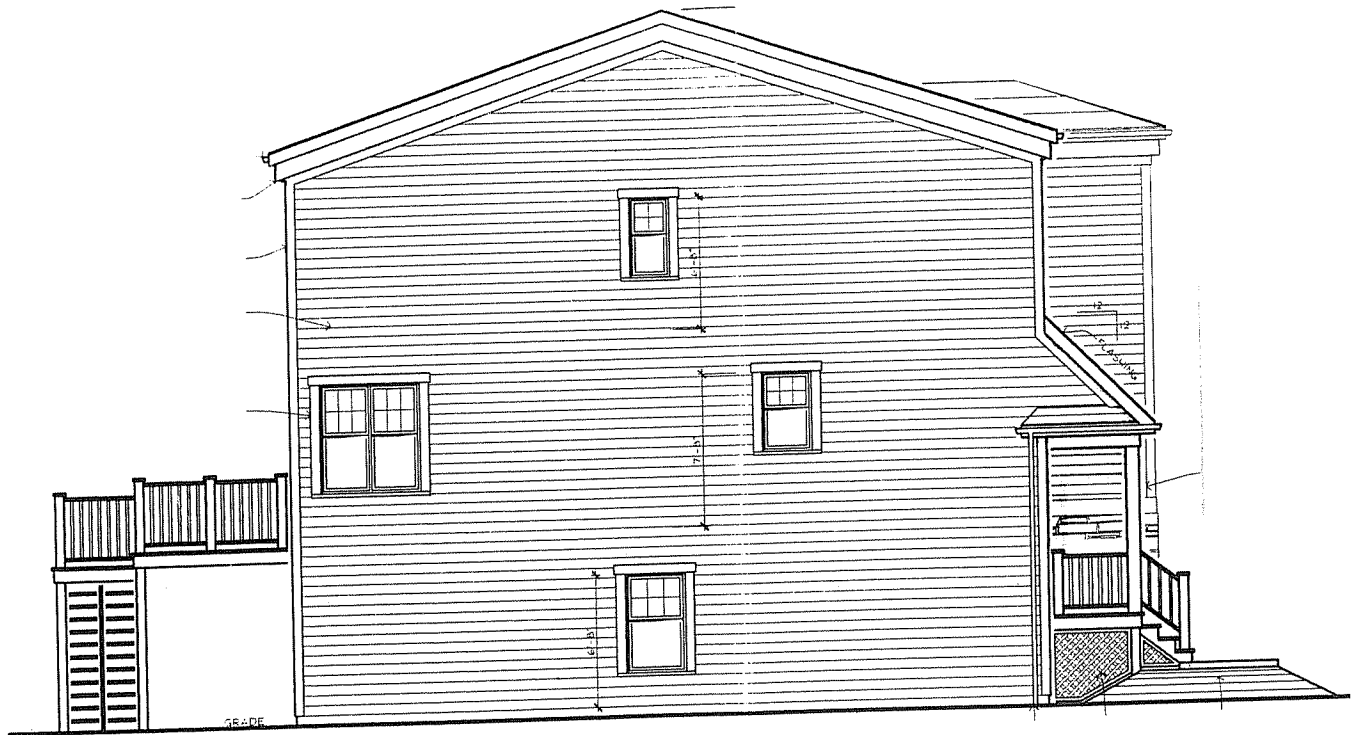
FRONT ELEVATION



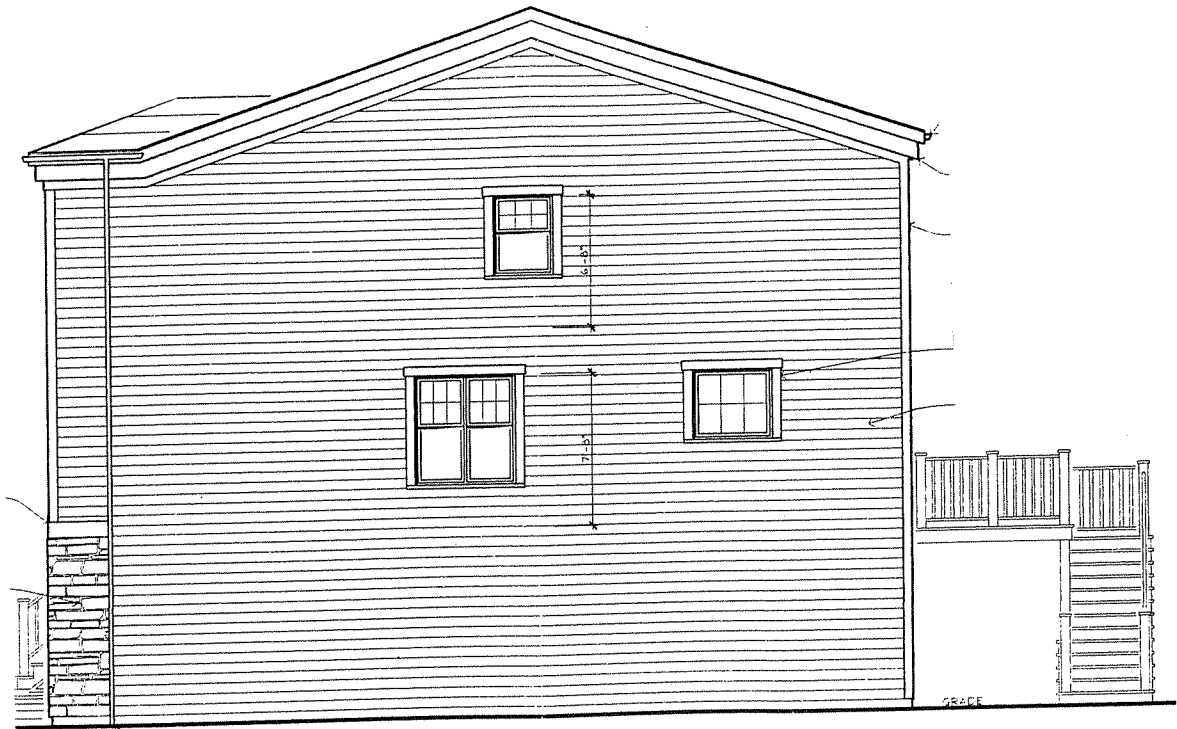
REAR ELEVATION

Case No. 15941- Variance at 6266 Lawrence Street

Attachment 6 - Elevations (cont.)



RIGHT SIDE ELEVATION



LEFT SIDE ELEVATION

Case No. 15941- Variance at 6266 Lawrence Street

Attachment 7 - Appeal Letter

Mar 13/10

Please be advised we are appealing
the decision by HRM staff regarding
6266 Lawrence St, Halifax.

Paul Martin
McFinn