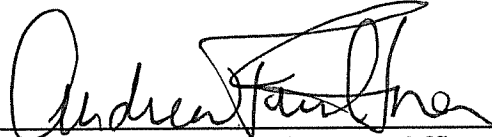


Peninsula Community Council
April 11, 2011

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner, Development Officer

DATE: March 31, 2011

SUBJECT: **Application #16709 - Appeal of the Development Officer's Refusal of a Variance – 2770 Windsor St.**

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the setback requirements of the Halifax Peninsula Land Use By-law to permit the addition to a commercial daycare.

RECOMMENDATION

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

BACKGROUND

The proposal is for an addition to an existing commercial daycare. An occupancy permit has been issued for a daycare facility. The proposal is for two additions, a one storey addition to the front and a three storey, plus basement, addition to the rear (See Attachments 1 and 2). The rear addition does not meet the left and right side angle controls as outlined in the R-3 zone.

The additions are in support of an expansion to an existing daycare facility.

The property is zoned R-3 (Multiple Unit Dwelling Zone) in the Peninsula North Secondary Plan, Sub Area 2. This zone permits commercial daycare facilities.

Occupancy for the daycare was issued December 2007 and the Building Official noted that the occupant load for the building is not to exceed 40 people including staff.

The floor area of the addition is 3400 square feet over 4 floors while the proposed addition is approximately 1660 square feet.

The current building is nonconforming however any additions must comply with the R-3 zone. Setbacks from property boundaries in this zone are regulated by angle controls. In order for the additions to meet the angle controls the building must be setback approximately 17.5 feet from the side property boundaries. The proposed additions are 3.1 feet and 8 feet from the right and left side property boundaries. The proposed additions meet the front and rear yard setbacks.

DISCUSSION

The *HRM Charter* 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.

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

One of the goals in planning policies adopted for the established neighbourhoods of the Halifax Peninsula is to maintain the character and stability of these areas through Municipal Planning Strategy policies such as Policy 2.4 which states:

"...the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will

be compatible with these neighbourhoods."

The neighbourhood could be considered a mixed use variety, including a number of single unit dwellings to the rear, and several multiple unit dwellings and minor commercial buildings alongside on Windsor Street.

The 5000 square foot area of the subject property is in keeping with others in the immediate neighbourhood, there are however three 10,000 square foot plus lots with multiple unit dwellings and a commercial retail operation (See attachment 3)

The intent of the angle controls is to ensure the size and mass of a building is in keeping with the size of the lot it is situated. The size of the addition is such that it must be 17.5 feet from the side property boundaries in order to meet the angle controls. The proposal is well within that setback and does not provide an adequate separation from the adjoining property boundary.

It is for this reason that the proposal violates the intent of the bylaw.

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

There are several other buildings in the area that have nonconforming side yard setbacks. These buildings predate zoning regulations, and angle controls were not in effect at the time of their construction.

The difficulty experienced is not general to properties in the area. This was not a consideration in refusing this variance.

Is the difficulty the result of 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.

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

In accordance with Section 251 (5) of the HRM Charter, all property owners within 30m of the subject property have been advised of the refusal and the variance hearing.

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 approve the variance.

ATTACHMENTS

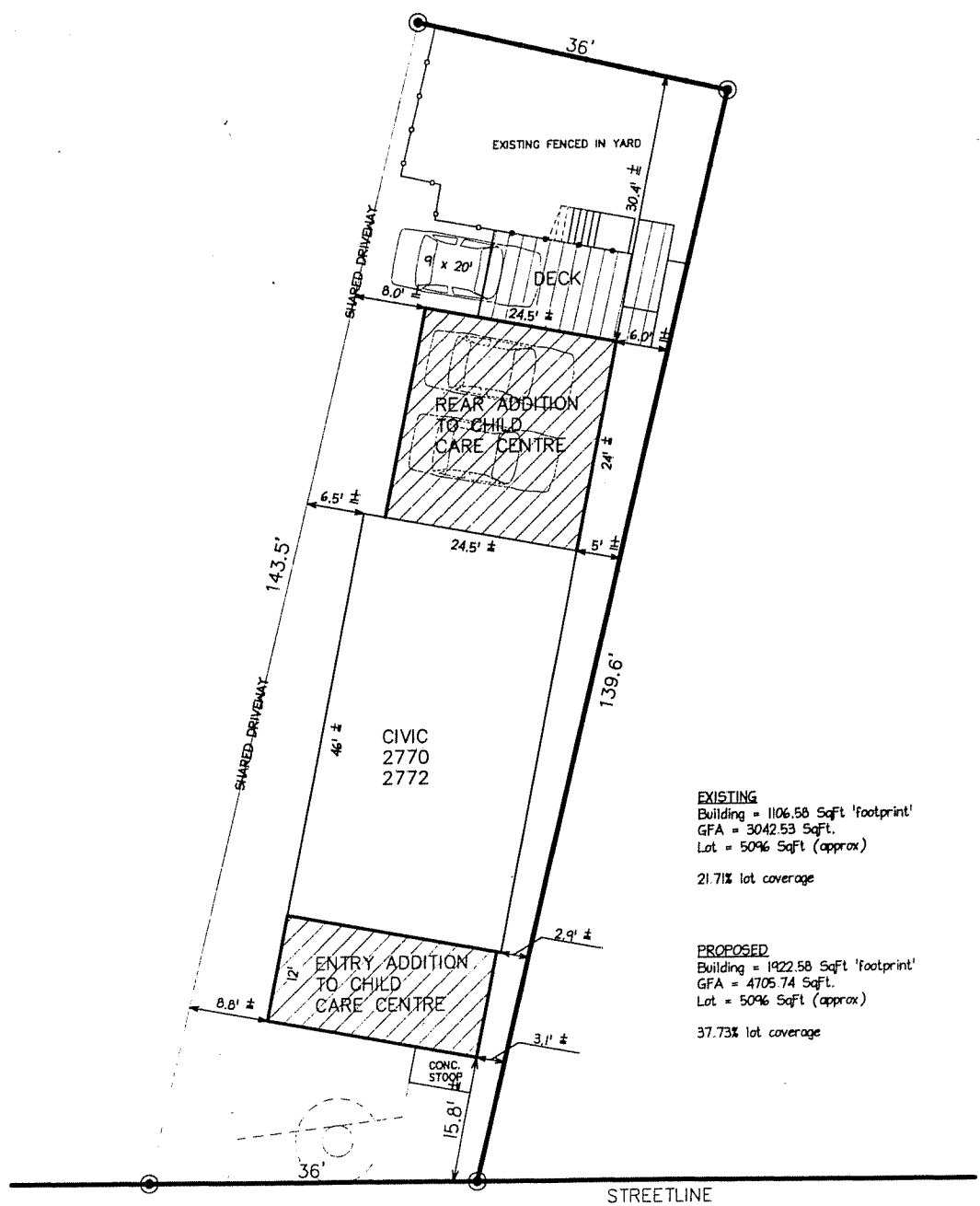
1. Site Plan
2. Proposed Building Elevations
3. Neighbourhood Site Plan

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 : Mike Cowper, Development Technician 490-7455

Report Approved by: Andrew Faulkner, Development Officer 490-4402

Financial Approval by: Cathie O'Toole, CGA, Director of Finance. 490-6308

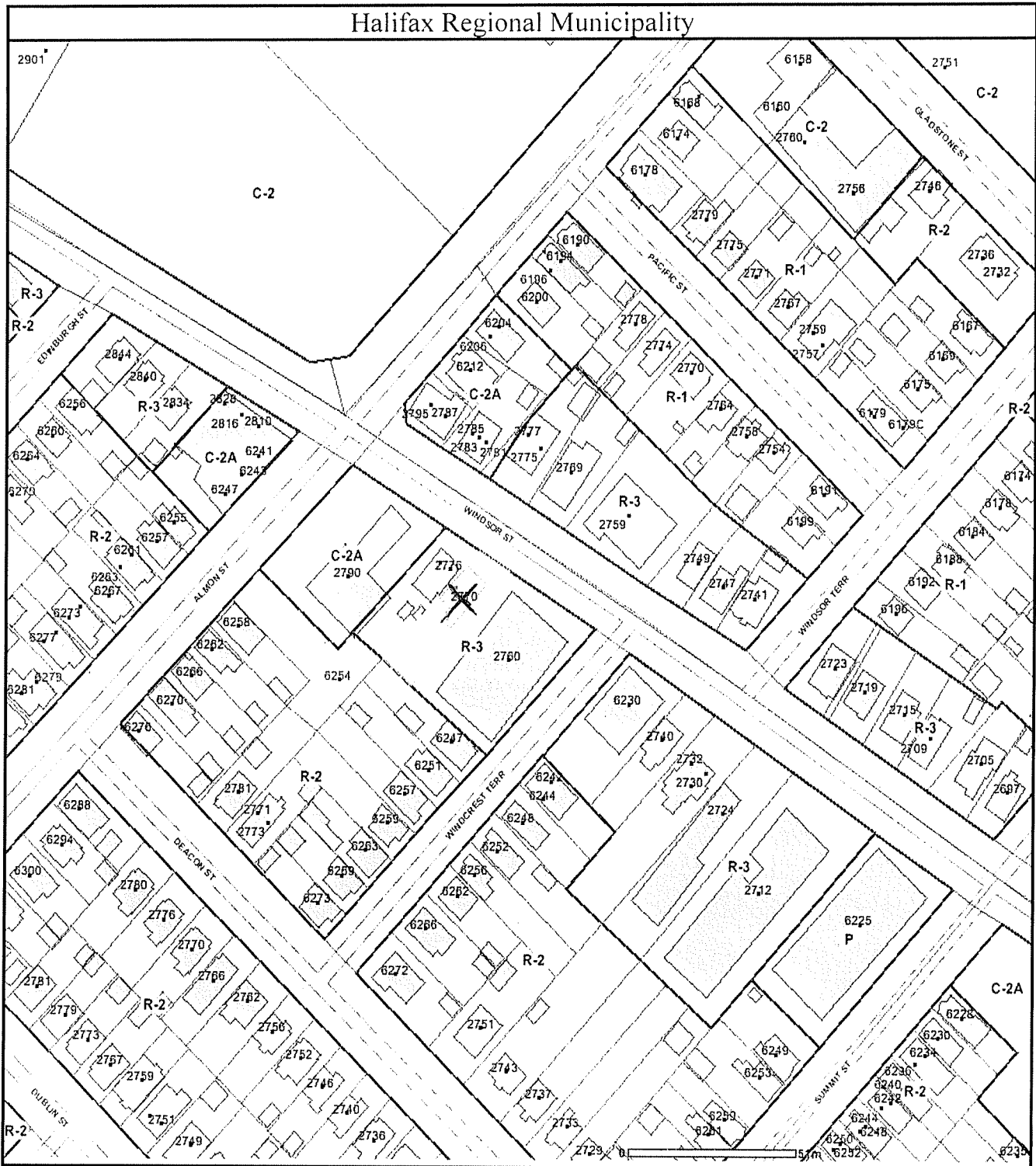


EXISTING
 Building = 1106.58 Sqft 'footprint'
 GFA = 3042.53 Sqft.
 Lot = 50% Sqft (approx)
 21.71% lot coverage

PROPOSED
 Building = 1922.58 Sqft 'footprint'
 GFA = 4705.74 Sqft.
 Lot = 50% Sqft (approx)
 37.73% lot coverage

WINDSOR STREET

Attachment # 3



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 civiccadd@halifax.ca Date of map is not indicative of the date of data creation