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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 #18392 – Appeal of Variance Approval – 5684 West Street,
Halifax, NS**

ORIGIN

Appeal of the Development Officer's decision to approve 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

A Development Permit for a four storey, 24 unit apartment building was approved under Permit 129725 on April 17, 2013. This proposal met all applicable Land Use By-Law (LUB) requirements including angle controls. The angle control requirements of the LUB result in the third and fourth storeys of the building being stepped back from the lower portions of the building to ensure the satisfactory design and massing of the building.

The applicant has now requested consideration of a revised building design which requires the relaxation of the angle controls in some areas of the building to:

- Allow the third and fourth storeys to be situated in line with the lower storeys;
- accommodate the inclusion of balconies; and
- allow corners in the front sections of the building.

Angle Controls

The Halifax Peninsula Land Use By-Law requires various angle control provisions to be applied to multiple unit buildings to control such elements as building setback, size and distances between external building walls. For this proposal, two angle control requirements are applicable; a 60 degree vertical angular plane and an 80 degree horizontal angular plane. The 60 degree vertical angle control is used in elevation to control height while the 80 degree horizontal angle is used in plan to control mass. The application of both angular planes to a building result in affecting its setback from property lines. An illustration of the angle control requirements is contained in Attachments B and C.

Site Details:

Zoning: C-2 (General Business Zone) under the Halifax Peninsula Land Use By-law.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance and notified the property owner. This decision was appealed by the owners of four (4) properties within the notification area. The matter is now before Halifax and West Community Council for decision.

DISCUSSION

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; or*

(c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law. 2008, c. 39, s. 250; 2008, c. 41, s. 9.”

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?

As noted in the Background section of this report, the intent of the angle controls is to limit an apartment building’s setback from property lines in proportion to its lot. In order to meet the angle control requirements, portions of the third and fourth storeys of the proposed building have to be set back from the lower portions of the building. The building proposed under the variance has very slight differences in the footprint and siting from the approved as-of-right building which meets the by-law requirements. The only difference between the as-of-right building and the building approved by this variance is slight architectural modifications which are shown on Map 2. The variance does not increase the density or number of units within the building which were approved under the existing Development Permit. Approval of the variance will result in an aesthetic rather than material difference and for these reasons, it is staff’s opinion that the intent of the by-law is not violated.

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 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 neighborhood has no consistency with respect to lot size or use and is a mix of residential and commercial buildings. The lots within the block (Agricola Street, West Street, Harris Street, and Maynard Street) are all zoned C-2. The C-2 Zone also allows for a commercial building. The LUB does not contain setback requirements for commercial buildings so buildings are able to be placed up to the property line, provided building code requirements are achieved. With the exception of the adjoining property at 5677 Harris Street which received approval of a similar variance request on September 23, 2013 (Case 18137) most of these lots within this block are not large enough to consider an apartment building because of the zoning criteria. This particular lot has sufficient lot size and frontage to build an apartment building. The difficulty is not general to the area because this is a condition/circumstance that does not apply generally to the area.

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. That is not the case in this request. The applicant has applied for a variance prior

to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the refusal of the variance requests.

Appellant’s Appeal:

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment D) 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 Response
Concerns the proposed building is a larger footprint than the previous building and is taller which will impact privacy, seclusion, and enjoyment of the owners’ backyard. The footprint and mass is inappropriate and too large for the property and surrounding neighbourhood.	New construction is not required to have the same footprint of previous buildings. The proposed building does not exceed the maximum height (50’) and a permit has been issued for a building that fully conforms to the land use by-law. The difference between the approved footprint and the proposed footprint is primarily the same with the exception of four small corners. Filling in the recesses on the third and fourth floors will not change the footprint as these areas are filled in on the first and second floors. Privacy and seclusion is not a consideration under the Land Use By-law.
HRM by Design, Phase 3, Agricola Street corridor streetscape consultations in 2012 for the vision of the neighbourhood were not considered.	The Land Use By-law has not been amended for these potential changes. These meetings were general discussions about the area. Land Use By-law amendments have not been proposed or adopted.
Concerns about noise, garbage collection, increased traffic, evening light, diminished property values, decrease in potential tenants for owner’s rental properties.	These issues are not addressed or regulated under the Land Use By-law.
No details on the quality of exterior cladding or consideration of architectural style.	Architectural style and building materials are not a consideration under the Land Use By-law.
Siting of the building so that it abuts the other tall building for the corner of Maynard and Harris.	Each side of the building has a minimum setback of 10 feet.

Height of the podium with the railing is too high. Maximum height of a fence is 6 feet.	A podium has its own requirements and is permitted under the R-3 Zone requirements as part of the development for apartment buildings. A podium is a different structure than a fence and treated different under the Land Use By-law and Building Code. The podium and railing is permitted.
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Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result, the variance request was approved as it was determined that the proposal does not conflict 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 request is appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellants to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may uphold the decision of the Development Officer to approve the variance.
2. Council may overturn the decision of the Development Officer and deny the variance.

ATTACHMENTS

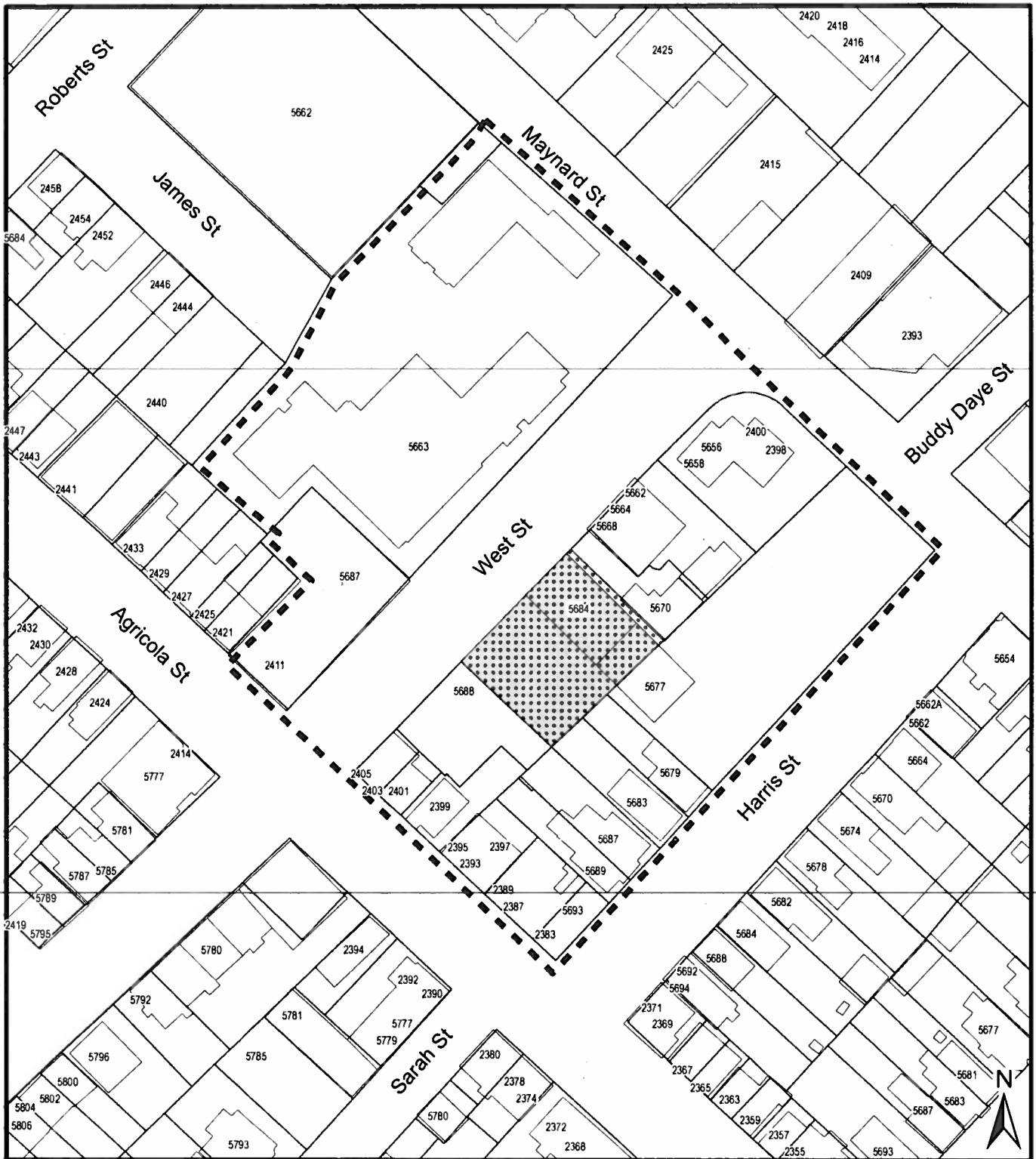
Map 1	Notification Area
Map 2	Site Plan – Approved permit and Areas of Requested Variance
Attachment A	Proposed Building Elevations
Attachment B	Graphic Representation of 60° Angle Control
Attachment C	Graphic Representation of 80° Angle Control
Attachment D	Appeal Letters

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: Sean Audas, Development Officer and Shilo Gempton, Development Technician, 490-6796

Original Signed by:

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



Map 1 - Notification Area

5684 West Street
Halifax



Subject Property



Notification Area

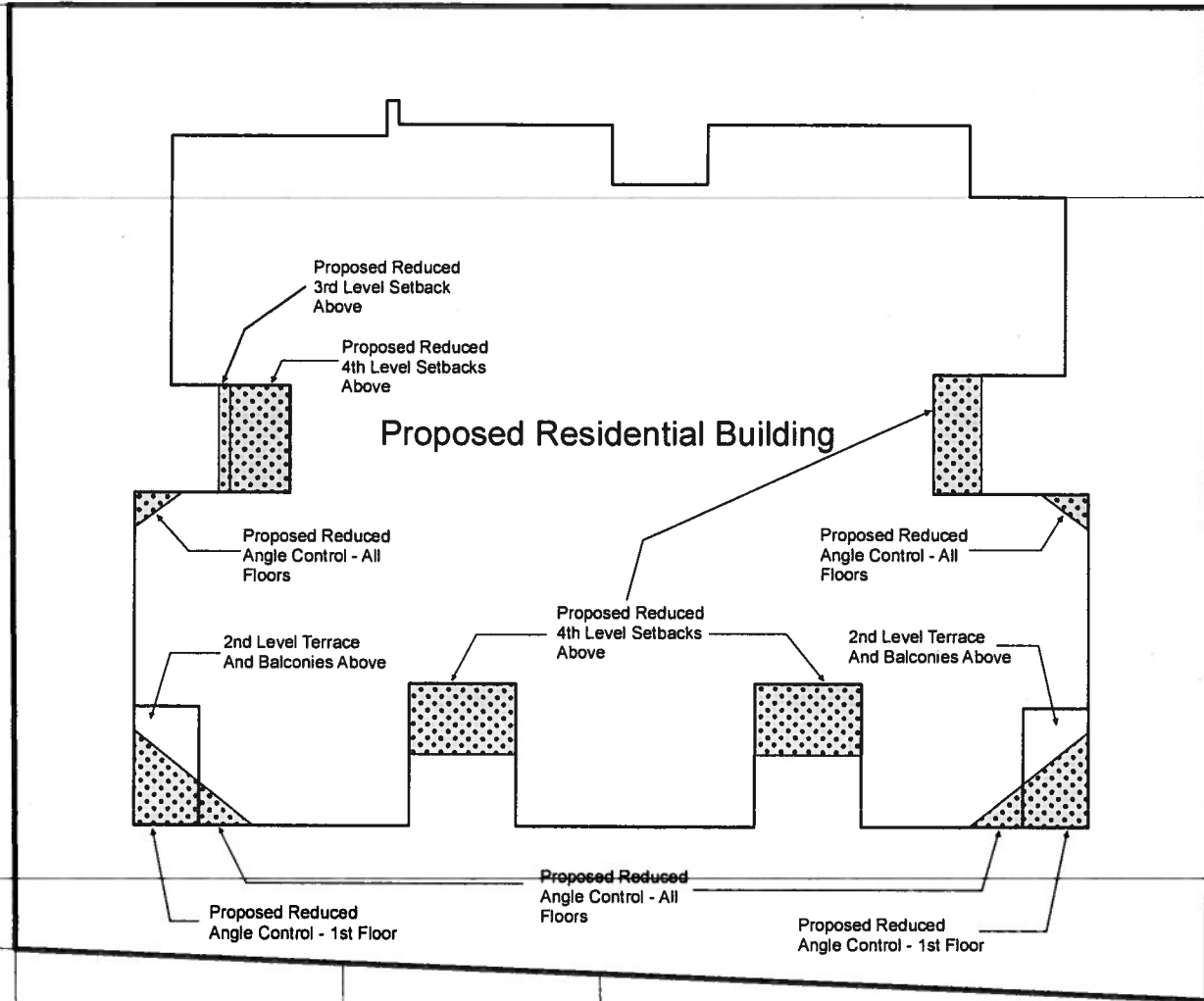


HRM does not guarantee the accuracy of any representation on this plan.

West Street

Curb

Sidewalk



Map 2 - Site Plan

5684 West Street
Halifax

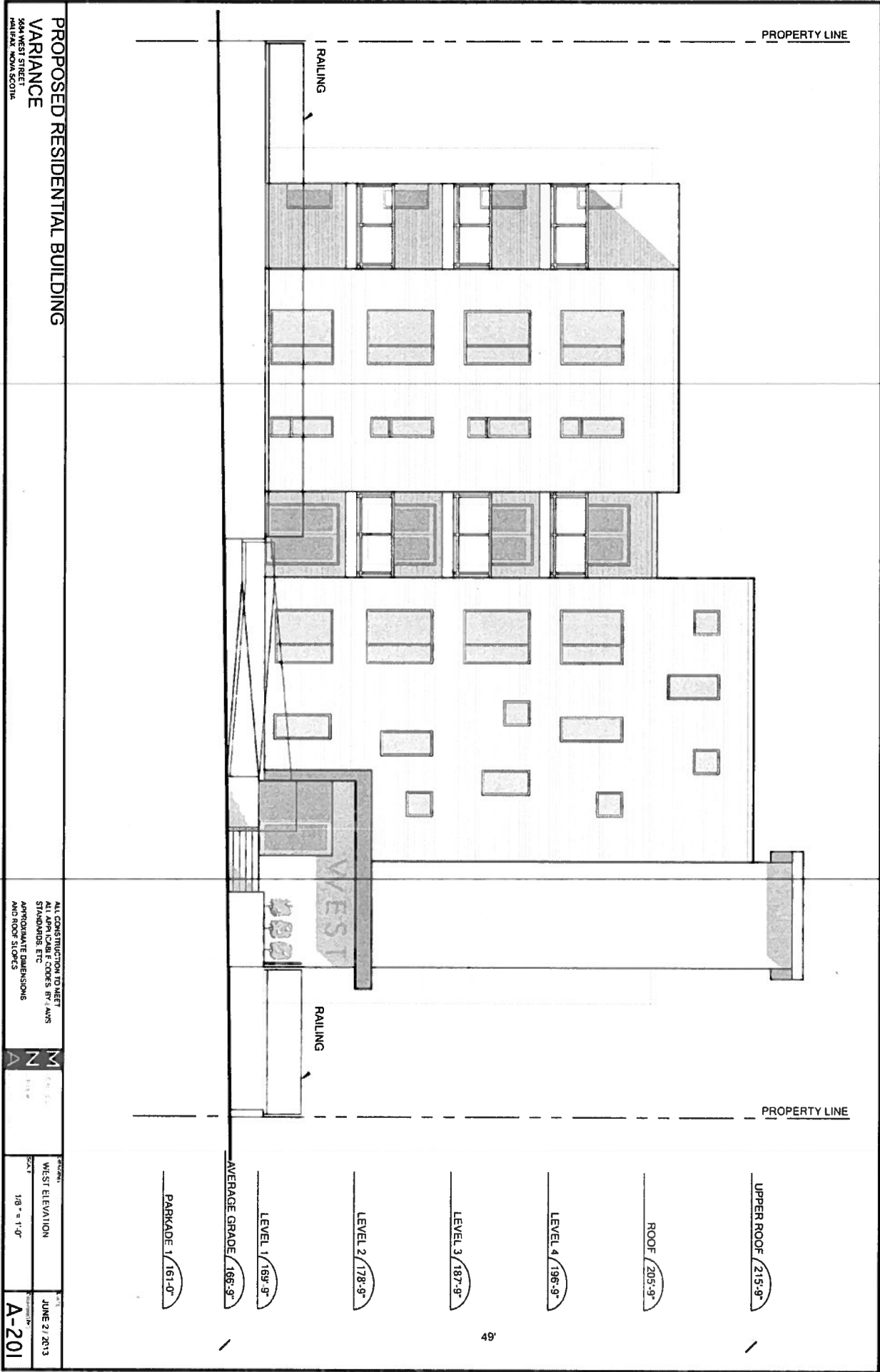


Area of requested Variances

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 1 2 4 m

HRM does not guarantee the accuracy of any representation on this plan.



PROPOSED RESIDENTIAL BUILDING
VARIANCE
 204 WEST STREET
 HANNAH, NORTH CAROLINA

ALL CONSTRUCTION TO MEET
 ALL APPLICABLE CODES BY AIA
 STANDARDS, ETC.
 APPROXIMATE DIMENSIONS
 AND ROOF SLOPES

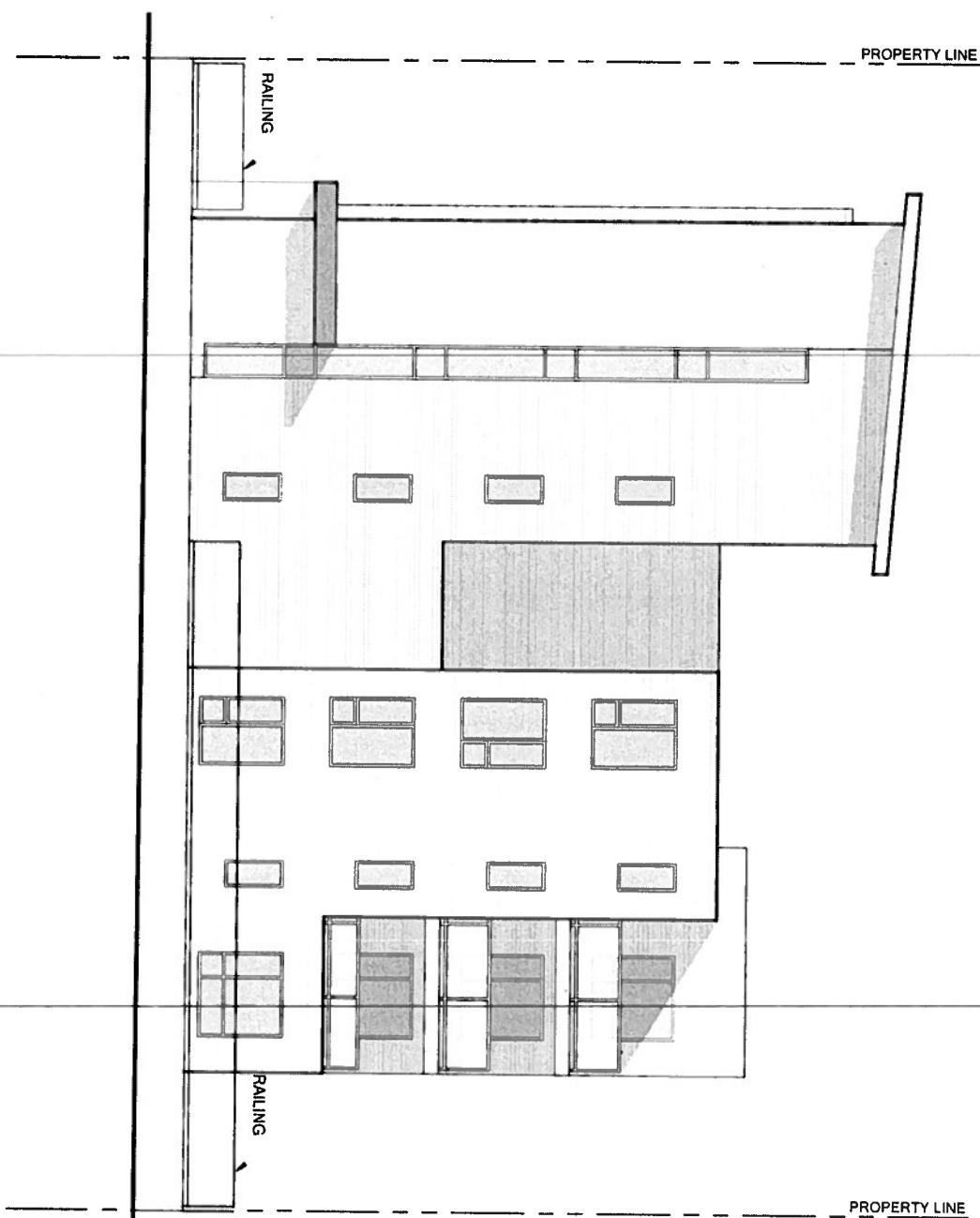


SCALE	WEST ELEVATION	DATE
1/8" = 1'-0"		JUNE 2 / 2013
		A-201

PROPOSED RESIDENTIAL BUILDING

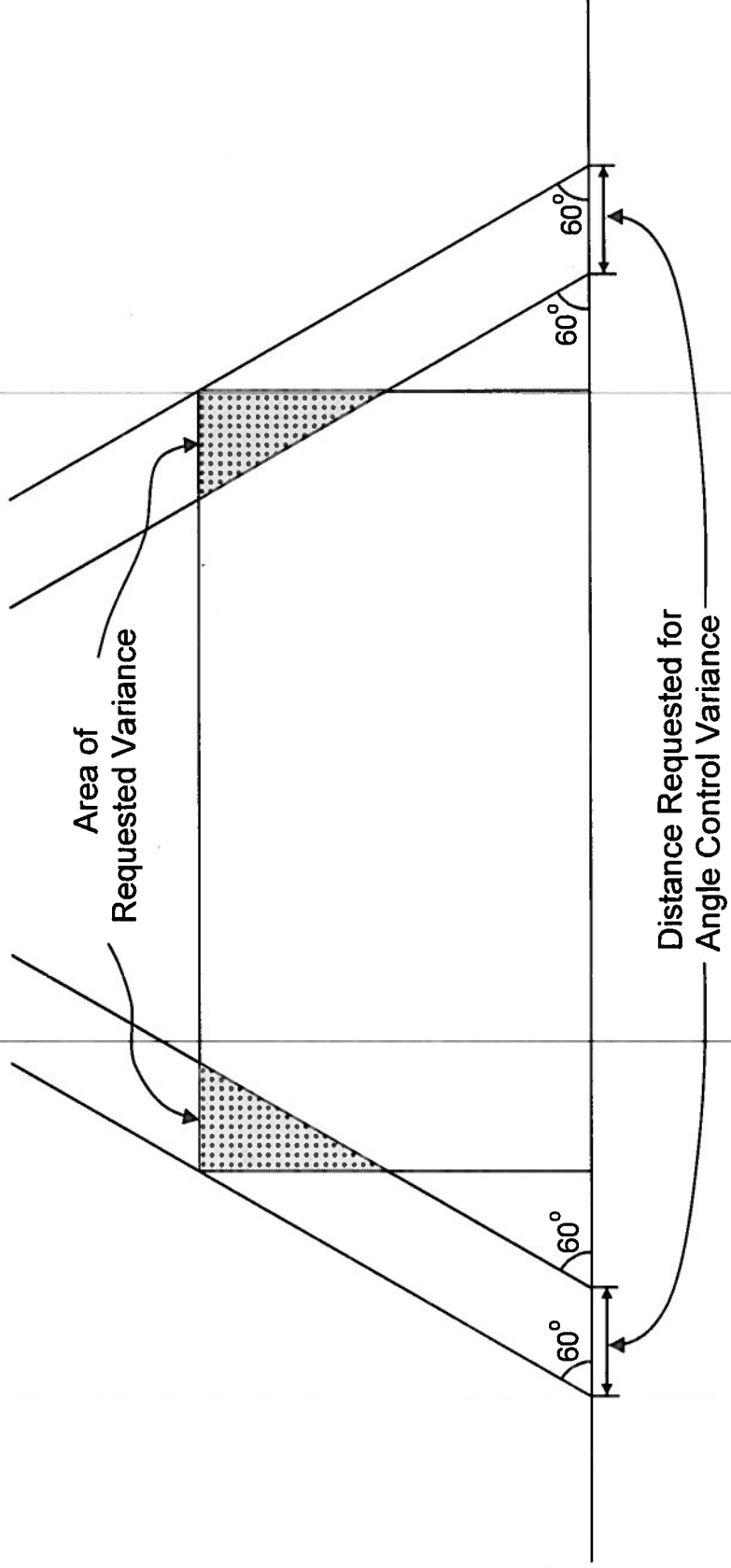
VARIANCE

554 WEST STREET
 WASHINGTON, NORTH CAROLINA



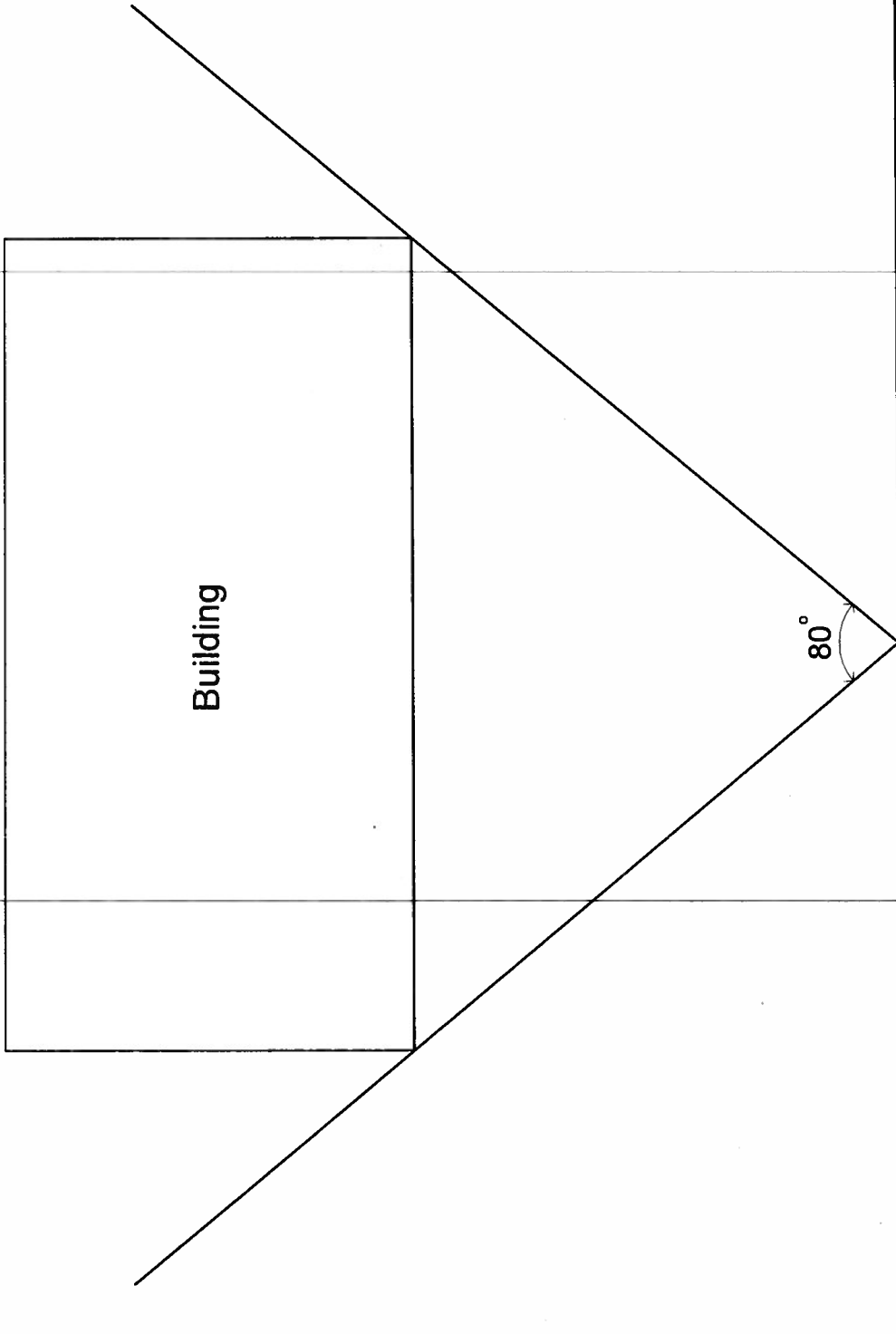
- UPPER ROOF / 215'-9"
- ROOF / 205'-9"
- LEVEL 4 / 196'-9"
- LEVEL 3 / 187'-9"
- LEVEL 2 / 178'-9"
- LEVEL 1 / 169'-9"
- AVERAGE GRADE / 166'-9"
- PARKADE 1 / 161'-0"

	CH. 12 P. 13	SOUTH ELEVATION	DATE JUNE 27 2013
	SCALE 1/8" = 1'-0"	A-204	



Attachment B
Graphic Representation of 60° Angle Control

 Area of Requested Variance



Property Line

Attachment C
Graphic Representation of 80° Angle Control

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DEVELOPMENT APPROVALS

HRM does not guarantee the accuracy
of any representation on this plan.

Stewart, April

HALIFAX REGIONAL
MUNICIPALITY

From: margaret anderson/
Sent: July-16-13 11:32 AM
To: Office, Clerks
Cc: Watts, Jennifer
Subject: 5684 West Steet - Variance Application

JUL 16 2013
wg
MUNICIPAL CLERK

Hi Sean

RE: Variance Application #18392, 5684 West Street.

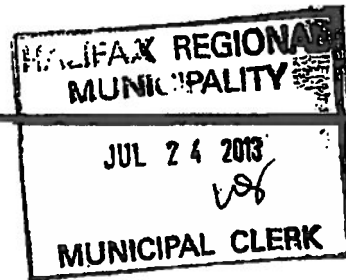
I am the owner of the property at 5683 Harris St. I do not agree with the variances that allow the building on West Street to be any larger than the by-laws allow. I am also very concerned with the "concrete podium". It looks like it is about 4' or 5' above finished grade and then has a railing above. Does that mean that the height of the railing will be about 10' above my yard? I thought the maximum height of fence could be 6 ft?

I am very concerned about the size of this building and how it will affect the light and general enjoyment of my property. Please let me know if there are any meetings with the owner or architect as I would like to understand what they are planning to build.

Regards

Margaret Anderson

Stewart, April



From: Heather Breeze
Sent: July-23-13 1:39 PM
To: Office, Clerks
Cc: Watts, Jennifer
Subject: Appeal of variance to angle control requirements, West Street

Follow Up Flag: Follow up
Flag Status: Flagged

Heather Breeze
2379 Moran St.
Halifax NS B3K 4K1
e-mail:

Sean Audas
Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Development Services – Western Region
Via e-mail: clerks@halifax.ca

Dear Mr. Audas:

RE: Variance Application #18392, 5684 West Street

I am writing to appeal the variance to the angle control requirements granted for the proposed development at 5684 West Street. I own a property directly next to the site on Harris Street (5679 Harris Street).

The proposed development has a much larger and taller building footprint than the previous building. When combined with the proposed Harris Street development, my property will feel both hemmed in and overlooked. The relative privacy and seclusion we have developed in the backyard through judicious use of plants and screening will be gone. As such, I do not support the variance that would further expand the existing, and in my mind, already inappropriate building mass and footprint.

I understand that because of the C-2 zoning, the developer has a right to develop a multi-unit residential building. When considered with the proposed development for Harris Street, these two streets (and Maynard Street) will be substantially changed, with no neighbourhood input.

The 2012 consultations on the streetscape for this area (HRM by Design Phase 3, Agricola Street corridor) proposed much greater setbacks and angle controls than is permitted under the current land use bylaw, in order to maintain the neighbourhood character. While those proposed setbacks have not yet been passed, in my view, granting the variance for the current setbacks is contrary to the vision for the neighbourhood that has been put forward.

I—and others in the neighbourhood—would be happy to discuss our concerns with the developer and/or HRM staff.

Sincerely,
Heather Breeze

c.c. Jennifer Watts

Delivered by Hand

July 24, 2013

James Ennis
2395 Agricola Street
Halifax, Nova Scotia
B3K 4B8

RECEIVED JUL 25 2013

Scan Audas, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Planning and Development - Western Region
Halifax, NS B3J 3A5

Re: Variance Application #18392, 5684 West Street, Halifax, N.S.

Dear Scan Audas,

I am the owner of two properties located at 2395 and 2399 Agricola Street. These properties are adjacent to the proposed development at 5684 West Street.

I am strongly opposed to the variance being granted. In my opinion, the As of Right development in itself is too large for the property's footprint and will have a great negative impact on the enjoyment and value of my properties. Granting an easement, thus further increasing the size and scale of the building, will increase the negative impact on my properties.

I ask that you, as Development Officer, deny this variance application.

Sincerely,

James Ennis

*I AM appealing the
VARIANCE BEING GRANTED.*

Syms, Lee

HALIFAX REGIONAL
MUNICIPALITY

From: robin stewart
Sent: July-25-13 12:22 PM
To: Gempton, Shilo; Office, Clerks
Cc: Watts, Jennifer
Subject: Appeal of Variance #18392, 5684 West Street, Halifax, NS

JUL 25 2013


MUNICIPAL CLERK

My name is Robin Stewart, and I am the owner of the following two properties:
5687 and 5689 Harris Streets.

I have owned and operated these properties as rental units since 2003 and 2001 respectively. I have been invested in this neighbourhood since 1999.

I would like to appeal the variance.

I am opposed to the building being any bigger than by-laws allow.

I would like any development on this site to have as small an impact to myself and the surrounding neighbourhood as possible.

That is, I am opposed to any increase in the scale of the building. It is already too big for the scale of the surrounding neighbourhood.

I am concerned about:

- increase in noise (from podium and balcony users, garbage collection, increased traffic)
- diminished evening light
- decrease in the general enjoyment of my property
- diminished property value
- a decrease in the pool of the usual candidates who want privacy and want to rent on a quaint street of well maintained low-rise historic homes. I am concerned that potential future renters of my building will be turned off by the scale of this building in their backyard, and this will be harder for me to make a living. The tenants I've rented to in the past have always been attracted to the private outdoor space my properties offer.
- ~~no details given on drawings about the quality of exterior cladding and whether this building will be enduring and stand the test of time like the surrounding cedar clad historic buildings (an expensive siding material to install and maintain).~~ My properties are examples of Second Empire architecture from the late 1800s.
- the highest point of the building is on the end of the site closest to my buildings and the surrounding neighbours: why couldn't it be more kind to the surrounding neighbours and be sited at the opposite side of the site so that it abutts the other tall building proposed for the corner of Maynard and Harris?

Sincerely, Robin Stewart