



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

Halifax and West Community Council
October 7, 2013

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original signed by
Brad Anguish, Director, Community and Recreation Services

DATE: September 23, 2013

SUBJECT: Case 18756: Appeal of Variance Refusal, 5691 Bilby 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 whether to allow or deny the appeal before them.

BACKGROUND

Variance requests have been submitted for the property at 5691 Bilby Street to permit the existing building to be enlarged, renovated and converted to a two unit dwelling. In order to facilitate this project, three variances have been requested to relax the minimum lot area, lot frontage and left side yard setback requirements. The property is currently developed with a single unit dwelling.

Site Details:

Zoning: R-2 (General Residential) Zone, Peninsula North Area 5
Halifax Peninsula Land Use By-Law (LUB)

	Zone Requirement	Variance Requested
Min. Lot Frontage:	50 feet	33.33 feet
Minimum Lot Area:	5,000 sq. ft.	3,333 sq. ft.
Left Side Yard Setback:	5 feet	2.3 feet

On May 1, 2013, a Building Permit was issued to “Renovate Three Unit Dwelling” at 5691 Bilby Street, Halifax (Map 1). That permit was issued pursuant to section 43J of the LUB, which allows for the internal conversion of existing residential buildings to a maximum of four dwelling units regardless of setbacks, lot size and lot frontage provided that:

- 1) There is no increase in height or volume of the building; and
- 2) At least one of the units in the converted building contains two or more bedrooms.

The restriction on height and volume was noted on the issued permit.

During an inspection on June 18, 2013, a Building Official found that the building had been raised three feet to accommodate the basement dwelling unit. This was contrary to the issued permit and the supporting construction plans submitted by the applicant. An Order to Stop Work was posted on the property.

As the scope of work no longer fell under the internal conversion provisions of the R-2 Zone, it is necessary to apply the zone’s requirements for a three unit dwelling. A variance request was submitted to relax the minimum lot area, lot frontage and left side yard setback requirements for a three unit dwelling. That variance request was refused, and the subsequent appeal denied by Community Council on August 7, 2013, under Case No. 18640.

In response to the denial of the variance appeal, the applicant could return the building to its original dimensions by removing the unauthorized 3 foot frost wall and placing the superstructure back on the original foundation. This would allow the conversion of the building to a two unit dwelling consistent with the requirements of the land use by-law. However, the applicant wishes to keep the wall and has made this second variance request to relax the

minimum lot area, lot frontage and left side yard setback requirements to allow the building to be used as a two unit dwelling.

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variances (Attachment A). The applicant has appealed the refusal and the matter is now before Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

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 this proposal does violate the intent of the Land Use By-Law. ~~The intent of the internal conversion clauses in the LUB are stated in the Halifax Municipal Planning Strategy as:~~

- 1) *To foster stable residential areas and to preserve the character of Peninsula North, the retention and rehabilitation of structurally sound housing units shall be encouraged.*
- 2) *In Area 5 of this Section, the conversion of buildings existing on 14 July 1979 in the Medium Density Residential areas south of Russell Street (NIP III area), for more intensive residential uses shall be encouraged in order to promote investment in the existing residential buildings, and to strengthen the residential character of the area.*

Relative to land use, the original permit to convert the single unit dwelling to three units as well as the revised permit request for a two unit dwelling are consistent with the MPS intent. However, altering the building to increase its height and volume on this lot is contrary to the MPS which states:

2.4 Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, 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. [Emphasis added]

The architectural styles are mixed in the neighbourhood, but consist primarily of two storey buildings. Raising the building at 5691 Bilby Street will create the only 2 and a half storey building in the immediate area, which would make it out of character with neighbouring properties (see Attachment C). The variance was refused as it did not meet the intent of the land use by-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The R-2 Zone of the land use by-law permits a two unit dwelling on a lot that has a minimum area of 5,000 sq. ft. and a minimum lot frontage of 50 feet. There is only one lot in the notification area which meets this requirement and therefore, the difficulty experienced is general to properties in the area and the variance was refused.

3. Is the difficulty experienced the result of an 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 By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

In this case, a construction permit application was submitted and issued authorizing an internal conversion of an existing single unit dwelling to create two additional dwelling units. Raising a building is a major structural undertaking and there was no indication in the submitted building plans to indicate this work. Furthermore, the issued permit stated that no increase to the height or volume of the building is permitted.

The Development Officer believes that there was an intentional disregard for the requirements of the land use by-law and the variance was refused.

Conclusion:

Staff reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts with the statutory criteria provided by the *Charter*. The matter is now before 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 denial is appealed, a hearing is held by 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. Council may deny the appeal and uphold the decision of the Development Officer to refuse the variances.
2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variances.

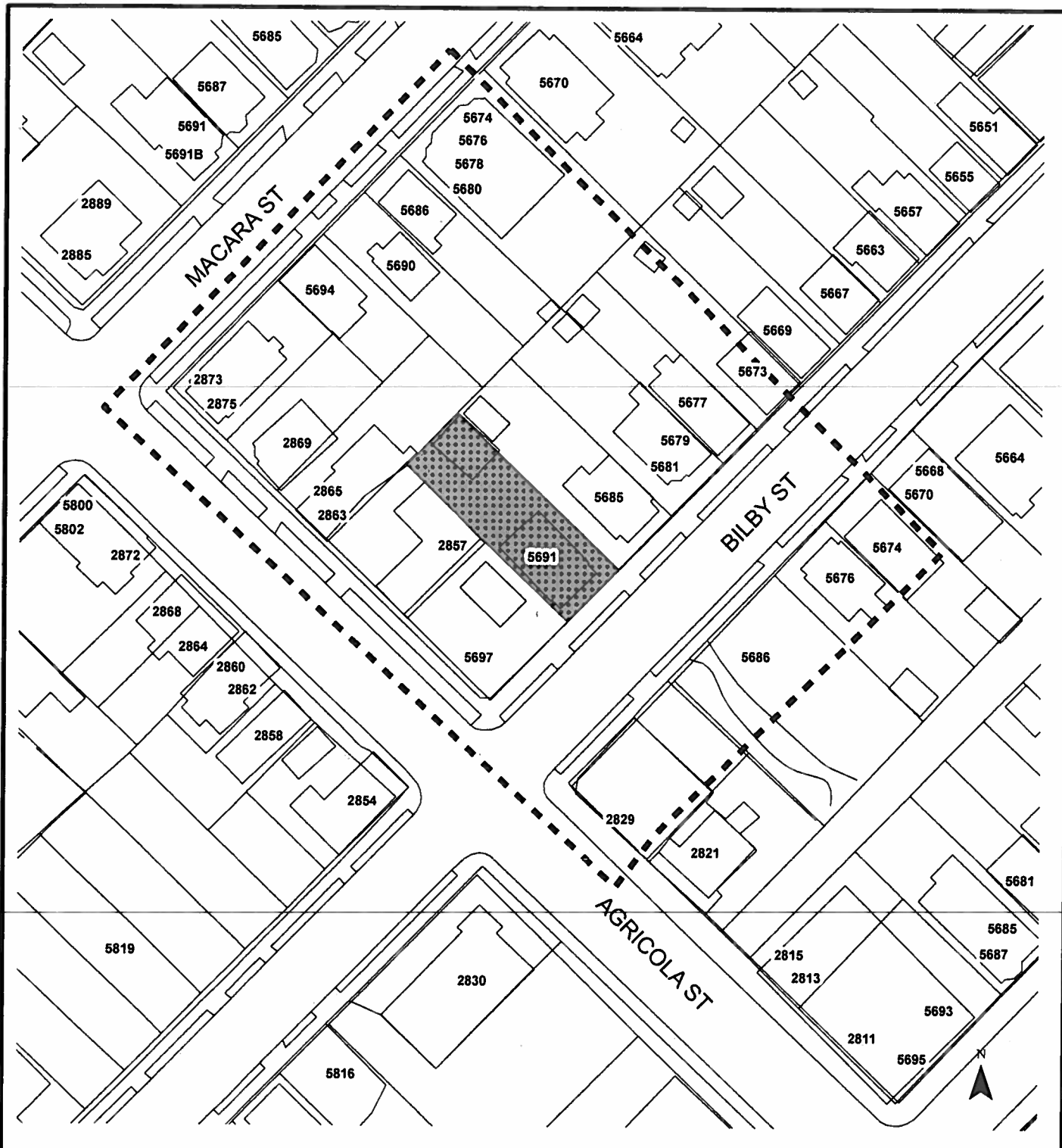
ATTACHMENTS

Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Refusal Letter
Attachment B	Letter of Appeal from the Applicant
Attachment C	Photos of Building Under Renovation & Surroundings

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: Andrew Faulkner, Development Officer, 490-4341
Original signed by _____

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



Map 1 - Notification Area

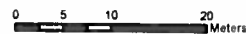
5691 Bilby Street,
Halifax



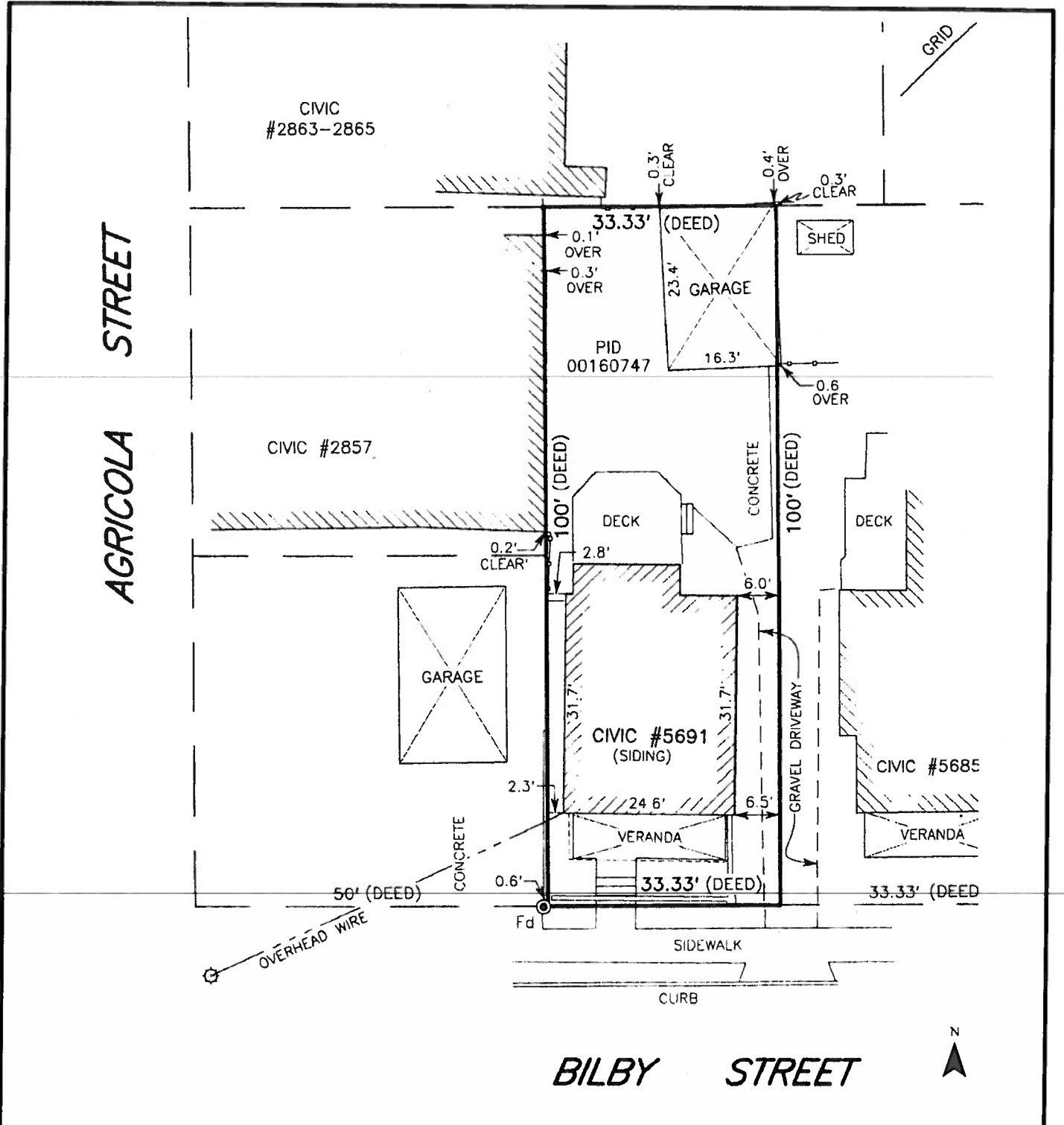
Notification Area



Subject Property



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



Map 2 - Site Plan

5691 Bilby Street,
Halifax



Unknown Scale

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

September 05, 2013

Attachment A

Allan Offman
6319 Cornwall Street
Halifax, NS
B3H 2J2

Mr. Offman

RE: Application for Variance, File 18756 – 5691 Bilby Street, Halifax, NS

This will advise that I have refused your request for variances from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Conversion of a single unit dwelling to a two unit dwelling.

	Requirement	Refused
Lot frontage	50'	33.33'
Lot area	5,000 sq.ft.	3,333 sq.ft.
Left side yard setback	5 feet	2.3 feet

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

No variance shall be granted if:

- (a) the variance violates the intent of the development agreement or 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 development agreement or land use bylaw

It is the opinion of the Development Officer that

- a) the variance violates the intent of the land use by-law.
- b) the difficulty experienced is general to 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(5) of the *Halifax Regional 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
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Your appeal must be filed on or before September 15, 2013.

If you have any questions or require additional information, please contact Paul Boucher at 490-4321.

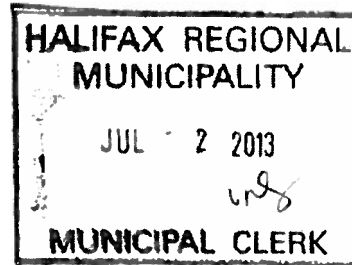
Sincerely,

Andrew Faulkner
Development Officer

cc. Gathy Mellett, Municipal Clerk
Councillor Jennifer Watts

Attachment B

July 02, 2013



Reference: 5691 Bilby Street
File Number 18640

Application for Variance and Refusal Dated June 28, 2013

Attention: Mayor Mike Savage
Councillor Jennifer Watts
Council Members
Municipal Clerk's Office

With reference to the above mentioned property we applied for a permit to convert a single family dwelling into three rental units. A permit was issued to do so and construction commenced the first of June 2013.

In doing so we raised the existing structure three feet. Shortly after we had a site visit by a HRM building official who indicated that we were in violation of our permit as it was indicated on the permit that the house could not be raised. At this point we were issued a stop work order.

I went back to our office and pulled the permit and the permit did indicate that the house was not to be raised. In reading the permit I for some reason did not read the full content for what ever the reason was. It was never our intention to disregard the intent of the permit or circumvent the process.

At this point I went out to HRM offices and discussed the matter with development and at that time proceeded with the application for a variance. We completed the necessary work to the property to leave it in a safe condition, boarded up and ceased work.

In further conversations with Stephanie Norman of development she indicated that under the single family dwelling aspect of the by-laws we could raise the property. However, we would still need to proceed with the variance if we wished to continue with the three units. Along with Ms. Norman and building applications we modified the permit to a single family dwelling so we could still work on the site.

The family members who own the property had intended this to be a three unit building with one of the owners occupying a unit. Work has not been resumed as they wish to go through the process for the original intent of a 3 unit rental property.

With the raising of the structure we meet the height restrictions and allowable gross floor space under the single family dwelling. Our foundation footprint remains the same. In order to have three rental units is where the difficulty lies.

With that we are officially in writing appealing the refusal decision by HRM Development and request that our variance be brought before HRM Council.

Thank you

✓ Allan Offman
6319 Cornwall Street
Halifax, N.S.
B3H 2J2
[REDACTED]

Property Owner's
Sandra Fitzpatrick-Offman
Michael Fitzpatrick
Lyn. Fitzpatrick



Properties Opposite Civic 5691, on South Side of Bilby Street

Civic 5691 Under Renovation & Adjacent Properties to the East



Attachment C

5691 Bilby Street, Halifax

HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

Sept. 26, 2013

Case 18750

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