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Peninsula Community Council
February 9, 2009

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: January 30, 2009

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance 15083 - Cornwallis St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the minimum lot size, lot coverage, left yard setback, right yard setback and rear yard setback requirements of the Halifax Peninsula Land Use By-law to permit the construction of a mixed use (commercial retail and 2 residential units) building.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 5537 Cornwallis Street on the Halifax peninsula (see location plan - Attachment 1). The property is zoned RC-3 in the Peninsula North Secondary Plan Area 8 under the Halifax Peninsula Land Use By-law.

An application for a Development Permit was received and reviewed as per the RC-3 (High Density-Residential/Minor Commercial) Zone. The zone refers to uses and requirements of other zones as well as uses specific to this zone. The retail and residential uses that are proposed are permitted uses.

The proposal is for a 4 storey mixed use building, proposed uses include ground floor commercial (retail space) and 2 residential units on the upper floors. The proposal does not meet the requirements of the Land Use bylaw, in particular, minimum lot size, lot coverage, left yard setback, right yard setback and rear yard setback.

The existing lot is approximately 1088 square feet and originated in approximately 1923. The required minimum lot size for residential uses is 5000 square feet. Commercial uses have no minimum lot size.

The building is proposed on a 1088 square foot lot. The maximum lot coverage permitted for the residential portion of the development is 35%, where as commercial uses have no maximum lot coverage. Although the residential uses are not located on the ground floor, the coverage is calculated based on the square footage of its footprint. The applicant has indicated his intent to purchase the adjacent lot and consolidate the lands. This could add approximately 320 square feet to the subject lands should the 2 lots be consolidated, decreasing the coverage to 78%. The applicant does not own the adjacent lands and the consolidation is purely conjecture at this point.

Residential uses are required to be set back from neighbouring properties a minimum of 5 feet from the right side, 5 feet from the left (Creighton St side) and 20 feet from the rear. Commercial uses are to be set back from properties which abut residential zones, in this case 4 feet from the right side lot line and 20 feet from the rear lot line. The application proposes 0 clearance from the left, right and rear property lines.

The applicant has stated that the variance is required due to the small lot size of the existing lot. Development Services cannot approve the request for variance as it violates the intent of the land use bylaw and the difficulty experienced is general to the area. Planning Services have advised that a rezoning to a suitable zone is not possible without a plan amendment, but that there is policy support for considering a Development Agreement for “innovative commercial and residential development”.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (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 bylaw."*

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.

(a) variance violates the intent of the land use bylaw;

The intent of minimum area lot coverage, side and rear yard setback requirements are to provide adequate separation of buildings from adjacent properties. This is necessary to ensure compatibility of uses, and to minimize potential conflicts between neighbouring properties. To permit the variance would violate the intent of the land use bylaw.

(b) difficulty experienced is general to the properties in the area;

The area consists of lots ranging in size from 320 square feet to 55,000 square feet, the average being approximately 2200 square feet. Existing land use consists of residential and commercial structures. Although the proposed site is at the smaller end of the scale it is not the smallest and is not in keeping with the scale of the developed commercial properties. The difficulty in this case could be seen to be general to property in the area.

(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."

As no construction has occurred at this site intentional disregard was not a consideration in refusing this variance.

BUDGET IMPLICATIONS

None.

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 uphold the decision of the Development Officer to refuse the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with the application to construct a mixed use residential/commercial building.

ATTACHMENTS

1. Location Map
2. Site Plan

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: Mike Cowper - Development Technician (490-7455)

Halifax Regional Municipality

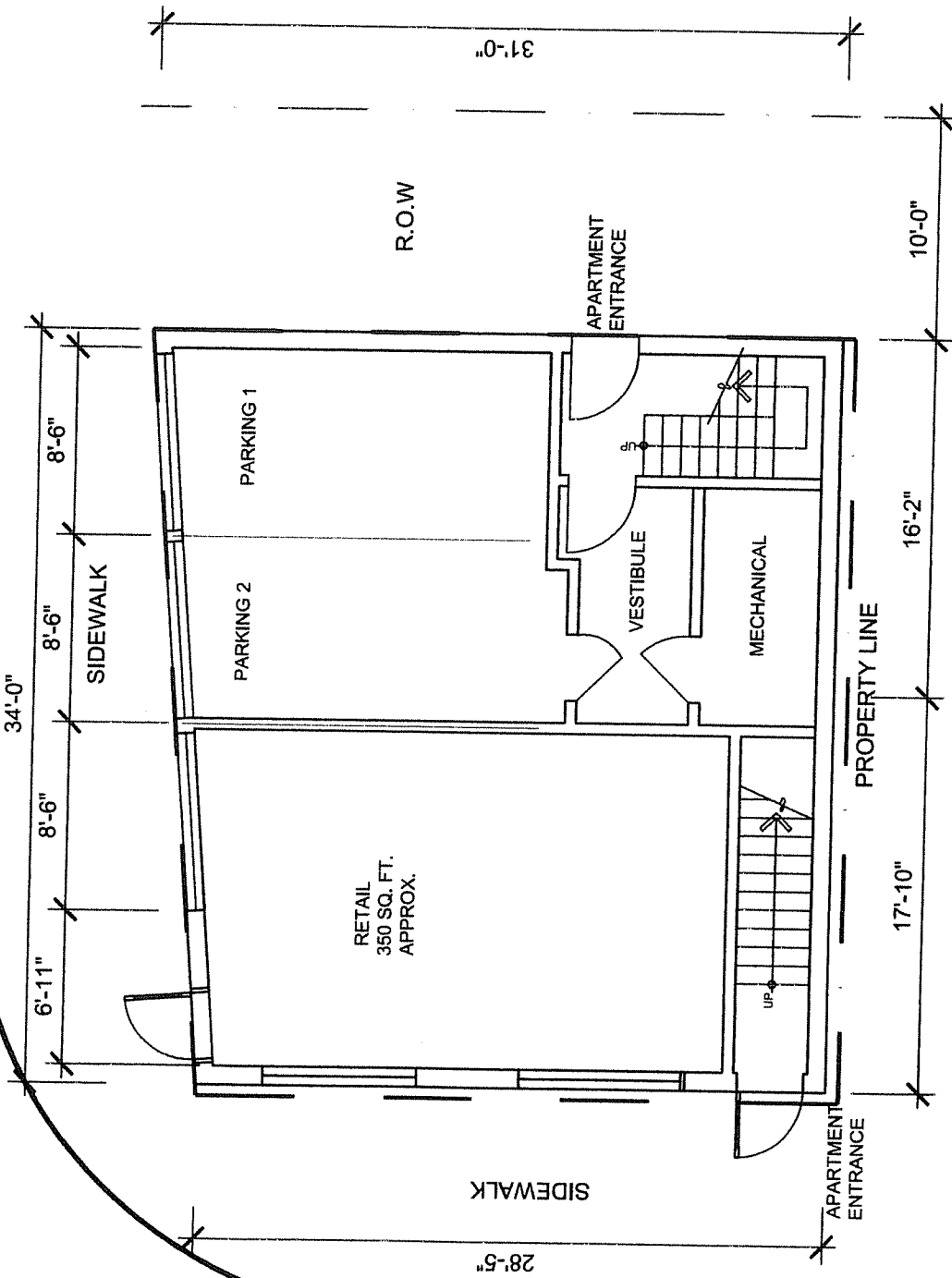
Attachment 1



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

CREIGHTON ST.

CORNWALLIS ST.



1 GROUND LEVEL PLAN
 AT 1/8" = 1'-0"

GROUND LEVEL

