



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

Item No. 8.1.1

Halifax and West Community Council
January 6, 2014

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY:

Brad Anguish, Director, Community and Recreation Services

DATE: December 17, 2013

SUBJECT: Case 18828: Appeal of Variance Refusal – 5573 North Street, Halifax.

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development.

RECOMMENDATION

The question before Halifax and West Community Council is to grant or deny the appeal before them.

BACKGROUND

Proposal:

The authorized use of the property at 5573 North Street, Halifax, (Map 1) is a two unit dwelling. A variance request has been submitted to permit a previously constructed rear addition and legalize a third residential unit. Both the rear addition and the third residential unit were constructed without permits.

On August 12, 2013 staff received a complaint of illegal construction activity at the subject address. A subsequent field inspection resulted in HRM’s building official finding construction had commenced and was comprised of the construction of a 2 storey rear addition and entrance system, as well as works associated with the fit up of a third unit in the basement level of the dwelling. An immediate Order to stop construction and obtain approvals was posted as well as notification sent to the property owner. Subsequently, on August 22, 2013, owners of the subject property applied for Construction Permits to gain approval. In review of that application, the Development Permit could not be issued as various Land Use requirements could not be satisfied for the proposed works. Having notified the property owner a permit could not be issued, a Variance application was submitted on September 17, 2013 with the intent of authorizing both the already constructed addition and the third residential unit (Map 2 & Attachment C).

A re-inspection by staff on December 23, 2013 concluded minor finish and trim was undertaken at exterior portions of the building since the original Order; access was unable to be gained to the interior basement level and alleged third unit. The investigation is ongoing. The variance application process and the prosecution process are independent of each other. Regardless of the outcome of the variance application, a prosecution referral by HRM’s building official is possible on the matter of the construction having commenced prior to approvals being provided.

Site Details:

Zoning: R-2 (General Residential) Zone, within the Peninsula North Area #5 Secondary Plan, under the Halifax Peninsula Land Use By-Law.

	Requirement	Variances Requested
Minimum lot area for a three unit dwelling	8,000 square feet	2850 square feet
Lot area required for 4451.06 sq.ft. of gross floor area in a dwelling.	9,000 – 11,000 square feet	2850 square feet
Maximum lot coverage	35%	56%
Minimum right side set-back distance to lot line	6.0 feet	0.5 feet (to deck)

	Requirement	Variations Requested
Minimum flank side set-back distance to lot line	6.0 feet	1.0 foot
Minimum mean rear set-back distance to lot line	20.0 feet	19.2 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variances (Attachment A). The applicant subsequently filed an appeal of the refusal on October 11, 2013 (Attachment B). The matter is now before the Halifax and West Community Council for decision.

DISCUSSION

Development Officer’s Assessment of Variance Requests:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to 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;*
 - (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, any 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?

It is the Development Officer’s opinion that the proposal does, in fact, violate the intent of the Land Use By-law. The Land Use By-law intends that lot size requirements and side, flank and rear yard setbacks are in place for both aesthetic purposes and practical reasons. Lot sizes and setbacks generally increase proportionally to the number of units and floor area, and provide visual separation from the street, area for future street expansion, and adequate separation between dwellings. The Land Use By-law carries out this intent through the application of zoning that contains provisions respecting land use; building setbacks, lot size, lot area, height, and building mass relative to lot area.

For the three unit dwelling, the Land Use By-Law requires a minimum lot size of 8,000 square feet and a maximum lot coverage of 35%. Further, the addition to the dwelling creates a total of 4451.06 square feet of gross floor area. According to Section 26D of the Halifax Peninsula Land Use By-Law, for Maximum Residential Gross Floor Area, the lot size would have to be 9,000 to 11,000 square feet in area for a building of this size. The lot size of the subject property is 2,850

square feet, well under the minimum permitted lot size in the R-2 Zone, and for the Gross Floor Area.

Secondly, the rear addition results in 56% lot coverage, which is well over the 35% maximum. The lot coverage of the property prior to the addition was already in excess of 35%. The newly constructed addition, without approval, has compounded this condition.

Finally, the R-2 Zone requires a three unit dwelling to have minimum setback of 6.0 feet to the right side lot line and flank lot line, and minimum mean rear yard set-back of 20.0 feet. The building does not comply with any of these three setback requirements. The building has 1.0 foot to the flank lot line, 0.5 feet to the right side lot line, and a mean distance of 19.2 feet to the rear lot line. The request for a reduction to these measurements in this case is substantial; the setbacks do not meet the minimum allowed requirements for a single unit in an R-2 Zone. It is acknowledged that the flank and side setbacks are the existing situation on the property for the legal two units, however the *HRM Charter* does not permit a further reduction of non-conforming setbacks regardless of the change of use. It is the opinion of the Development Officer that granting this variance would result in violation of the intent of the Land Use By-law.

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

The dwelling is situated on a lot that is 2,850 square feet in area; this is similar to neighboring properties. There are ten (10) properties within the 30m radius of the subject property that contain dwellings. The lot area of these properties ranges from 2,054 square feet to 3,427 square feet. Eight of the ten properties contain single unit dwellings, one is a three unit dwelling and one is a four unit dwelling. The three and four unit dwellings are existing non-conforming structures in terms of lot size.

Also within the 30m radius of the subject property are larger lots. Three vacant lots are used for parking; one lot is under a Development Agreement and used for a church with a dwelling and some community uses, one lot is under another Development Agreement to allow for a general store/take-out with three residential units and a garage.

As the residentially used lands are similar in size to the property at 5573 North Street, and most have lot areas that are non-conforming for the use on the lot, the difficulty experienced on the subject property appears to be general to properties in the area.

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

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the Land Use By-law relative to their proposal and then took deliberate action which was contrary to those requirements. The rear addition of a stair well and upper level office space to the existing two unit dwelling to create a third dwelling unit, was constructed in the absence of the necessary HRM permits.

Staff only became aware of the addition when a stop work order was issued by an HRM Building Official for working without a permit. Intentional disregard of Land Use By-law requirements was a consideration in the refusal of the variance request.

Appellant’s Appeal:

While the criteria of the *HRM Charter* limit Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment B) for Council’s consideration. These points are summarized and staff’s comments on each are provided in the following table:

Appellant’s Appeal Comments	Staff Comments
Has always understood this to be a three unit rooming house, neighbours have as well.	Permit records show that a rooming house and two residential units are recognized on this property. Changing the rooming house to a third dwelling unit is permitted by way of an internal conversion, but there can be no increase in the volume of the building.
The building next door is a 4 unit dwelling, across North Street is a commercial building with residential, and across Fuller Terrace is the North Street Church which contains residential.	-The 4 unit dwelling is non-conforming and guided by Sections 253 to 257 of the <i>HRM Charter</i> . -The commercial building across North Street is under Development Agreement No. 00013 to allow for a general store/take-out with three residential units and a garage, and is on a larger lot with 4,725 square feet. - The Church across the street is a registered heritage property that is also under Development Agreement No. 5902 to allow for a church, dwelling units, Artist’s Studio, Auditorium, and, Cinematographic Studio. The church is on a larger lot of 5,409 square feet.
The side yard set-backs to the dwelling are existing, which has been used as a three unit dwelling and do not relate to the addition	The addition to the building in conjunction with the change of use triggers a change in the by-law requirements for minimum allowed set-back distances from property lines. It is now required that the dwelling meet the minimum set-back distances for three units.
The house was used as a three-unit, 12 room, rooming house for many years, the rear addition allows proper building code access to the basement.	Changing the boarding house to a third dwelling unit is permitted by way of an internal conversion, but there can be no increase in the volume of the building. Any changes to the structure to meet Code must be done within the existing shell.

Many houses and building in the area significantly exceed lot coverage and many do not have parking.	There are dwellings in the area that exceed lot coverage, but they are non-conforming as the permits for those dwellings were issued prior to the current land use regulations. All new construction must meet the current land use regulations. Parking is not a consideration in a variance request; that has to be determined through a Development Permit review.
Surrounding buildings include commercial and multi-unit residential.	Agreed, there are a few commercial and a few multi-unit residential in the 30m buffer area, however the majority are single unit dwellings.
The existing structure already covered 52.5% of the lot, the 100 square foot rear addition only adds a small amount to the lot coverage.	52.5% lot coverage is in excess of the maximum allowed 35%, meaning the structure prior to the addition did not conform to the land use by-law. This proposal would increase the Lot Coverage to 56% and this may only be authorized through the variance process.

Conclusion:

Staff reviewed all the relevant information in this variance request. As a result of that review, the variance request was refused as it was determined that the request conflicts with the statutory criteria provided by the *HRM Charter*. The matter is now before Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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 a variance refusal decision is appealed, a hearing is held by Community Council to provide the opportunity for the applicant and all assessed owners within 30 metres of the variance to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Community Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance. The owner would have to remove the unauthorized dwelling unit and addition.
2. Community Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

Map 1 – Notification Area

Map 2 – Site Plan

Attachment A - Variance Refusal Letter

Attachment B – Letter of Appeal from the Applicant

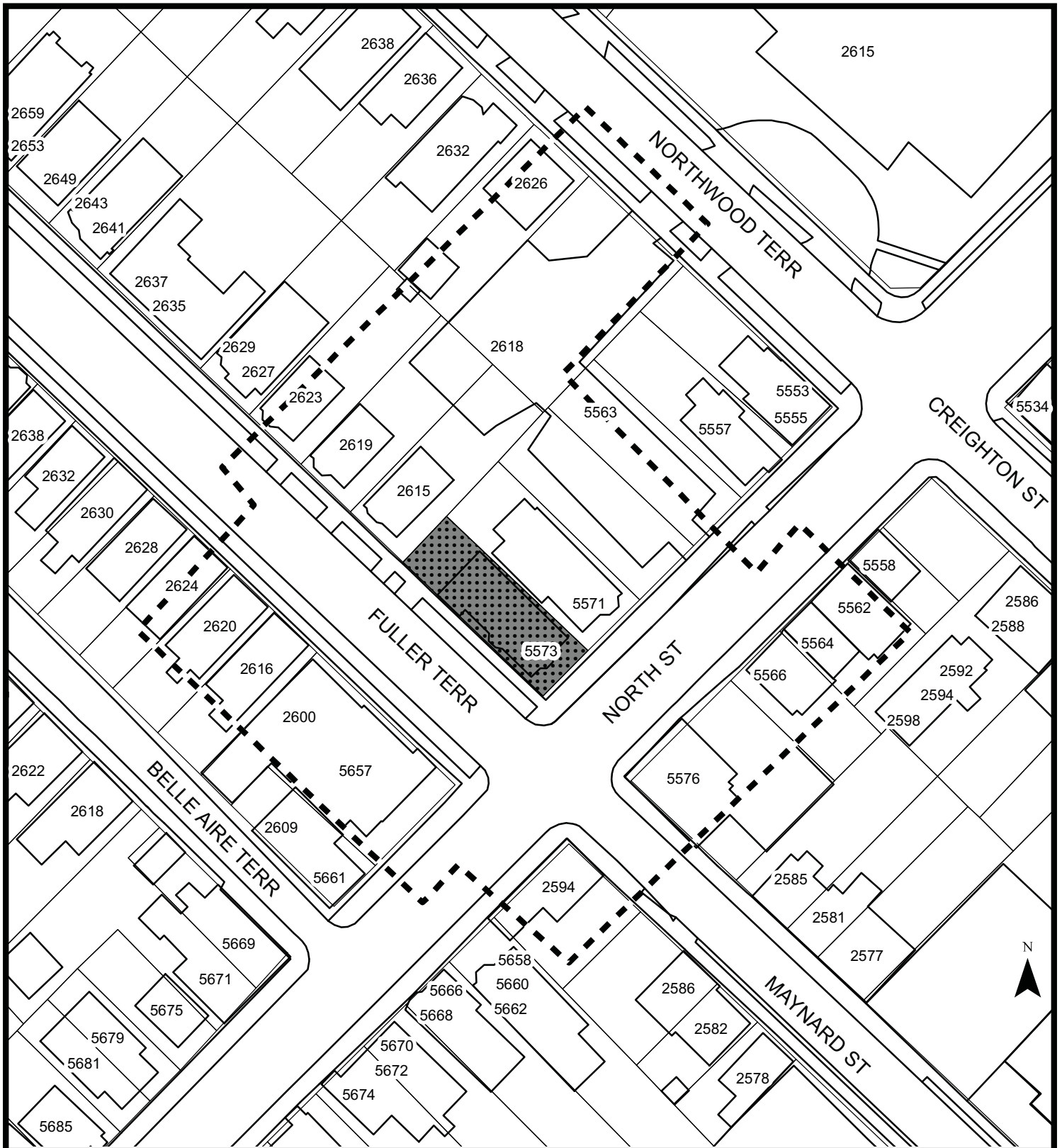
Attachment C – Picture of rear addition

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: Mark Inness, Development Technician, 490-6257 and
Andrew Faulkner, Development Officer, 490-4341

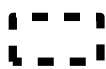
Original Signed

Report Approved by: Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 Notification

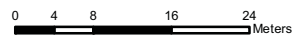
5573 North Street,
Halifax



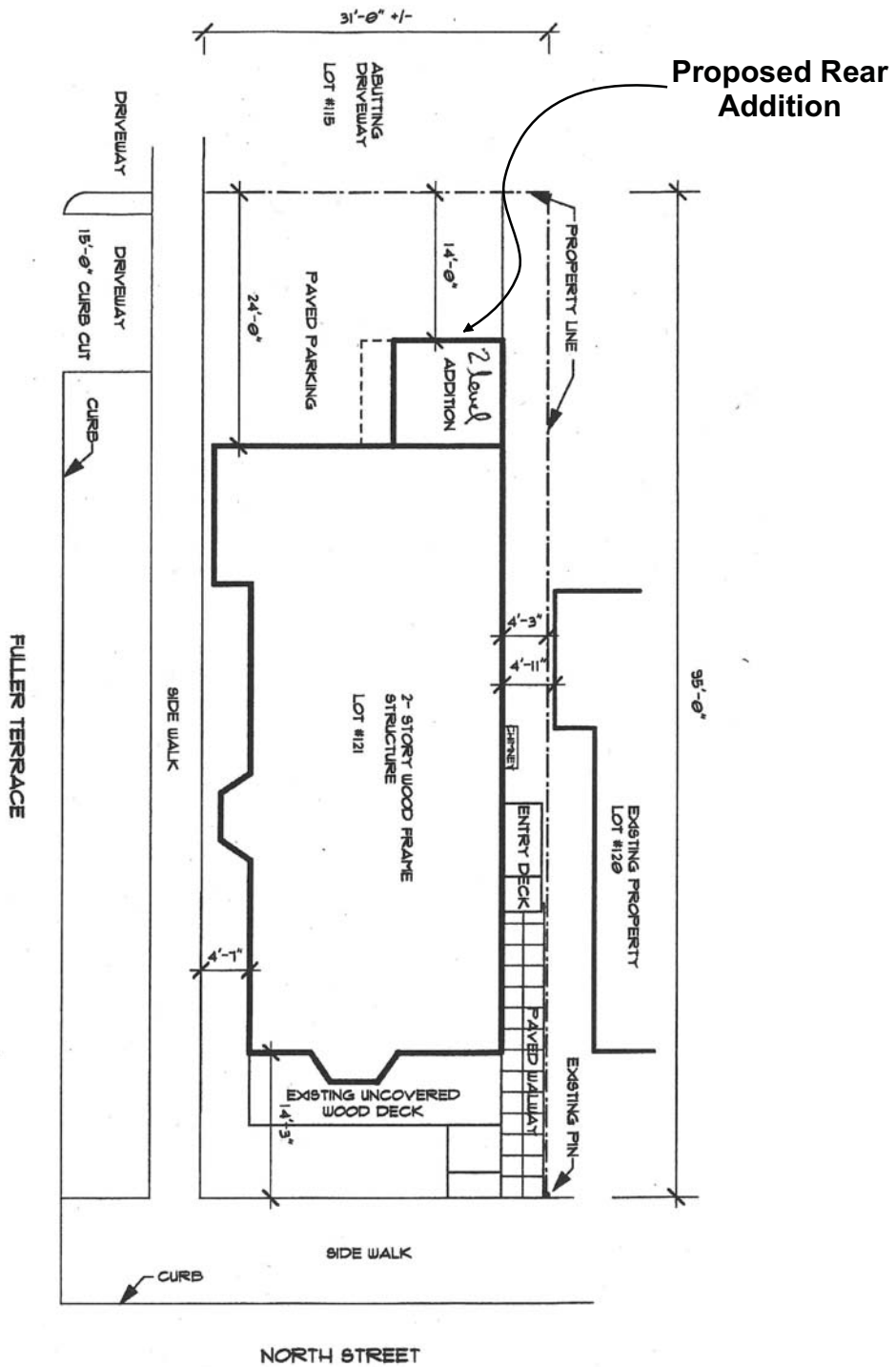
Notification Area



Subject Property



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



Map 2 Site Plan

5573 North Street,
Halifax



Undefined Scale

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

October 1st, 2013.

Bryan Burns
5531 Black Street
Halifax, NS B3K-1P7

COPY

Dear Mr. Burns,

RE: Application for Variance #18828 – 5573 North Street (PID 00168468)

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: 5573 North Street
Project Proposal: Construct a rear addition and legalize a 3rd residential unit.

Variances Requested:

	Requirements	Proposed
Minimum lot area for a three unit dwelling	8,000 square feet	2850 square feet
Lot area required for 4451.06 sq.ft. of gross floor area in a dwelling.	9,000 – 11,000 square feet	2850 square feet
Maximum lot coverage	35%	56%
Minimum right side set-back distance to lot line	6.0 feet	0.5 feet (to deck)
Minimum flank side set-back distance to lot line	6.0 feet	1.0 foot
Minimum mean rear set-back distance to lot line	20.0 feet	19.2 feet

Section 250(3) of the Halifax Regional Municipality Charter 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.**

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Page 2.

It is the opinion of the Development Officer that; (a) the variance violates the Intent of the Land Use Bylaw, (b) the difficulty experienced is general to the properties in the area, and (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

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:

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

Your appeal must be filed on or before October 11th, 2013.

If you have any questions or require additional information, please contact Mark Inness at 490-6257.

Sincerely,

"ORIGINAL SIGNED"

**Andrew Faulkner
Development Officer**

**cc. Cathy Mallett, Municipal Clerk
Councillor Jennifer Watts, District 08**

COMMUNITY & RECREATION SERVICES – DEVELOPMENT APPROVALS
Eastern Office – Alderney Gate, 2nd Floor

**Tel: (902) 490-4341 Fax: (902) 490-4661
E-mail: falukna@halifax.ca Web Site: www.halifax.ca**

11 October 2013

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

Dear Mr. Faulkner:

Re: Application for Variance #18828 – 5573 North Street (PID 00168468)

This is my appeal of the Development Officer's refusal of my request for a variance from the requirement of the Land Use Bylaw for Halifax Peninsula.

I will be providing photographs, letters of support from neighbours and will speak to the reasons for supporting the Variance. I have also provided drawings of the building as part of my submissions to HRM.

Background & Rationale for Approval

The house at 5573 North St. was for many years a three-unit rooming house in absolutely appalling condition. Essentially, it was a crack house. It is not possible in words to outline the abject and hopeless condition of the building in which men were residing when I purchased the building.

The outside of the house was equally as decrepit when I purchased the house in 2008. It also had an HRM by law order to scrape and repair shingles, which were repaired in the first year of my ownership and living in the house.

As a small business owner and small property owner, I have plucked away, over the course of the past five years, on a variety of small projects, which have resulted, over time, in significant upgrades to the house. It is now, for the area, 3 relatively high-end units, with the third requiring a small addition to allow proper access. The house is dramatically changed both on the interior and exterior.

Work done and proposed to this property is important and has resulted a number of positive changes:

Quality of the Neighborhood

- Neighbours – neighbours have consistently complimented and thanked me for the work in helping to clean up the neighborhood. Recently a neighbor remarked about how the former residents of 5573 North used to buy and sell their crack in front of the North St. Church. Some neighbors have been involved in working with me to paint and do other renovations to the property.
- People living in the neighborhood – the house really stands out as one of the better renovated houses on the street. People like it.

Density

- The density of residents in the building has been reduced. As a rooming house with three separate units – a bachelor for the super, a main floor with four rooms and an upstairs with seven rooms, the building housed 12 men in deplorable conditions.
- The current and proposed usage will house a maximum of 7-9 residents in 3 units.

Streetscape

- Improved the streetscape for residents in the neighborhood and North Street commuters alike – there have been on several occasions' commuters who have taken the time to stop and inquire the building since exterior upgrades were completed. People seem to particularly like the upgrades and often stop to complement the look of the house. It is helpful to our community to have nice, well taken care of houses.
- The current renovations are to the rear of the house and not visible on North St. That said, they add to the look of the back of the house and are necessary for proper access to the basement rooms and to provide a proper living situation in the basement, the remaining area of the house left untouched to date in the renovations.

Current Renovations

- In order to make the house more efficient and to provide proper access to the basement, renovations were required.
- The rear staircase to the basement was unsafe and not to current building standards (as is the case with many north end houses).
- Addition to the Building: The addition that is very much in keeping with the neighborhood and blends well with the house. It has been tastefully completed

and it enhances not only the house, but the neighborhood. As mentioned, it allows proper access to the basement.

- There was some indication both during digging around foundation and in talking to neighbours that a porch existed in the location of the addition. In undertaking the addition, we understood this would be a grandfathered structure, taking the place of a previous rear porch.

Summary of reasons for appeal

There are a number of important points here:

- I have always understood this building to be a three unit building. Neighbors have as well.
- The building next door is a 4 unit and across the street is a commercial building, 'The North Street Church' which also contains multi residential. Across north St. is a commercial store and multi unit buildings.
- Side yard setbacks are existing to the house which has been used as a three-unit house and do not relate to the addition.
- The house was used as a three-unit, 12 room, rooming house for many years. The rear addition of 100sq.ft. allows proper to code access to the basement of the house.
- Many houses and buildings in the area significantly exceed lot coverage and many do not have parking.
- Surrounding buildings include commercial and multi-residential.
- The existing structure already covered 52.5% of the lot and the rear addition of 100sq.ft. simply allows proper to code access to the basement of the house while only adding a small amount to overall lot coverage.
- The building will have 4 parking spaces that conform to HRM's residential parking requirements and/or I am willing to install bicycle racks in the 4th spot.

Sincerely,

"ORIGINAL SIGNED"

Bryan W. Burns, MEC, B.Comm

Attachment C: Rear Addition

September 11, 2013

