

DRAFT minutes extract from the June 12, 2006 meeting of Peninsula Community Council

8.2.1 Appeal of the Development Officer's decision to approve an application for a Variance - 5562 Falkland Street, Halifax

- A staff report dated June 2, 2006 on the above noted was before Community Council.

Ms. Leticia Smillie, Development Technician, Planning and Development Services, reviewed the report with Community Council. Ms. Smillie indicated that this is an appeal of the Development Officer's decision to approve a variance from the Gross Floor Area Ratio ("GFAR") requirement of the Halifax Peninsula Land Use Bylaw ("LUB") to permit an addition to a single family dwelling. Ms. Smillie clarified the following at the request of Community Council members:

- The addition will not change the building footprint,
- The applicant applied for a renovation permit, which was issued in error as staff did not capture the additional proposed floor area exceeding the permitted GFAR,
- When the error was realized, the permit was revoked, a stop work order was issued, and the applicant applied for the variance to correct the situation.

Councillor Fougere opened the appeal hearing and called for speakers.

Mr. Peter Greer, Halifax

Mr. Greer addressed Community Council, distributing correspondence dated June 12, 2006 from his wife, Allison Strachan, who could not be in attendance this evening. Mr. Greer advised the following:

- That he and his wife, Allison Strachan, are the owners of the property which backs onto the side lot of the subject property,
- He showed photos of the property, indicating that an addition has been built six feet closer to his property and there are now ten windows on the side of the house overlooking Mr. Greer's property, where there were three windows before,
- That the property owner also added grade to the yard and lowered the fence, diminishing his family's quiet enjoyment of their property,
- That the deck that was constructed across the third floor of the back of the house is 20-25 feet above his and his neighbour's properties,
- That there are no similar properties in the neighbourhood.

Mr. Greer showed photos of the subject property, and at the request of Councillor Sloane, clarified that a photo of the back of the property showed three doors on the main level.

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Mr. Scott Aitchison, property owner

Mr. Aitchison addressed Community Council, advising that the shut down period of the permit was for less than twelve hours. He further advised that the three doors at the back of the property are a design feature, and that the windows on the side of the house are in a stairwell. Mr. Aitchison requested that the variance be allowed.

At the request of Councillor Sloane, Mr. Aitchison clarified that the structure is a single family home.

Councillor Fougere called three times for any further speakers.

Hearing none, it was **MOVED by Councillor Sloane, seconded by Councillor Uteck, that the appeal hearing be closed. MOTION PUT AND PASSED UNANIMOUSLY.**

Councillor Sloane commented that the area is very quaint and tranquil, with small houses and private backyards. She commented that this is a difficult case since the initial permit was issued in error. Councillor Sloane further commented that development can be dealt with in an easier manner if the developer communicates with neighbours prior to the commencement of construction. She noted that she does not believe that the house fits in with the community.

MOVED by Councillor Sloane, seconded by Councillor Murphy, that Peninsula Community Council overturn the decision of the Development Officer and refuse the variance from the GFAR requirements of the Halifax Peninsula LUB.

At the request of Councillor Uteck, Ms. Smillie advised that, based on assessment of the neighbouring properties, the subject property is keeping within the character of the surrounding properties.

Councillor Uteck indicated that she will not support the motion as the GFAR regulations are in place to detract from the construction of rooming houses, not to interfere with quality development of single family homes.

At the request of Councillor Fougere, Councillor Sloane clarified that the construction is already 98% completed.

At the request of Councillor Murphy, Mr. Andrew Faulkner, Development Officer, advised that if the decision of the development officer is overturned, the permit will be revoked and the property owner would be required to take action to have the building modified to meet the by-law.

MOTION DEFEATED (2 in favour, 2 against).

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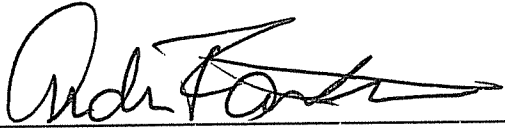
The decision of the Development Officer to approve a variance from the GFAR requirements of the Halifax Peninsula Land Use Bylaw upheld.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
June 12, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: June 2, 2006

SUBJECT: Appeal of the Development Officer's decision to approve an application for a Variance - 5562 Falkland Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance from the Gross Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to a single family dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 5562 Falkland Street in Halifax. The property is zoned R-2 (General Residential Zone) under the Peninsula North Area 6 Secondary Planning Strategy of the Halifax Peninsula Land Use Bylaw. The subject property is a 2625 ft² lot which would permit a maximum Gross Floor Area Ratio of 0.75 (equal to a floor area of 1969 ft²).

The property currently contains a 3021 ft² single unit dwelling having a GFAR of 1.15, which existed at the time of the adoption of GFAR amendments. The applicant has proposed a two-storey addition over the existing main floor, left side bump-out and an extension of the rear wall of the structure to create additional attic space. This would involve an increase in the square footage of the home but would not change the building footprint as all additions are above the existing structure. The proposed additions would add 376 ft² to the floor area of the dwelling for a proposed GFAR of 1.29 (3397 ft² of floor area).

This Variance was approved by the Development Officer on May 17, 2006. Subsequent to the approval notification, one appeal was received.

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?

In many cases, the intent of a specific regulation in a land use bylaw can be quite general in nature and determining the intent sometimes requires subjective judgement. However, in this case, due to the recent review and subsequent adoption of the affecting GFAR requirements staff believe the intent is clear.

The GFAR requirements were adopted to achieve two objectives. Firstly, to limit the size of dwellings which could be converted to create an excessive number of bedrooms. That is not an issue with this application.

Secondly; 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 (MPS) 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."

In determining whether the proposed variance violated the intent of the bylaw, an assessment of the GFAR of the surrounding properties was undertaken. As there were few recent permits for adjacent properties; GFARs were determined using HRM mapping and visual assessments during inspection.

The following is a list of properties within the notification buffer detailing estimated floor area and GFAR of the dwellings. The property subject to the variance is in bold.

Civic Address	Floor Area (ft ²)	Lot Area (ft ²)	GFAR
2040 Creighton Street	2700	3400	0.8
2042-44 Creighton Street	2780	3400	0.82
2048 Creighton Street	3740	3500	1.07
2052 Creighton Street	1360	2148	0.63
2054 Creighton Street	1070	1586	0.67
2084-86 Creighton Street	4630	1855	2.5
2088-92 Creighton Street	1480	1334	1.11
2096 Creighton Street	2050	1840	1.11
5562 Falkland Terrace	3397 (proposed)	2625	1.29
5563 Falkland Terrace	1530	1566	0.98
5567 Falkland Terrace	2290	1484	1.54
5568 Falkland Terrace	1720	1402	1.23
5570 Falkland Terrace	2110	960	2.2
5571 Falkland Terrace	1350	2001	0.67
5572 Falkland Terrace	1920	840	2.3
5574 Falkland Terrace	1420	1129	1.26

5575 Falkland Terrace	2310	1840	1.25
5577 Falkland Terrace	3180	2475	1.28
5578 Falkland Terrace	3090	1590	1.94
2023-27 Maynard Street	4680	7518	0.62
2029 Maynard Street	1690	2500	0.68
2033 Maynard Street	2810	2100	1.34
2037 Maynard Street	2260	4478	0.5
		AVG. GFAR	1.2

The majority of properties in the surrounding area are quite small. Based on lot size, the GFAR average that would be allowed surrounding properties would be .73. However, historically the smaller lot sizes have resulted in a dense development pattern of relatively massive homes with little space between them. The average estimated GFAR for the 22 dwellings in the buffer area was calculated at 1.20. The applicants are proposing a GFAR of 1.29, which is much higher than the “allowed” GFAR but would be in keeping with the character of the neighbourhood. Based upon this, staff believe that the proposed variance does not represent a violation of the intention of the LUB.

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

The application of a GFAR is consistent across all low and medium density residential zones on the Peninsula. This lot is only 2,625 ft², which makes it difficult to meet the GFAR requirements of the Land Use By-law. The GFAR requirements would permit a maximum GFAR of .75 (1970 ft²) if the lot was vacant. This is considerably less floor area than the majority of surrounding dwellings. Therefore this difficulty is not general to the properties in the area.

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

There has been no intentional disregard for the requirements of the Land Use Bylaw. The applicant applied for the additions under permit #74810. At the time of review, staff did not capture the additional proposed floor area and the permit was issued in error. When it was realized that the work involved an addition of floor area exceeding the permitted GFAR, the permit was revoked and the applicant applied for the variance to correct the situation.

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 approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

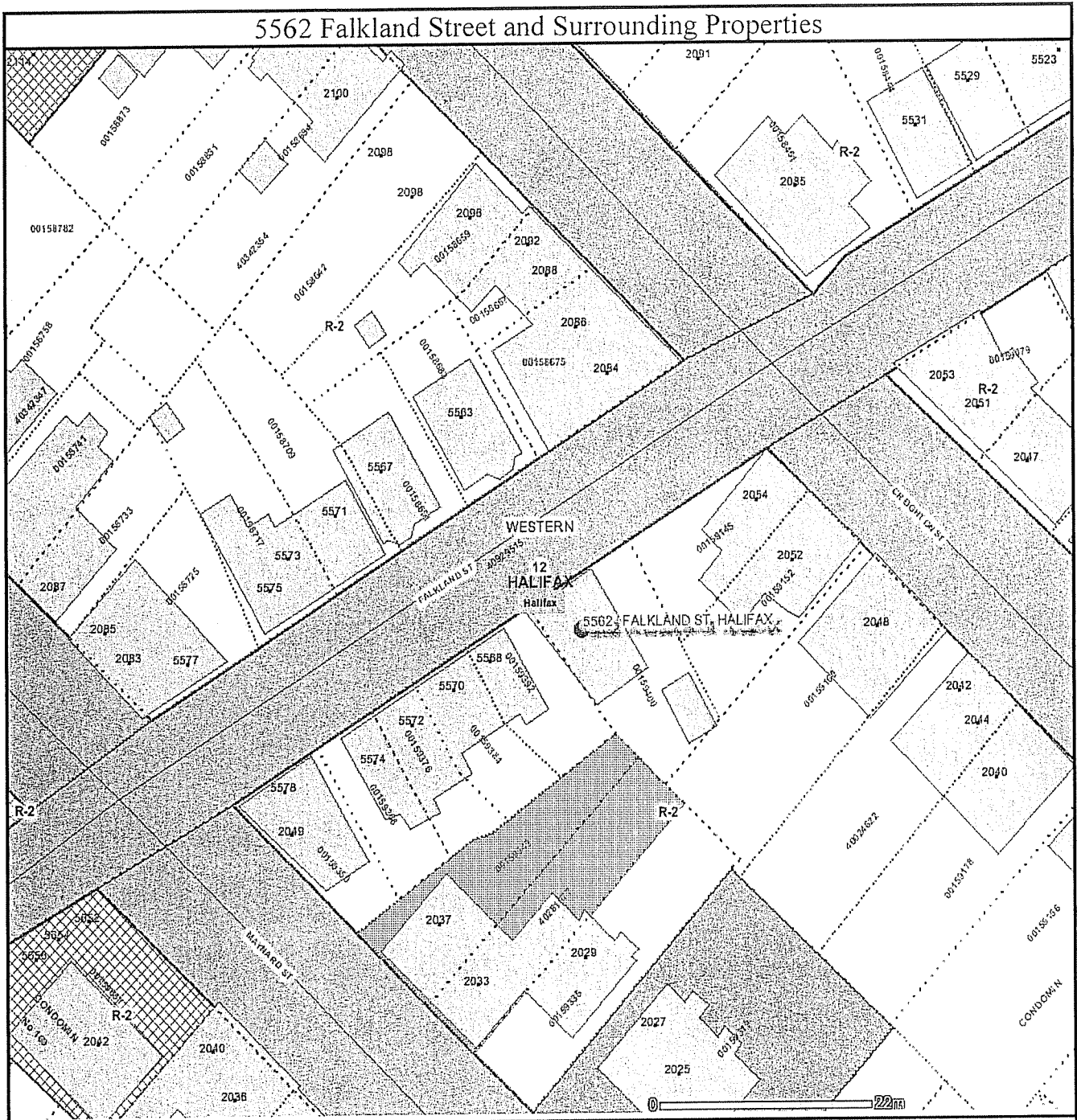
ATTACHMENTS

1. Location Plan
2. Approval Letters with Site and Elevation Plans.
3. Appeal Letter

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: Leticia Smillie - Development Technician (490-4046)



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.



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

May 17, 2006

Kiwi Construction

Dear Scott:

Re: Case No. 12939 - Variance at 5562 Falkland Street, Halifax

As the Development Officer for the Halifax Regional Municipality, I have approved your request for a variance from the requirement(s) of the land use bylaw as follows:

Location: 5562 Falkland Street
Project proposal: Addition to existing single family dwelling
Required: Maximum Gross Floor Area of 3021 ft² (existing house) which is equal to a Floor Area Ratio of 1.15.
Approved: Gross Floor Area of 3397 ft² equal to a Floor Area Ratio of 1.29.

Please Note: Gross Floor Area is the total square footage of all storeys of a home, including basements over a certain height and attics accessed by stairs. The Floor Area Ratio is the gross floor area divided by the area of the lot.

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before **June 2nd, 2006**

PERMITS WILL NOT BE ISSUED UNTIL ANY APPEAL HAS BEEN DISPOSED OF OR THE APPEAL PERIOD HAS EXPIRED.

If you have any questions or require clarification of any of the above, please contact this office at 490-4046.

Yours truly,

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

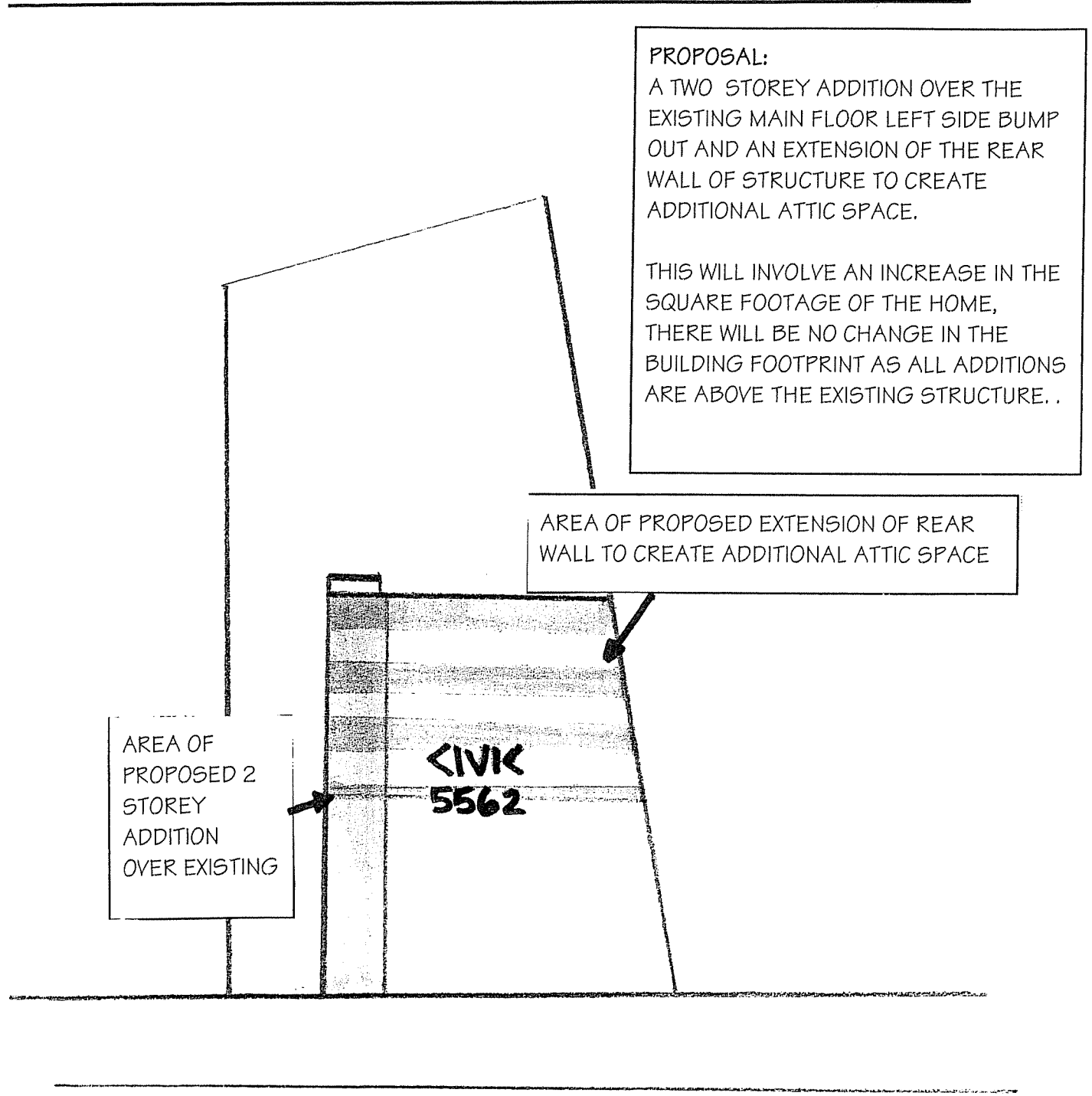
Andrew Faulkner, Development Officer
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk
Councillor Dawn Sloane, District 12

DATE: May 24, 2006

SUBJECT: Case No. 12939 - Variance at 5562 Falkland Street, Halifax

SITE PLAN



DATE: May 24, 2006

SUBJECT: Case No. 12939 - Variance at 5562 Falkland Street, Halifax

ELEVATION PLAN

AREA OF PROPOSED EXTENSION OF REAR WALL TO CREATE ADDITIONAL ATTIC SPACE

AREA OF PROPOSED 2 STOREY ADDITION OVER EXISTING



REAR



FRONT

June 1, 2006

Allison Strachan
Peter Greer

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

Re: Appeal of Case No. 12939 – Variance at 5562 Falkland Street, Halifax

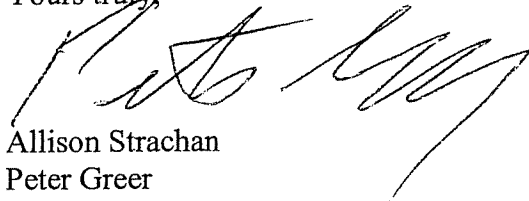
Dear Sir:

I am writing in reference to your letter of May 17, 2006, reference Case No. 12939 – Variance at 5562 Falkland Street, Halifax. We would like to appeal this Variance.

We are the owners of two properties abutting 5562 Falkland Street, 2052 and 2054 Creighton Street. Therefore, we respectfully request that this letter be given the weight equal to an appeal from each property, and in accordance with time limits or other protocol be considered as two separate appeals.

We look forward to meeting with Community Council to discuss our concerns.

Yours truly,



Allison Strachan
Peter Greer

June 12, 2006

Peninsula Community Council
Council Chambers – City Hall
1841 Argyle Street

Re: Variance #12939 – 5562 Falkland Street, Halifax, Nova Scotia

Councillors:

The following is my submission in opposition to the above noted application for variance. As you are most likely aware, this is a cart behind the horse situation as the subject building has reached what appears to be 95% completion as of the date of this hearing. Because of this, I go on the record not only as opposed to the variance but also as strongly opposed to the neglect or absence of process that took away the “voice” that such a process is meant to involve.

Background

I am the registered homeowner of 2052 and 2054 Creighton Street, two residences in one duplex building that abuts 5562 Falkland Street. I have owned and lived in 2054 Creighton Street since August 1982. I have owned 2052 Creighton Street since 1994. 2054 Creighton Street was the first home I ever purchased. In 1982 Creighton Street was a different place than it is today. It would be overstated to say that my realtor’s interest in showing and selling me 2054 was “reluctant”. That part of the old City was rife with issues. Primarily challenged by absent landlords whose only interest was collecting rent on the first day of each month; secondarily challenged by a City management that did not seem to care and turned a blind eye to overcrowded-unregulated rooming houses and housing conditions that fell below an acceptable standard. Some homes were still occupied by their owners but the majority provided low-income housing for people who deserved better.

I was from New York and had seen worse. I, and others, found “affordable” housing in Old Halifax, purchasing homes to live in and fixing them up much to the criticism of others who misguidedly accused us of gentrification. We were guilty only of having found a place that we could afford.

My husband and I spent hours at the Public Archives and learned that the building housing 2052 and 2054 Creighton Street has some historical significance. The structure was built in the 1860’s under the hand of Henry Busch. That name may not be familiar to everyone attending this meeting. Henry Busch went on to become a leading architect in Nova Scotia responsible for many ‘icons’ that remain a part of our landscape. Most well known would likely be the bandstand in the Halifax Public Gardens. Others include the NSCAD campus on Brunswick at the corner of Sackville; the Normal College in the Town of Truro; Town Hall in the Town of Lunenburg; the stately home for women known as Victoria Hall on Gottingen Street; and, the well loved Boscowen Inn in

Lunenburg. Mr. Busch and his family lived in 2054 Creighton, his “builder” as they were known at the time, Mr. William Smith, and his family lived in 2052 Creighton.

There is nothing grand about either 2052 or 2054 Creighton Street. It can only be described as small scale when compared to modern subdivisions. As a testament to its original architect-owner, the original layout of the house has survived generations. The back of our home was bathed in sunlight from 11:00 to evening. This continued to be the case from 1860 to some time this spring 2006. Our backyard gave us a sense of privacy even though a City sidewalk ran along one end of it. Our view from our kitchen was of 5562 Falkland Street, a story and a half Cape-Cod cottage owned by Fred Purcell. Two small Scottish dormers faced Falkland while one small flat-faced dormer faced the backyard. Although in serious disrepair, the house offered continuity to the architectural style of the neighbourhood. A summer porch (not on a foundation) was attached to the house and faced the back of our property. Two windows peeped out above the summer porch as did a third window in the unused attic. Every June, we looked forward to Fred’s magnificent lilac bush filling the air with its heady aromatic scent. It was a sure sign that another bleak season had passed.

In the last 20 years, this part of Old Halifax began to have its fading integrity replaced with the integrity that grows out of pride of ownership. Yards and gardens reappeared where there had been derelict vehicles and overgrown weed lots. Many of the lurking evils no longer exist – when the corner of Creighton and Cogswell burned to the ground in 2005, the last vestiges of crack institutions and rooming houses were removed from our little corner of the world.

As the neighbourhood took on a renewed life during the 1990’s it captured the interest of others who don’t necessarily want to live here but who recognize the “value” in housing located so close to downtown Halifax. Because of development restrictions, we were able to ensure that new development in our neighbourhood was something that we could all live with. This was primarily through the development agreement process.

5562 Falkland Street

Sometime last summer we found out that our long-time neighbour Fred Purcell had sold his property. This, of course, was interesting to us because the house that was in serious disrepair, and that abutted our property, would be renewed and once again occupied.

The winter months brought action. Excellent tradespeople arrived on-site each morning at 7:30 a.m. and immediately began doing their thing. The lines of the house became fully exposed once the summer porch was removed. Then, sometime in March we realized that a new porch was not going on but instead, the house was having its foundation extended 6 feet or so towards our house and a 6 foot or so extension of the house was being built from the ground to the rooftop.

I contacted Dawn Sloane who checked with Andrew Faulkner who reported that all building requirements were being met and a building inspector was on site regularly to

ensure that there were no irregularities. To our absolute disbelief we were told that this addition was being approved as of right.

Things did not stop there. The rear rooftop of the house suddenly went from a 45 degree slope to a flat rooftop. My husband contacted "Leticia" at City Hall. She explained that there was a permit issued to renovate inside and outside. This was not a renovation. This was an extensive development of the little property next to ours. During the winter months, 5562 Falkland Street was transformed from a two-bedroom home to a four bedroom house with finished basement. Three non-descript dormers now face Falkland Street and a full third story replaced the little flat-faced dormer and roof that previously existed on the back.

Sometime in April, we read an article in the Chronicle Herald that talked about building lot restrictions. In disbelief with what we had been led to believe was as of right development, armed with the information from the article, a tape and ruler, copies of deeds and Service Nova Scotia Property Online, we discovered that the building at 5562 Falkland exceeded development for a lot its size. After once again contacting the City with the information we had come across, we were told that a stop work order was on the property.

Nothing stopped. The project continued on. The lilac tree was chopped down. 10 windows were installed that face my house where there had once been three. 10 windows and a transparent third floor deck now overshadow my little backyard that had been a source of privacy and retreat after a busy day at work. Our light-filled kitchen is no longer light-filled. Our light-filled back-yard is no longer light filled. Our children insist on hanging a blanket over their bedroom window curtains because they feel "exposed" by the number of windows bearing down on them and which are 6 feet or so closer than any windows had previously been. I have to agree with them and am faced exploring expensive solutions to our new visual vulnerability. The anticipated joy of new neighbours has been replaced by a substantial loss of privacy and, I truly believe, a loss in value to our home and the quality of life previously enjoyed by our family in our home for 25 years. A walk around our neighbourhood, and indeed the greater HRM, will demonstrate that sidewalls such as the one next to our home rarely, if ever, have more than four or five windows and more typically have three or less. Presumably this is out of respect for adjoining property privacy.

Where to now?

Council is faced with a difficult decision – substantially more difficult than it would have been had the proper procedure for a "minor" variance been followed. As said earlier, the cart is before the horse. I cannot emphasize that this is not a "minor" variance for us. Years ago landowners depended on the torts of nuisance or trespass to regulate development that had the effect of interfering with property enjoyment. As a society we supposedly moved beyond that by transferring those rights in exchange for building "rules" regulated by Towns, Cities and Municipalities. If those rules are overlooked or

not followed appropriately, who do landowners have to turn to? That is a question, I believe, for lawyers and the courts.

I believe that we would have had an excellent case for Council if this matter had proceeded as it was designed to proceed. I believe that the developer would have had to make some concessions – including the use of less windows and creation of less shadow – **if** we had been properly involved in the process. This was through no fault of our own. We had to pursue the matter on our own and push those responsible at HRM to do what should have been done many months ago. Instead, we have a substantially finished project to deal with. It is now unlikely that Council has the moral turpitude to “do the right thing” simply on the basis of “what is done is done.” We are off to a bad start with a new neighbour and we have lost many things through the improper process that this irregular variance application took. The way this matter has traveled through Council bureaucracy is chilling for us and should be chilling for anyone else living near an undeveloped lot or home ripe for renovation in Old Halifax where lot sizes fall below their counterparts in modern subdivisions. What is the proper remedy? Is Council able to provide a proper remedy? I seriously doubt it. The process has been ignored in this case and I’m not even sure that Council has the power to remedy the situation. That may be a matter left for resolution by the courts.

Your truly,

A handwritten signature in black ink, appearing to read "Alison Strachan", with a long, sweeping horizontal line extending to the right.

Alison Strachan