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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 5, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:


Andrew Faulkner - Development Officer

DATE: January 12, 2007

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 1538 Lemarchant Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the Side Yard Setback requirements of the Halifax Peninsula Land Use Bylaw which if granted, would permit the conversion of a single unit dwelling into a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 1538 Lemarchant Street in Halifax. The property is zoned R-2, General Residential Zone in the Halifax Peninsula Land Use Bylaw.

This Variance was refused by the Development Officer on December 7, 2006. The applicant appealed the Development Officers decision on December 11, 2006.

In 2004, the current owners secured a building permit (Permit #58168) for basement excavation and interior renovations. The basement floor plan submitted for this application showed areas labelled as "bar" and "Guest room". Subsequently, the basement was transformed into a second unit. This second unit was not part of the plans reviewed for the 2004 permit application. The basement excavation served to eliminate the possibility of internal conversion to a second unit.

In 2006, it was brought to HRM's attention of the existence of a second unit. It was suggested to the owners that they apply for a permit to verify whether it was possible to legalize the second unit. During the permit review, it was discovered that the right yard setback (when facing building) did not meet the required five (5) feet setback. The last remaining avenue at the owners' disposal to legalize the second unit was a variance application on the right yard setback.

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.

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

Throughout the Land Use Bylaw, density is directly or indirectly controlled by lot area requirements. Staff believe the intent of the regulations is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard R-2 guidelines require a lot are of 4000 square feet for single unit dwellings, 5000 sq ft for duplexes and 8000 sq ft for three and four unit buildings. Side lot line setbacks are increased as density increased, from 4 feet to 6 feet. For low density residential development, it is clear the bylaw intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas and greater open space between the buildings and the lot line.

Given that the intent of the bylaw in this case is clear, the Development Officer believes that further reduction to allow additional units would clearly violate the intent of the bylaw. Therefore the variance is refused.

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

The zone permits up to four units, dependent on the frontage, lot area and side yard setbacks. The side yard setback found on this property do not meet the requirements for a two unit dwelling. The majority of properties in the buffer area are single unit dwellings. Based on our provincial mapping, (see copy attached) the majority of these single unit dwellings appear to be quite close to the property lines. Therefore, the difficulty experienced is general to the properties in the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

During the permit application of 2004, the floor plans clearly did not show a second unit and the applicant did not communicate this intention. There were never any permit application for the inclusion of a second unit in this building. The building permit application which subsequently led to this variance application came after the fact that a land use by-law investigation of the property was commenced. It is therefore clear that the difficulty presented was the result of an intentional disregard of the land use bylaw.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with legalizing second unit.

ATTACHMENTS

1. Location Certificate showing existing setbacks
2. Refusal Letter
3. Email indicating decision to appeal refusal

INFORMATION BLOCK

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.

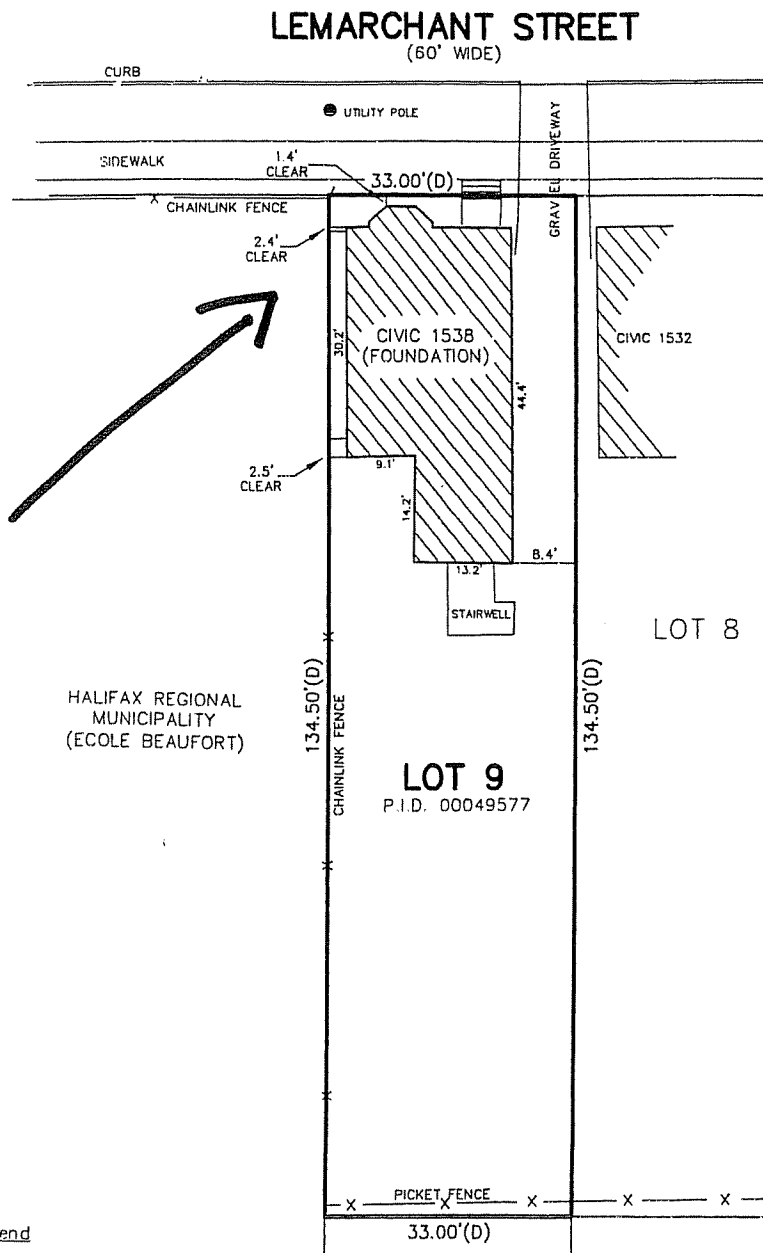
Report Prepared by: Brenda Seymour, Development Technician (490-7455)

DATE: January 8, 2007

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance at 1538 LeMarchant St., Halifax

SITE PLAN

To vary right side yard requirements from 5 ft to 2.4 ft



pend
- Dead

Brenda Seymour - Appeal

From: Natalie Burke
To: <faulkna@halifax.ca>
Date: 11/12/2006 2:11 PM
Subject: Appeal
CC:

Hello Andrew. This is written confirmation that I will be appealing the HRM decision to reject my application for a variance. Thank you for scheduling this to be heard at council on February 5, 2007.

Regards
Darren

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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

December 7, 2006

Darren Burke

Dear Mr. Burke

Re: Application for Variance, File No. 13465 - 1538 LeMarchant St, Halifax

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:	1538 LeMarchant St
Project Proposal:	Converting from 1 unit to 2 units
Variance Requested:	Vary Side Yard setback from 5 ft to 2.4 ft

Section 235(3) of the **Municipal Government Act** 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.

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 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 236(4) of the **Municipal Government Act** 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:

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

Your appeal must be filed on or before *December 15th, 2006*.

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December 7, 2006
Darren Burke

If you have any questions or require additional information, please contact Brenda Seymour, Development Technician at 490-7455.

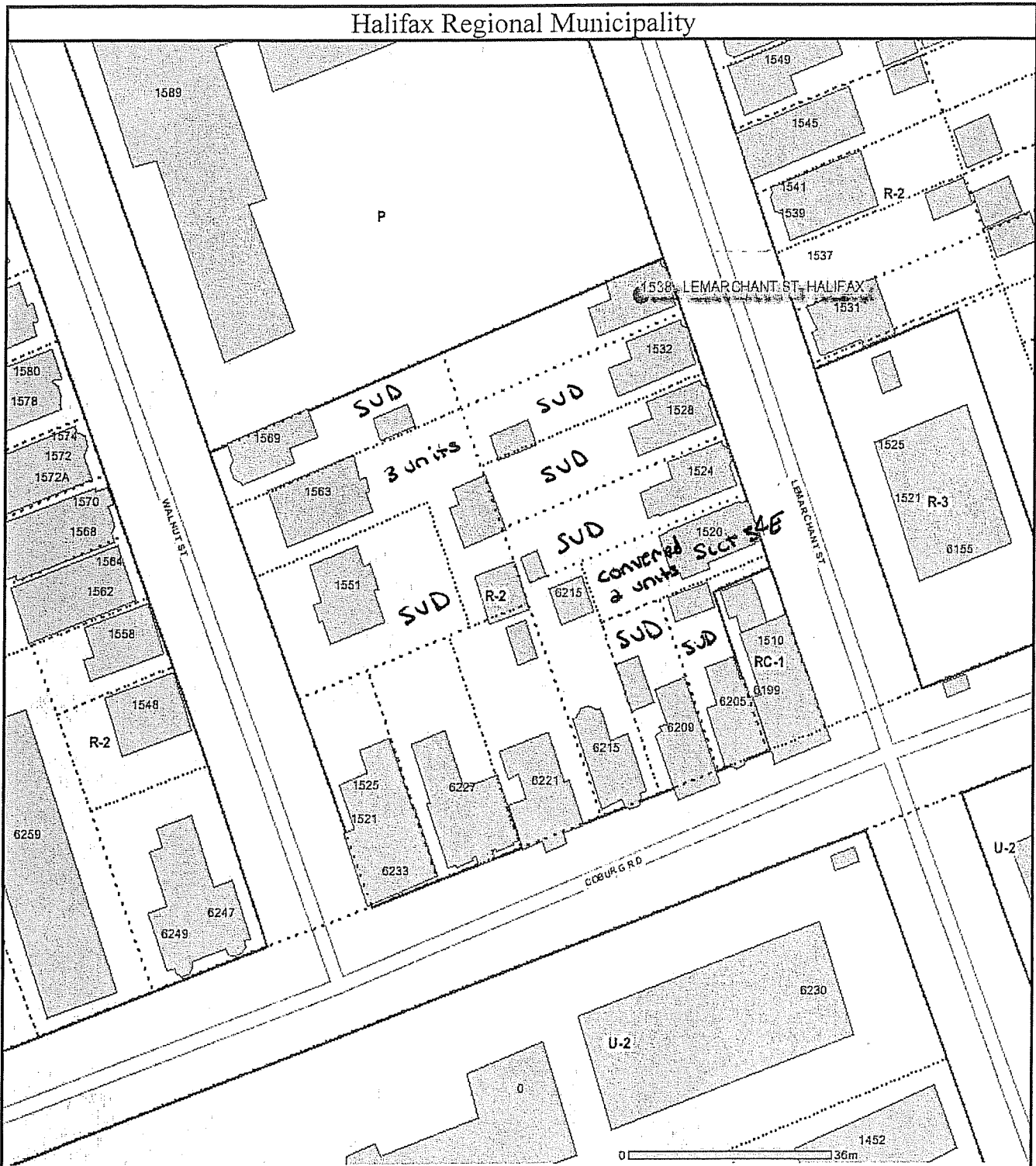
Sincerely,



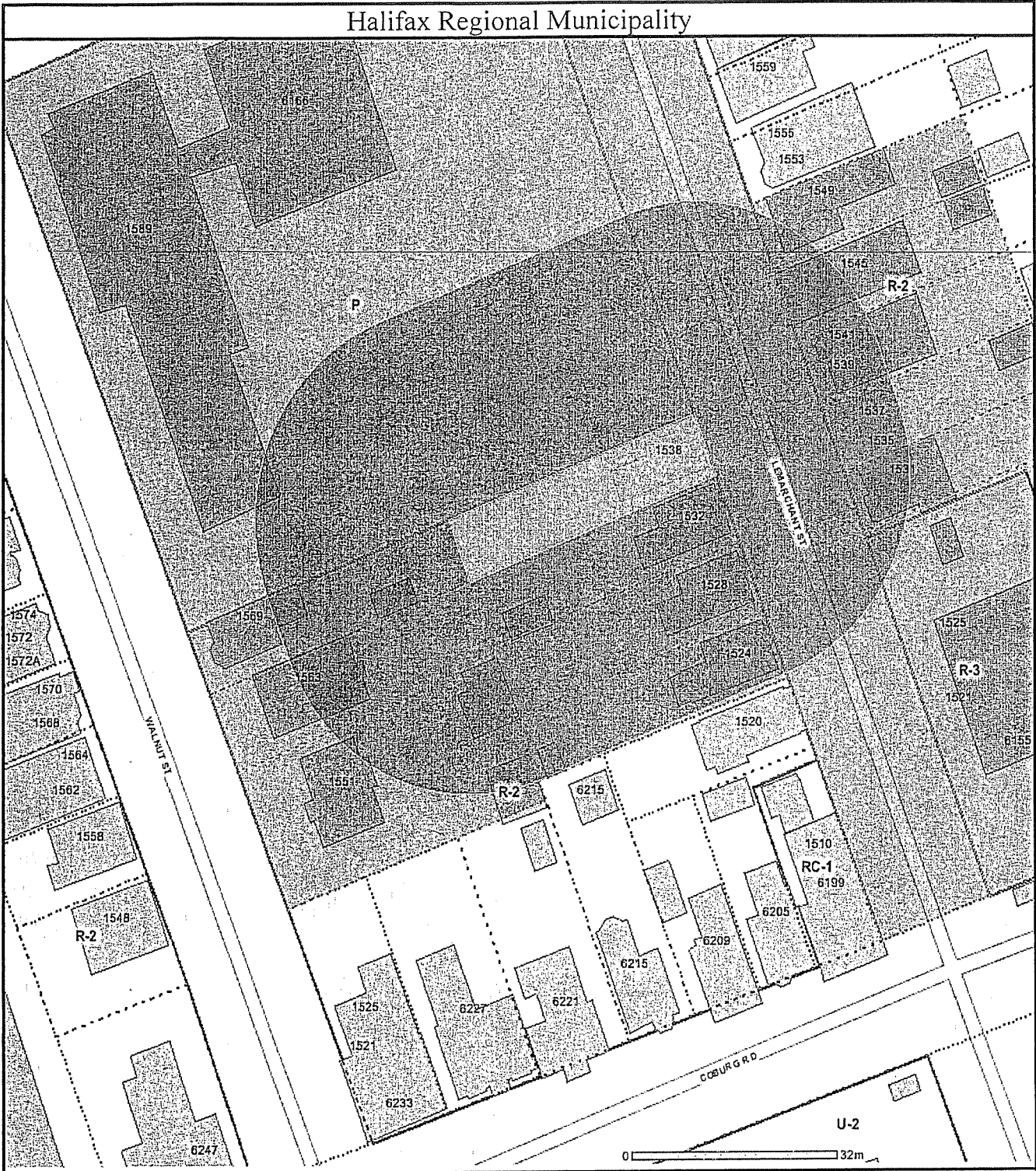
Andrew Faulkner
Development Officer

cc

Jan Gibson, Municipal Clerk
Councillor Sue Uteck, District 13



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.



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