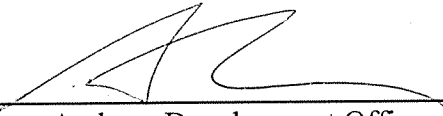


Peninsula Community Council
February 7, 2011

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Sean Audas – Development Officer

DATE: January 31, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a Variance at 6177 Regina Terrace, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance on the minimum required front yard setback for a new single unit dwelling at 6177 Regina Terrace, Halifax

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned R-1, Single Family Zone under the Land Use By-law for Halifax Peninsula, South End Secondary Plan.

Existing Use:

The current use of the property is a single unit dwelling. The lot area is approximately 9240 square feet. The lot is sloped and the elevation is increased from the front of the property to the rear. The existing dwelling meets all setback requirements including the front yard setback.

Proposal:

The applicant wishes to demolish the existing single unit dwelling and construct a new single unit dwelling. The new single unit dwelling would have an attached two car garage extending into the front yard. A variance was requested to reduce the front yard setback from 15 feet (minimum requirement) to 5 feet to accommodate the two car garage.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use By-law requirements. The criteria are as follows:

“A variance may not be granted where if:

- (a) The variance violates the intent of the development agreement or land use by-law;
- (b) The difficulty experienced is general to the 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, the proposed Variance must not conflict with any of the above statutory criteria. An assessment of the proposal relative to these stipulations is set out below.

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

- The Land Use By-law sets out the standards relative to the required yards, street frontage, lot area and lot coverage for residential, commercial and industrial uses.
- The intent of the front yard setback is both aesthetic and functional. Front yard setbacks provide a consistent appearance and also provide for off street vehicle parking.
- The applicant wishes to reduce the required setback from 15 feet to 5 feet.
- This is a substantial request and if approved would create the smallest front yard setback on the street.
- Many dwellings on Regina Terrace are setback in accordance with the By-law. To reduce this setback from 15 feet to 5 feet is felt to violate the intent of the Land Use By-Law.

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

- Many lots on Regina Terrace have fairly dramatic slopes that rise from the front of the property towards the back of the lot. This lot already has a dwelling that meets the front yard setback even with a sloping lot. Also, many other dwellings with similar conditions meet the minimum required front yard setback.
- The Development Officer feels that the circumstances which limit development of the property are general to the area.

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

- The prospective purchaser's designer has applied for the Variance request. No construction has started and it is not felt that this results in intentional disregard for the requirements of the Land Use By-law.

In summary, staff reviewed all the relevant information in this case. As a result of that review, the Variance was refused as it was determined to be contrary to the provisions of the *Halifax Regional Municipal Charter*, in relation to the intent of the Land Use By-law.

As per the requirements outlined in the Halifax Charter, the applicant was notified in writing of the decision to refuse the Variance by the Development Officer. The decision was appealed by the applicant. The appeal letter indicates the applicant's opinion that they meet the intent of the Land Use By-law. The appellant makes reference to the steep rise of the land approximately 30 feet from the front property line. The appellant argues that meeting the front yard setback requirement would result in additional blasting or the appearance of a larger dwelling from the street.

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

The procedure for public notification is mandated by the HRM Charter. If the Variance request is appealed, a public hearing is held which is the opportunity for residents (within 30 metres of the subject property) to speak to staff's recommendation.

ALTERNATIVES

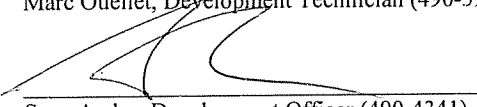
1. Council could uphold the decision of the Development Officer to refuse the Variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the Variance request.

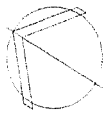
ATTACHMENTS

1. Site Plan
2. Elevation drawings.
3. Refusal Letter
4. Appeal Letter

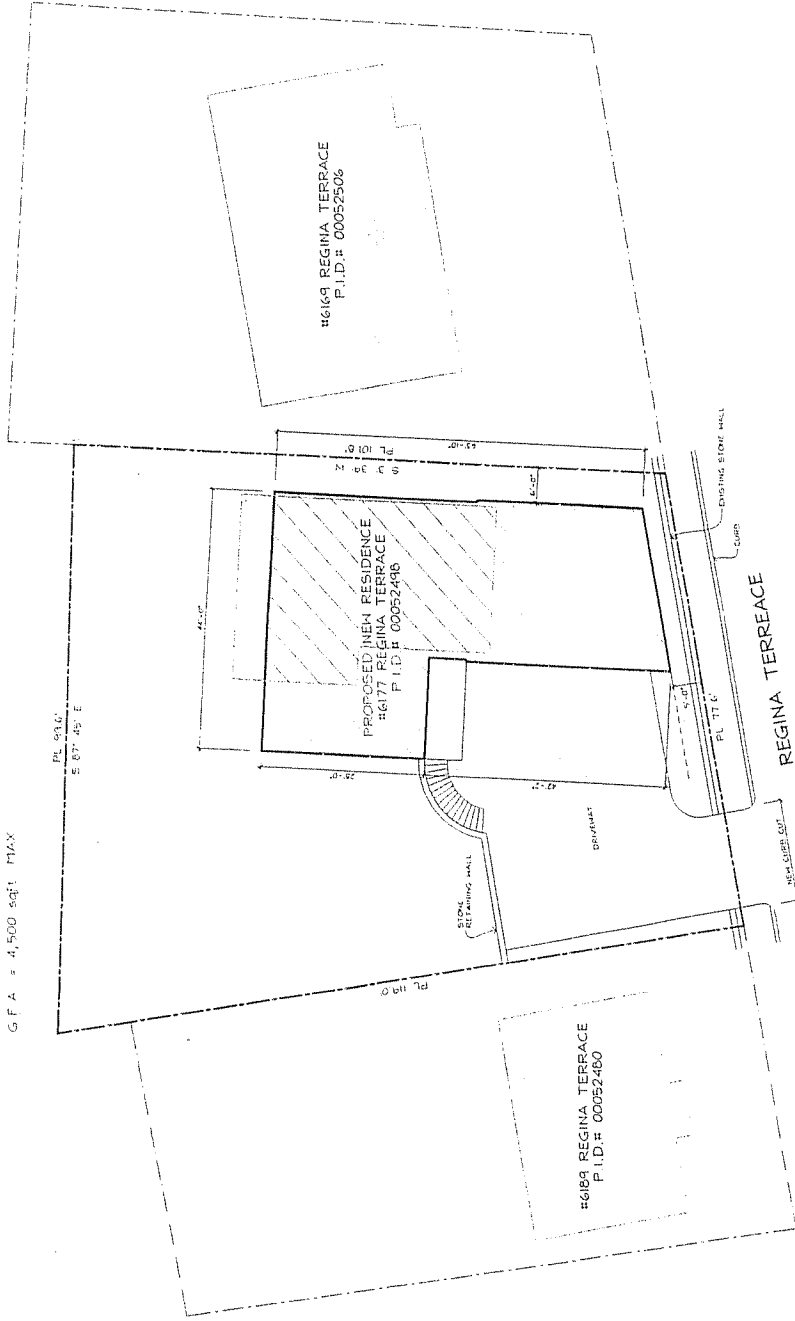
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Marc Ouellet, Development Technician (490-5985)

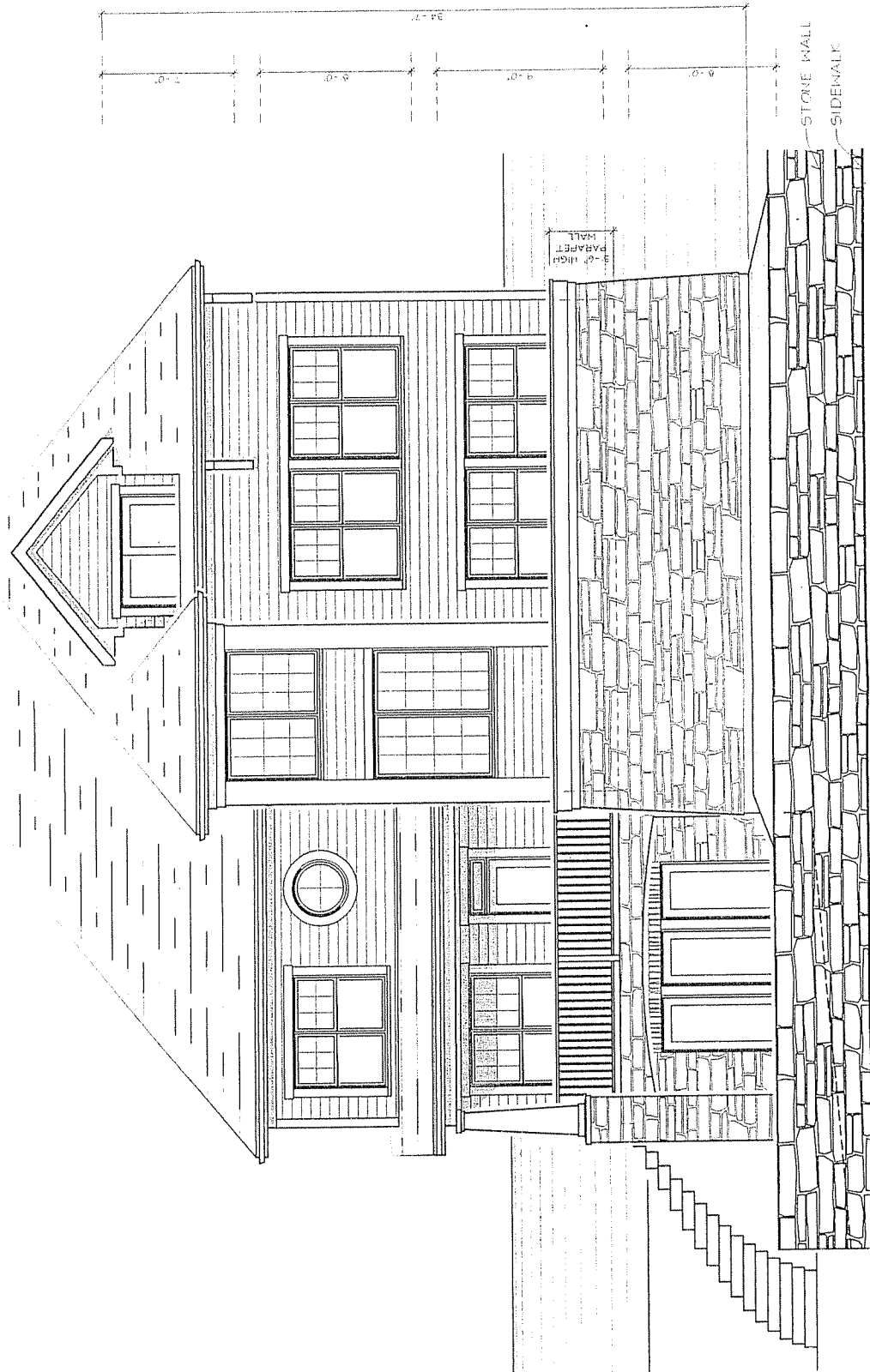
Report Approved by: 
Sean Audas, Development Officer (490-4341)



LOT AREA = 9,654.27 sqft
G.F.A. = 4,500 sqft MAX



SITE PLAN
SCALE 1" = 20'-0"

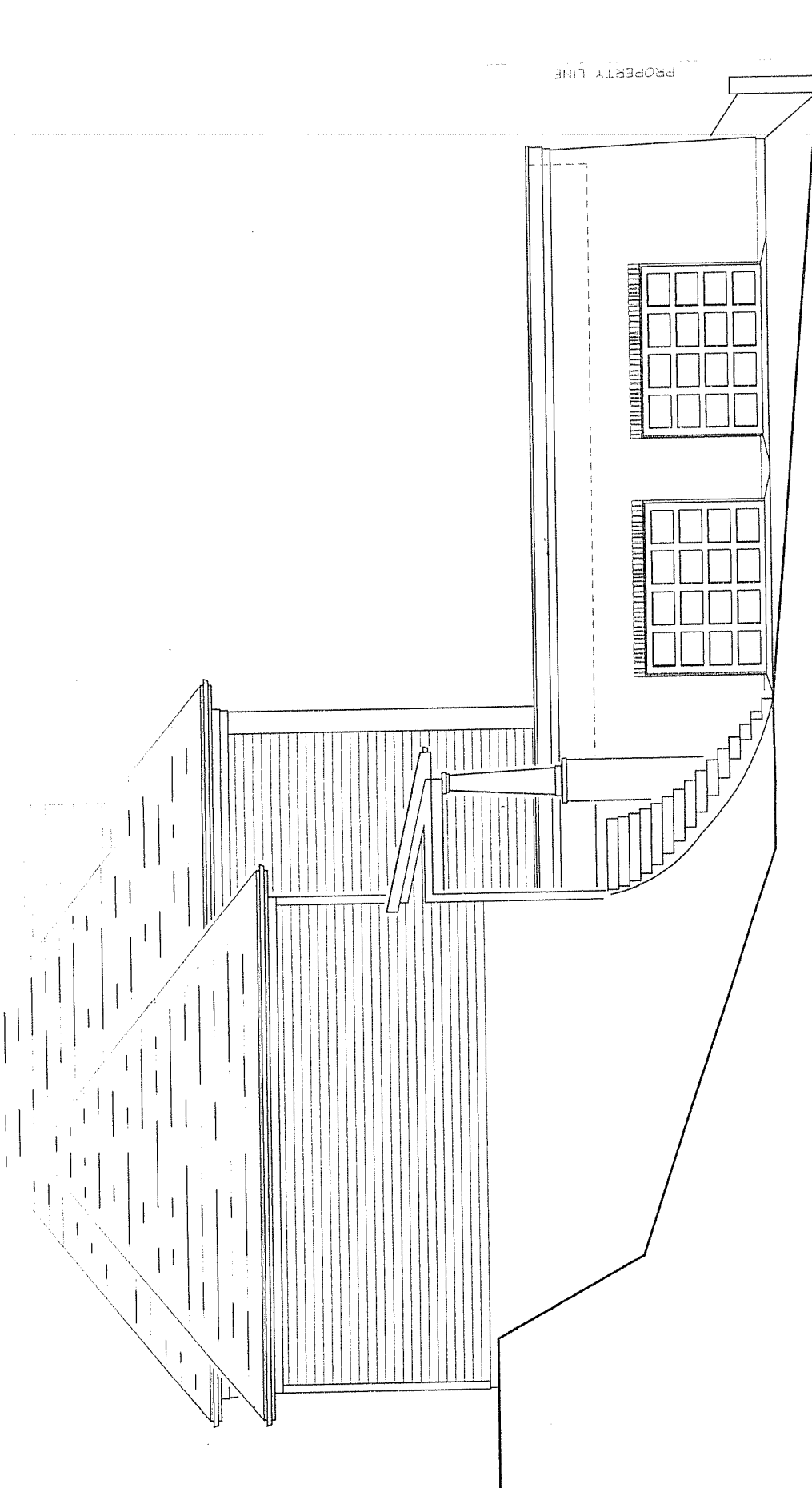


NE Designs

PH: 902-457-1821

6177 REGINA TERRACE

FRONT ELEVATION
SCALE 3/16"=1'-0"



PROPERTY LINE



PH. 902-457-1821

6177 REGINA TERRACE

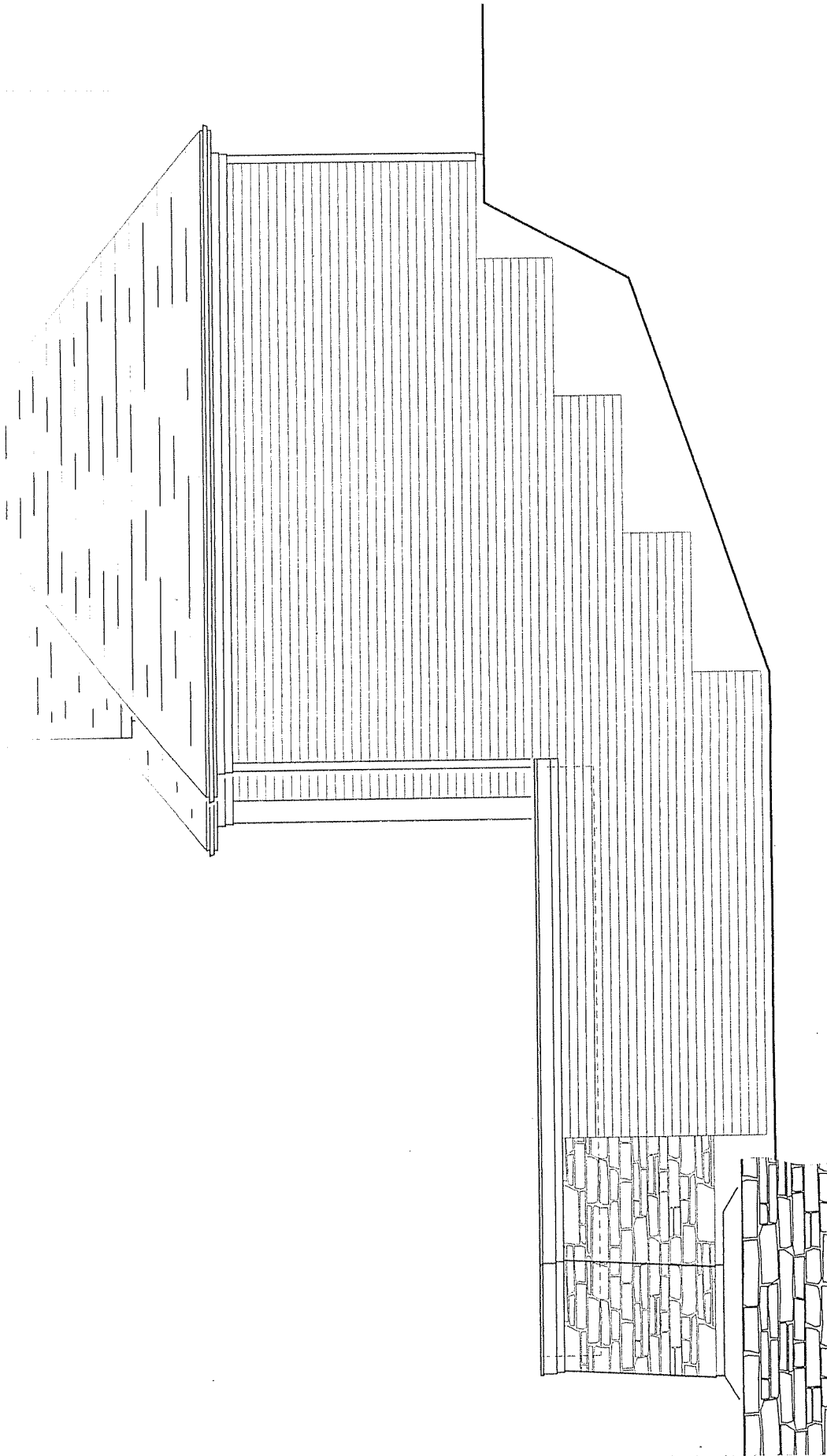
RIGHT SIDE ELEVATION

SCALE 3/16" = 1'-0"

NE Designs

PH: 902.457.1521

6177 REGINA TERRACE



LEFT SIDE ELEVATION

SCALE 3/16"=1'-0"



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

January 21, 2011

NC Design
 C/O Nigel Collinson
 200-200 Waterfront Drive
 Halifax, NS
 B4A 4J4

Dear Mr Collinson:

RE: Application for Variance, File No.16657 – 6177 Regina Terrace, Halifax, Nova Scotia

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:

Location: 6177 Regina Terrace, Halifax.
Project Proposal: Construction of a single unit dwelling.
By-law Requirement: 15 feet for front yard setback.
Variance Requested: Reduced front yard setback to 5 feet.

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

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.

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, therefore your request for a variance has been refused.

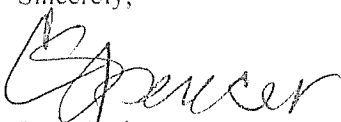
Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

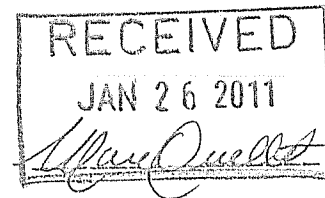
Your appeal must be filed on or before *February 1, 2011*.

If you have any questions or require additional information, please contact Marc Ouellet at 490-5985.

Sincerely,

for 
Sean Audas
Development Officer

cc. Cathy Mellett - Municipal Clerk
Councillor Sue Uteck, District 13



200 - 200 Waterfront Drive
Bedford
Nova Scotia
B4A 4J4
(902) 457-1321

26th Jan. 2011

Municipal Clerk
C/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

RE: Application for Variance, File No. 16657 - 6177 Regina Terrace, Halifax,
Nova Scotia

Dear Sean Audas,

It is my clients wish to proceed with the variance application and appeal
your decision to the Municipal Council.

In your letter dated 21 January 2011 you refused the request for a variance
because you stated that the variance "violated the intent of the Land Use
By-law". You did not communicate what you believed the intent of the
Land Use By-law to be.

The grounds for this appeal are the request for a variance is in fact
consistent with the "intent" of the Land Use By-law. In addition the unique
features of this lot are such that to build a house that follows the "letter" of
the Land Use By-law would in fact violate the "intent" of the Land Use By-
law.

The lot has a very steep rise approximately 30 feet back from the city
property line along the street. This rise brings the ground level 20 feet
above the level of the street. The ground continues to rise slowly from this
line to the back of the lot. There is some dirt but every indication is that
most of this rise is due to the underlying rock.

The existing small house is built 30 feet back from the property line and the
first two levels of the house are completely below grade, excepting the

front wall. It is our intention to remove the current house and replace it with a new, much larger house. If we build the new house in the same location as the current house and slightly wider, the first two levels will be completely below grade (in essence having two basements), and this is clearly unacceptable. If we put the new house in the same location but raise it up out of the ground several feet so that the second level is out of the ground enough to have decent sized windows, we run into the problem of where to put the garage. The height restriction by-law (max 35 feet from grade at the front of the house to the ceiling of the highest room) practically means that the garage has to be at the same level as the lowest floor of the house. The only way to get the garage several feet above the level of the street is to have a long driveway and the only way to do that on this lot is to run it across the front of the lot, resulting in the application for variance in which the garage is turned sideways and the south side of the garage is located 5 feet back from the property line (almost 15 feet from the street) instead of 15 feet from the property line as required by the Land Use By-law.

This will prevent removing one hundred year old trees on the remaining part of the property by placing the new house where the existing is and will also reduce the amount of rock removal from blasting, if needed, preventing potential damage to neighbour's foundations.

The house four lots to the west has done exactly this but on that lot the rise is less steep and further back from the street. As a result they were able to locate the south side of the garage the required 15 feet back from the property line and stay within the Land Use By-law. If we were to do that at 6177 Regina Terrace, the new house would be approximately 15 feet further back into the hillside than the current house. This would again put the first two levels mostly below grade, negating the reason for the longer driveway and the request for variance.

To stay within the "intent" of the Land Use By-law, we have designed several features in the proposed new house. First, there will be a retaining wall running across the front of the property, one foot back from the property line, matching up with the retaining walls on the adjacent lots. On top of the retaining wall, in the 4 feet between the retaining wall and the front edge of the garage, there will be a solid cedar hedge. This hedge will also extent along the west side of the garage such that the garage will be largely hidden from view. In addition, it is our intention to have a flat roof on the garage to remove the visual impact of a large roof near the street. We also propose to have a roof garden on top of the garage, further reducing the visual impact of having the garage closer to the street than allowed by the Land Use By-law. Finally, the proposed design has the front edge of the house in approximately the same location as the current house,

approximately 30 feet back from the property line and almost 40 feet back from the street.

If the request for variance is refused, the only viable option is to have the garage in the basement and to move the house forward as far as possible so that more of the first and second levels will be out of the ground. This would result in a large, three story house with the front wall of the house located 15 feet back from the property line. It is my opinion that having such a large house so close to the street would in fact violate the "intent" of the Land Use By-law, even though it would be within the "letter" of the Land Use By-law.

My clients have discussed the proposed design with the neighbour's on either side and several of the neighbour's across the street (all that were home). None had any objections and all were delighted to learn that the current house, which is an eyesore on the street, was going to be replaced with a new house designed to fit in with and greatly enhance the visual appearance of the street.



Nigel Collinson, Designer.