

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

8.2.3 Appeal of the Development Officer's decision to approve an application for a Variance - 5539-5543 Cogswell Street, Halifax

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

Mr. Andrew Faulkner, Development Officer, Planning and Development Services, reviewed the report with Community Council. Mr. Faulkner indicated that this is an appeal of the Development Officer's decision to approve a variance from the GFAR and Lot Coverage requirements of the Halifax Peninsula LUB to permit construction of two single unit dwellings. Mr. Faulkner clarified the following:

- The lots are currently vacant due to a fire several years ago,
- The former buildings on the site were non-conforming and cannot be re-built,
- The proposed buildings are consistent with the neighbourhood and propose small increases in lot coverage,
- The proposal is for two five bedroom, single family dwellings, with one dwelling owner occupied.

Councillor Fougere opened the appeal hearing and called three times for speakers.

Mr. Hal Forbes, Halifax

Mr. Forbes addressed Community Council, advising the following:

- That he owns three properties in the vicinity of the subject property,
- That a neighbourhood meeting was held with Councillor Sloane, the property owners, and fifteen other neighbourhood residents in attendance,
- He does not have any issue with lot coverage, however, the volume of the house was unclear from the drawings provided and he therefore cannot support the variance on this basis,
- Mr. Forbes commented on the need to have a tight appeal process in place.

Mr. Robin Stewart, Halifax

Mr. Stewart addressed Community Council, advising the following:

- He has owned the property next to the subject properties for the past seven years,
- He invested in his property with the understanding that only a 1500 square foot building, with 50% lot coverage and a height of 35 feet,
- He contracted a graduate architect to incorporate light, ventilation, access, and egress in the design of his house in accordance with by-laws and without

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- variance,
- His property was formerly owned for 70 years by a groundskeeper of the Public Gardens. Mr. Stewart restored the garden in the backyard, however the proposed structures would create shadow in the yard,
- A three story addition is proposed for the back of the building where there was previously a one story addition similar to Mr. Stewart's home,
- Page three of the staff report dated June 2, 2006 estimates the floor area of Mr. Stewart's property (5537 Cogswell Street) to be 3,000 square feet, however his plans show the floor area to be 2,400 square feet, questioning the other figures indicated,
- He is concerned that he will lose the use of the alley between the properties for access to his back yard and for storage of garbage and organic green cart,
- That he believes maintaining the scale of the streetscape is important and he considers this a major variance.

Councillor Sloane indicated that Mr. Stewart and the property owners had previous discussions regarding a formal agreement, and she inquired of Mr. Stewart as to the status of these negotiations. Mr. Stewart advised that he was contacted by the property owners

on June 1, 2006 and informed that an agreement was prepared, however he has not communicated with the property owners since.

Ms. Rhonda Smith, property owner

Ms. Smith addressed Community Council, advising the following:

- She and her husband, John Fraser, are the owners of the subject properties,
- They believe that the downtown community is an ideal location to raise their family,
- They have seven children and require a space large enough to accommodate their family's needs,
- They have made attempts to facilitate with the community and do not wish to jeopardize the integrity of the neighbourhood as they intend to become longtime neighbourhood residents,
- The proposed structures are consistent with neighbouring properties and will be a dramatic improvement over the previous structures,
- They intend to reside in the larger home at 5543 Cogswell Street and sell the home at 5539 Cogswell Street, which will have three bedrooms as opposed to five, as previously stated by Mr. Faulkner.

Mr. John Fraser, property owner

Mr. Fraser addressed Community Council, advising the following:

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- There were two written submissions of concern for 5539 Cogswell Street and none for 5543 Cogswell Street,
- He and Ms. Smith met with Mr. Stewart several times to address his concerns and do have a written agreement prepared for Mr. Stewart,
- They attempted to reach Mr. Stewart prior to the meeting tonight but were unable to make contact with him,
- He and Ms. Smith have met with Councillor Sloane on several occasions, along with a meeting of Mr. Forbes and other community neighbours to address their concerns,
- At the community meeting, no objections were made to the proposed lot coverage nor to the GFAR of the two proposed dwellings.

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 noted concern that the property owners had not come to an agreement regarding their abutting properties and because of the historical aspect of Mr. Stewart's property. Councillor Sloane indicated that there are questions that need to be answered prior to the commencement of construction.

MOVED by Councillor Sloane, seconded by Councillor Uteck, that Peninsula Community Council defer the decision for the variance at 5539 Cogswell Street . MOTION PUT AND PASSED.

MOVED by Councillor Sloane, seconded by Councillor Uteck, that Peninsula Community Council uphold the decision of the Development Officer and approve the variance at 5543 Cogswell Street, Halifax. MOTION PUT AND PASSED.



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 - 5539-5543 Cogswell 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 & Lot Coverage requirements of the Halifax Peninsula Land Use Bylaw to permit construction of two single unit dwellings.

RECOMMENDATION

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

BACKGROUND

The subject properties are located at 5539 & 5543 Cogswell Street in Halifax. The properties are zoned R-2, General Residential Zone, Peninsula North Area 8 Secondary Planning Strategy in the Halifax Peninsula Land Use Bylaw. This zoning allows for 0 feet side yards and 50% lot coverage.

This Variance was approved by the Development Officer on April 26, 2006. Subsequently, there were two appeals received following the variance notice to the neighbours.

The review for this variance found that the proposed dwelling at 5539 Cogswell Street resulted in a lot coverage of 58% and a Gross Floor Area Ratio (GFAR) of 1.55. The dwelling at 5543 Cogswell Street resulted in a lot coverage of 63% and a GFAR of 2.00. The permitted lot coverage for both of these lots is 50% and the permitted GFAR is 0.75 (1,500 square feet).

It is also worth noting that these lots are vacant at the present time as a legal non-conforming rooming house was destroyed by fire in November of 2004. Because greater than 75% of the market value of the building above the foundation was destroyed, the Municipal Government Act does not allow the structure to be rebuilt with the non-conforming use. Therefore, due to lot size, the only possible uses for these properties are single unit dwellings.

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 to “maintain the character and stability” of the neighbourhood, an assessment of the GFAR, lot coverage and the use of housing stock in the immediate area was undertaken. Unfortunately, there were very few recent permits for any of these adjacent properties. Therefore most statistics were determined using HRM mapping and site inspection. On those properties where no building permit record was available, the GFAR has been rounded upwards to the nearest denominator of 5% to address any potential errors in floor area estimations.

The following is a list of addresses, GFAR, Lot coverage and the use of property for nearby properties. It is noted whether the calculation is based upon permit information or estimations. The properties subject to the variance are bold.

Civic Address	Floor Area (sqft)	Lot Area (sqft)	Lot Coverage	Use	GFAR
5537 Cogswell Street	3,000 (estimate)	2136	47%	SUD	1.40
5539 Cogswell Street	3,100 (proposed)	2000	58%	SUD	1.55
5543 Cogswell Street	4,000 (proposed)	2000	63%	SUD	2.00
5561 Cogswell Street	2,400 (estimate)	1139	70%	2UD	2.10
5565 Cogswell Street	2,700 (permit)	2125	33%	4UD	1.30
5567 Cogswell Street	2,300 (estimate)	1900	40%	SUD	1.25
2022-28 Creighton Street	5,300 (estimate)	4000	44%	4UD	1.35
2010 Creighton Street	3,200 (estimate)	3012	35%	5UD	1.10
2013 Creighton Street	4,800 (estimate)	5437	29%	6UD	.90

As indicated in the above table, all existing development is nonconforming in respect to GFAR. Therefore the proposed GFAR for the two buildings is consistent with the existing residential character and the variance was approved.

In regards to lot coverage: It should be noted that the original building at 5539 Cogswell Street had a footprint of approximately 1,150 sqft which is equivalent to 57.5% lot coverage; the new building footprint is proposed to be 1,160sqft which is 58% lot coverage.

The original building at 5543 Cogswell Street had a footprint of approximately 1,220 sqft which is equivalent to 61% lot coverage; the new building footprint is proposed to be 1,260sqft which is 63% lot coverage.

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. These particular lots in question are only 2,000 square feet which makes it extremely difficult to meet the GFAR and Lot Coverage requirements of the Land use By-law. The GFAR requirements would only permit a 1,500 square feet dwelling on each lot. If compared to the existing dwellings in this neighbourhood, these dwellings would have considerably less gross floor area. 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.

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 both variances.
2. Council could uphold the decision of the Development Officer and approve the variance at 5539 Cogswell Street, and overturn the decision of the Development Officer and refuse the variance at 5543 Cogswell Street.
3. Council could uphold the decision of the Development Officer and approve the variance at 5543 Cogswell Street, and overturn the decision of the Development Officer and refuse the variance at 5539 Cogswell Street.

4. Council could overturn the decision of the Development Officer and refuse both variances.

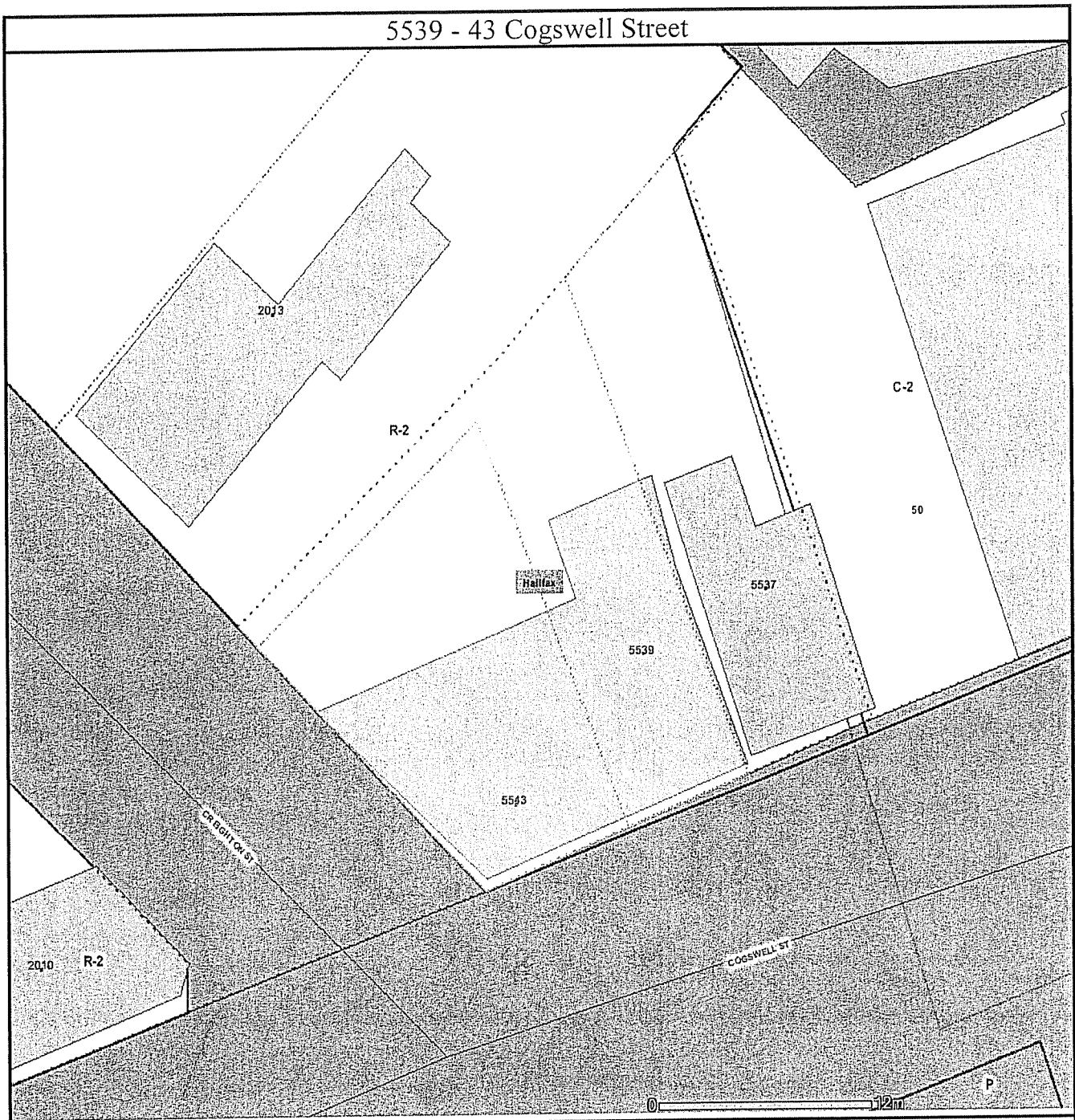
ATTACHMENTS

1. Site Plan and Elevations of proposed construction
2. Approval Letters
3. Appeal from Robin Stewart, 5537 Cogswell Street
Appeal from Hal Forbes, 2010 Creighton Street & 5561 Cogswell Street

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.

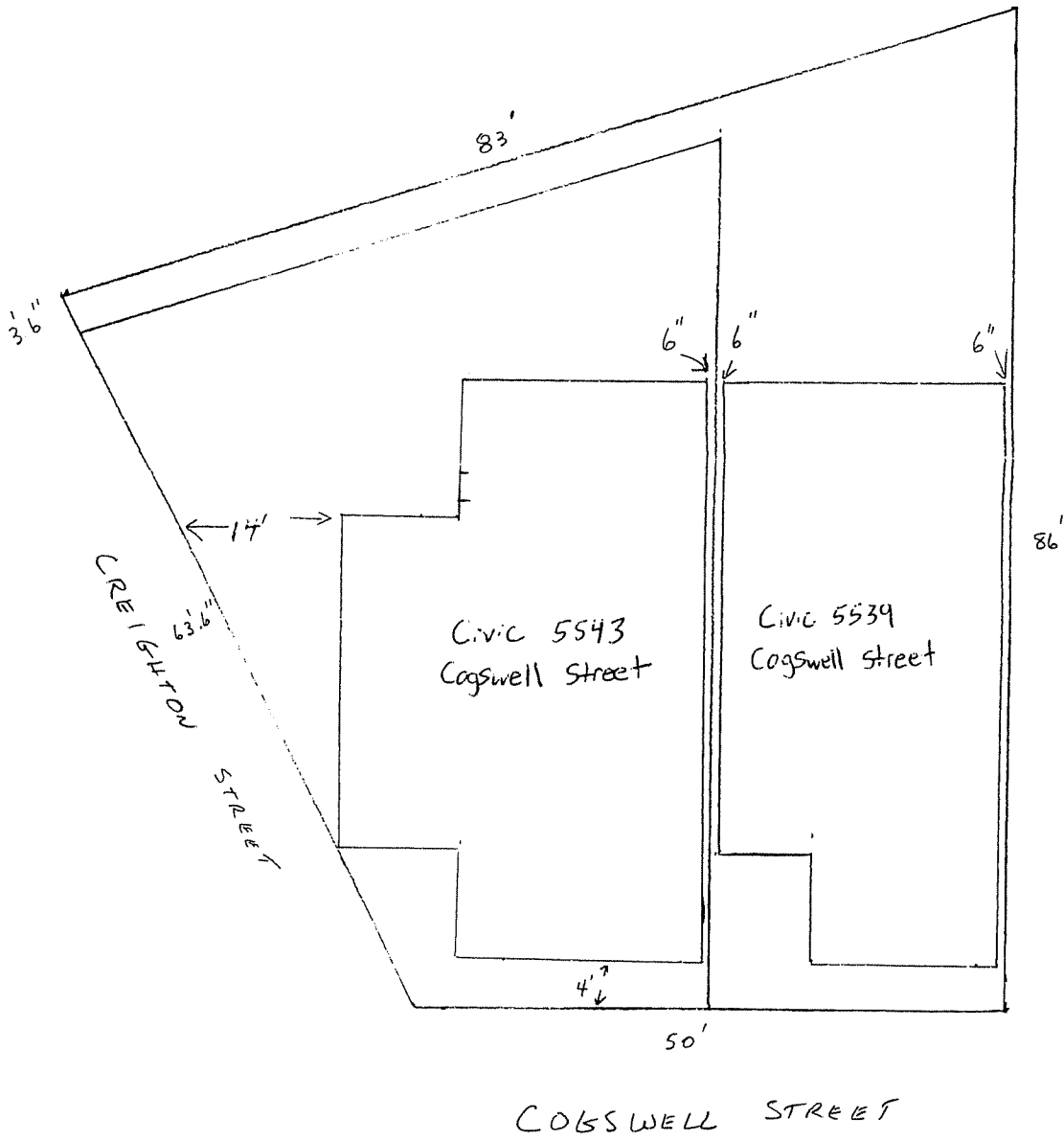
Report Prepared by: Andrew Faulkner - Development Officer (490-4402)



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. User: geoinfo@halifax.ca

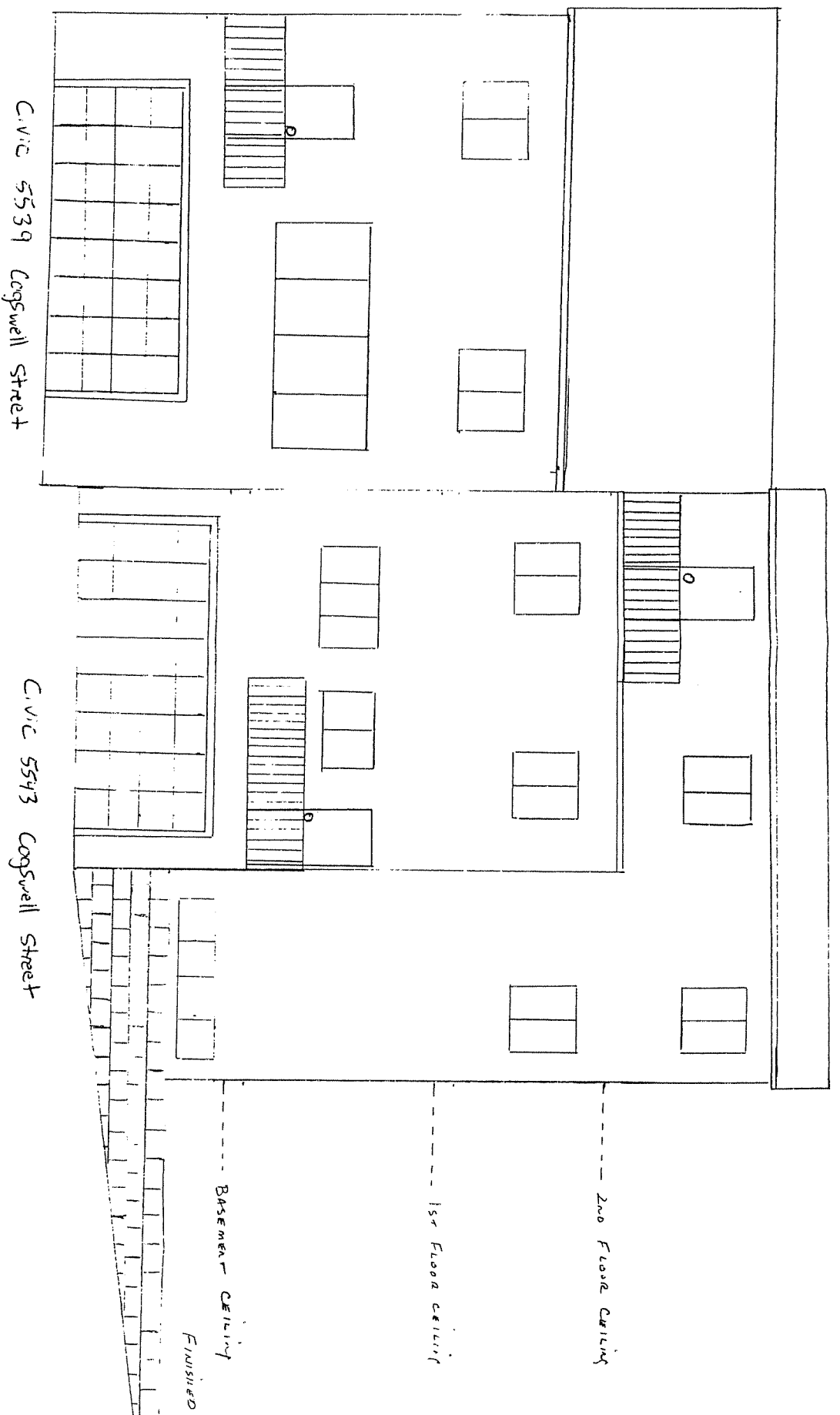
SCALE 1 cm = 4 Feet

Site Plan

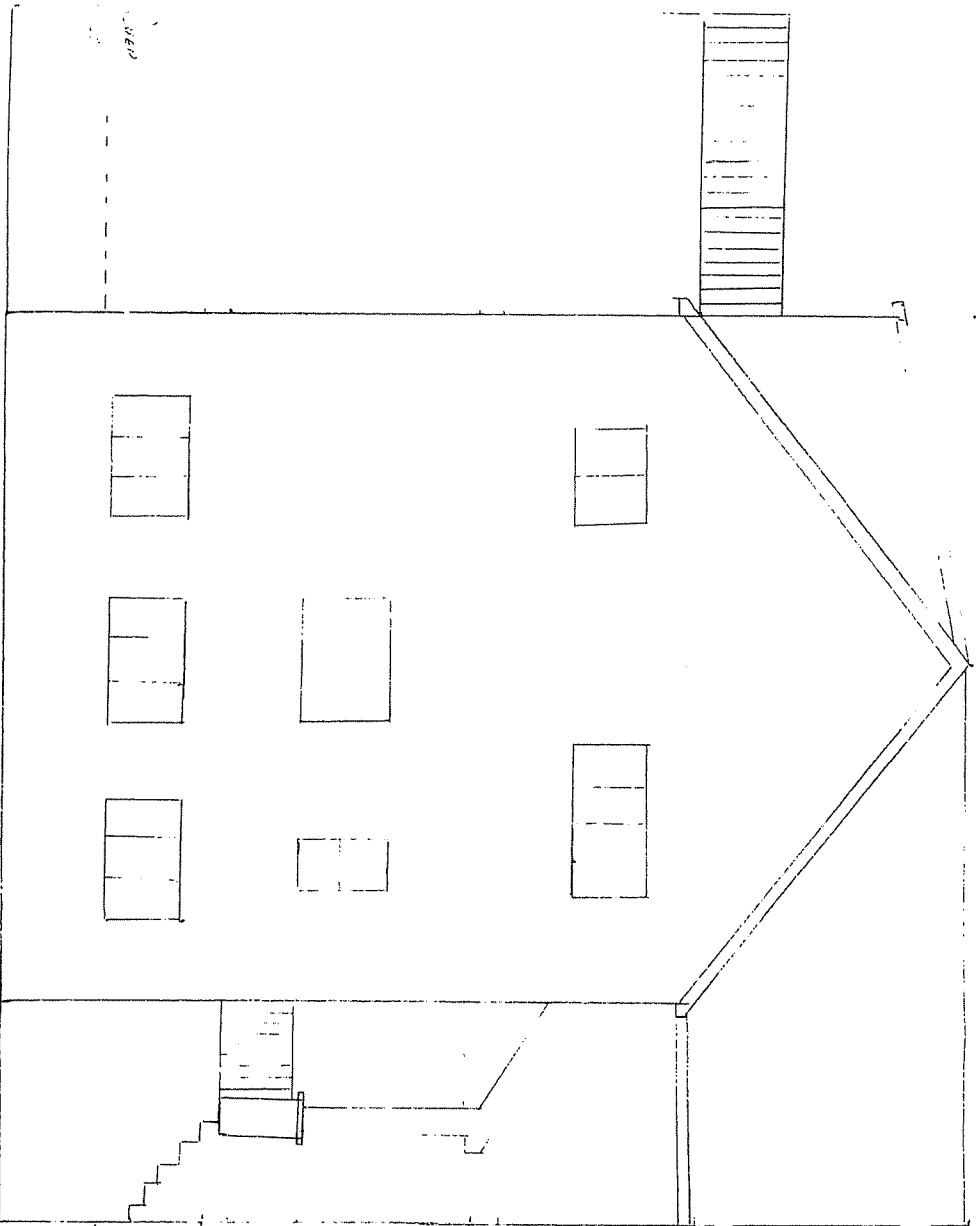


SCALE 1 cm = 2 Ft

Rear Elevation

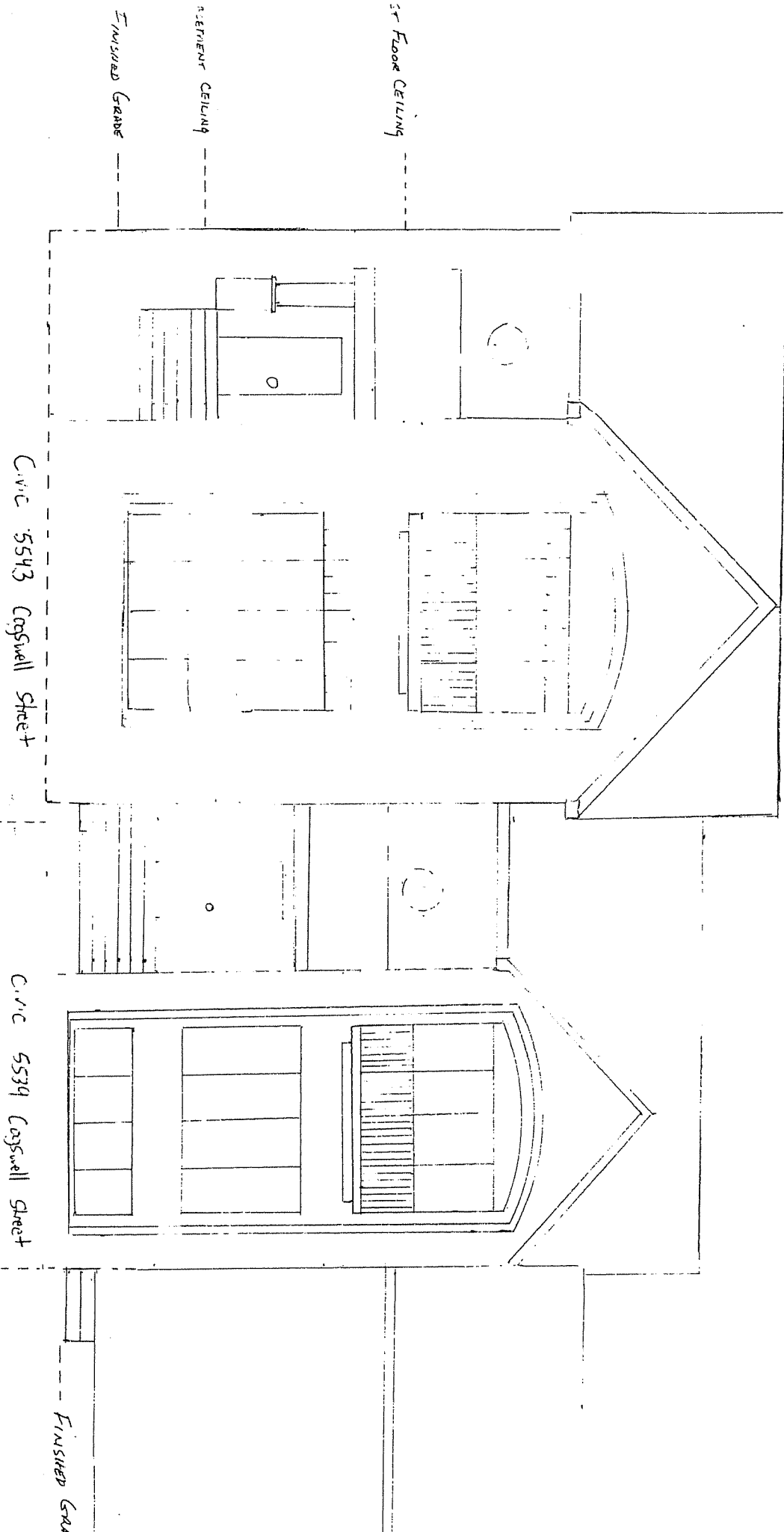


Civic 5543 Logswell Street



1st Floor ceiling
Basement ceiling
Finished grade

SCALE 1cm = 2 FEET
Left Elevation
(Creighton Street Elevation)



SCALE 1 CM = 2 FEET
 Front Elevation

HALIFAX
REGIONAL MUNICIPALITY

April 26, 2006

Dear Assessed Owner:

Re: Case No. 12902- Variance at 5539 Cogswell Street, Halifax

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

Location:	5539 Cogswell Street, Halifax
Project proposal:	Construct a Single Unit Dwelling
Required:	Maximum Gross Floor Area of 1,500 square feet and 50% lot coverage
Approved:	Gross Floor Area of 3,100 square feet and 58% lot coverage

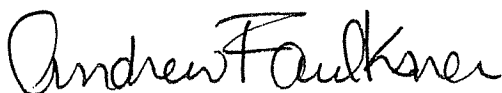
Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **4:30p.m. May 15, 2006** and address your appeal to:

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

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY, THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require clarification of any of the above, please contact this office at 490-4402.

Yours truly,



Andrew Faulkner, Development Officer
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk
Councillor Dawn Sloane

HALIFAX
REGIONAL MUNICIPALITY

April 26, 2006

Dear Assessed Owner:

Re: Case No. 12901- Variance at 5543 Cogswell Street, Halifax

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

Location:	5543 Cogswell Street, Halifax
Project proposal:	Construct a Single Unit Dwelling
Required:	Maximum Gross Floor Area of 1,500 square feet and 50% lot coverage
Approved:	Gross Floor Area of 4,000 square feet and 63% lot coverage

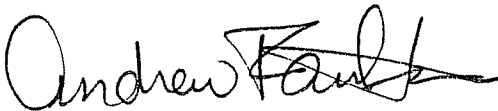
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B3J 3A5.**

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If you have any questions or require clarification of any of the above, please contact this office at 490-4402.

Yours truly,



Andrew Faulkner, Development Officer
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk
Councillor Dawn Sloane

May 11, 2006

Andrew Faulkner,
Development Officer
Halifax Regional Municipality
Planning and Development- Western Region
PO Box 1749
Halifax, Nova Scotia

RE: Case No. 12902- Variance at 5537-5539 Cogswell Street, Halifax

As multiple property owner in the immediate area, and also as the liaison representing an informal neighbourhood association, we would like to respond to the matter of the above noted approval for the request for a variance. There are an amount of concerns that we as the residents would request clarification on.

Firstly, we are happy that there has been interest, and as a neighbourhood we are encouraged by the notion that there could be resolve to the empty lot.

8With the drawings provided, along with the description of the variances we feel that there is certainly not enough information supplied for us to accurately comment.

Concerns that have been brought up are issues with the set backs and the side yards.

Why are there so many? Are they required? Are they appropriate?

Why is the project not built as an attached pair of townhouses?

Are the 6" clearances between the properties legal?

Have the parking issues been addressed?

What are the proposed finish details? Exterior cladding?

We understand that there are proposals for five bedrooms.

What is the requested occupancy?

Will that stay firm, can that occupancy be later converted?

How much larger is this proposed footprint than the original footprint that had existed?

These are the questions that are responding directly to the request for comments by your letter dated April 26, 2006

In addition there are discussions regarding line, design and proportion. The majority of the streetscape on the north side of Cogswell has remained virtually intact since it was built in the 1850's through to the 1880's. We recognize that as a streetscape, this proposed project is not protected by the Municipal Heritage ByLaw, though all of the buildings had been unofficially intact as a streetscape until the tragic fire in 2004. With a little more research and innovation, a kinder silhouette of the new proposed building could allow the street to maintain its integrity while delivering viable housing to the new owners/developers. Though we recognize that as homeowners in the area we would most likely not get a vote on aesthetic, it would be our wish that as homeowners that perhaps this aesthetic could be respected. These are the very reasons that we have chosen to live here.

With this appeal in place, we would be more than happy to field any additional comments or discussions with the owners. It has been the tradition that an informal meeting with the residents and the owners be held to sit down and better field our concerns along with the intent of the owners. Please feel free to call upon me to communicate with the local residents and it would be our wish that these issues could all be resolved.

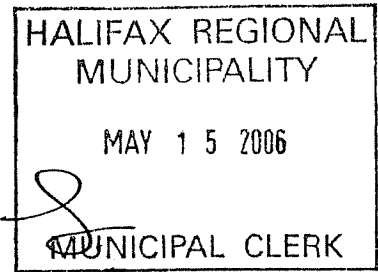
If there are additional questions, please feel free to contact me at . I will then forward any requests to the residents.

Sincerely,

Hal Forbes

Cc The Mayor and Council
Maggie Holm

Wendy Weagle
Andrew Faulkner



15 May 2005

Jan Gibson, Municipal Clerk
c/o Andrew Faulkner, Development Officer, HRM
Planning and Development - Western Region
PO Box 1749, Halifax NS
B3J 3A5

Re: Case 12902 - Variance at 5539 Cogswell Street, Halifax

Because the drawings as depicted lacks such detail it is very difficult to make an informed decision, as there is nothing to reference them to the site (that is, it is not tied in to any physical feature on the site such as a telephone pole or an iron pin). Does the municipality have a survey that has not been produced?

My only reference is that the proposed front elevation shows the 5539 single unit dwelling right up against my building at 5537 Cogswell and encumbers over my roofline. I don't know how this is in anyway possible as when I bought my building I was under the understanding that there was an alleyway belonging to my property between my home at 5537 Cogswell and the adjacent lot at 5539 (as depicted on my location certificate). As well, I bought with the belief the city would uphold their setback bylaws and that this alleyway would remain intact. The current owners of 5539 Cogswell also would have bought knowing that bylaws and setbacks exist, and what could be done with the property as of right.

The remnants of the foundation of the former building at 5539 also indicate the existence of this alley (see photographs 1, 2 and 3 attached). It is has been used by the occupants of 5537 Cogswell for decades and decades (the house dates back to the 1840s) as evidenced by these photos and the existence of an existing fence line at the back of the property with mature grape vines growing atop it. It is my desire to preserve this existing alleyway for several reasons:

- 1) to facilitate on-going maintenance to my sidewall. Building right up to my building as proposed hinders my ability to maintain this sidewall
- 2) to access my oil tank (at the back of the property)
- 3) facilitate garbage and green cart transfer between my backyard (if the city demands participation in the composting program they should not bend city bylaws that would take away my ability to store the cart at the back of my property. Storage at the back of my property helps control odour, pests and vandalism by rowdy bar-goers who transit this street).
- 4) to allow diffused light to enter the existing third floor windows, and the one basement window on that side of my building.

I would also like to state my objection to the proposed property being six feet taller than mine (as depicted on the front elevation) which again would cut in on diffused light to my windows and would infringe on my future ability to collect rooftop solar energy (which is becoming extremely attractive as energy prices rise).

Since the proposed 5539 building is taller at the back and a slope is depicted in the back elevation how is the water going to be managed at

the back of the property. Is it going to pool at the back of the property and slowly leach into my basement?

Basically, I am appealing this variance because as currently presented it appears to go outside the footprint of the former building (which was in scale with the neighbourhood) and thus destroys the pre-existing alley. Also as presented the planned front elevation appears to result in an encumbrance to my property.

If the city ignores my strong objection to the front elevation as proposed I would like the city to compensate me as follows:

- 1) Pay for the upgrade to my sidewall so that it made of a material that will not require maintenance.
- 2) Pay to have my oil tank line extended to the front of my property or as a last resort have my oil tank moved inside and compensate me for the loss of use of the interior space (as determined by a third-party qualified residential assessor agreed to by both parties and paid by the Municipality)
- 3) Pay to have my roof raised six feet to ensure future potential for solar collection
- 4) Pay to have two skylights of the same square footage as the two existing sidewall windows installed in my roof to compensate for the loss of solar light to my building.
- 5) Pay to have the basement window moved to the front of the sidewall
- 6) Compensate me for the loss of the alleyway (as determined by a third-party qualified residential assessor agreed to by both parties and paid by the Municipality)
- 7) Guarantee in writing that a city employee will come and clean the front sidewalk every time my green cart is knocked over by vandals
- 8) Guarantee in writing that the city will compensate me for any loss of rental income due to greencart odour complaints outside the front window of the building (as determined by rental averages updated yearly by the Canadian Mortgage and Housing Corporation or similar body)
- 9) Guarantee in writing that the city will pay for an exterminator if occupants complain of any pests resulting from having the greencart so close to the front windows.

Sincerely,

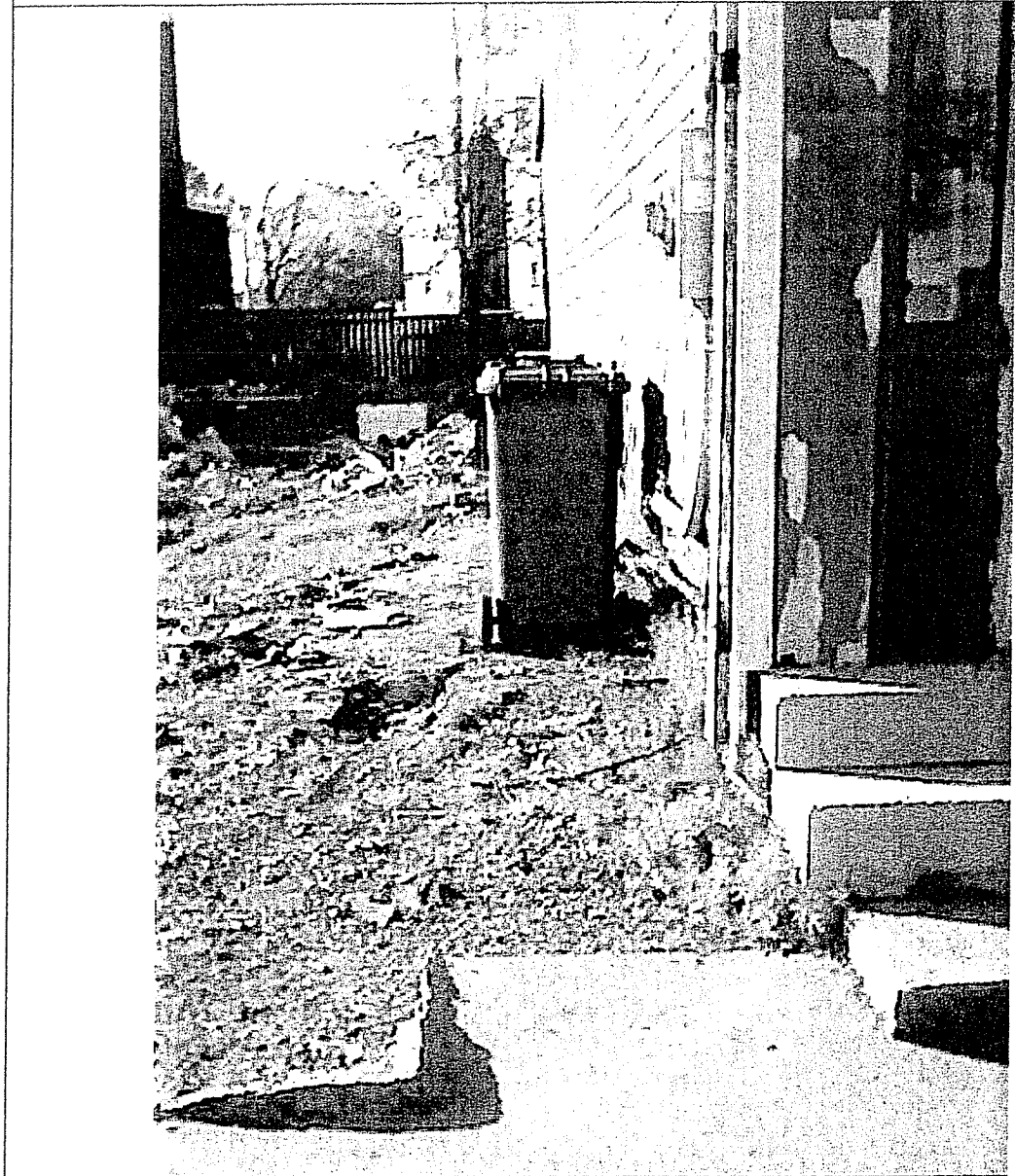
Robin Stewart
Assessed Owner
5537 Cogswell Street



Picture view

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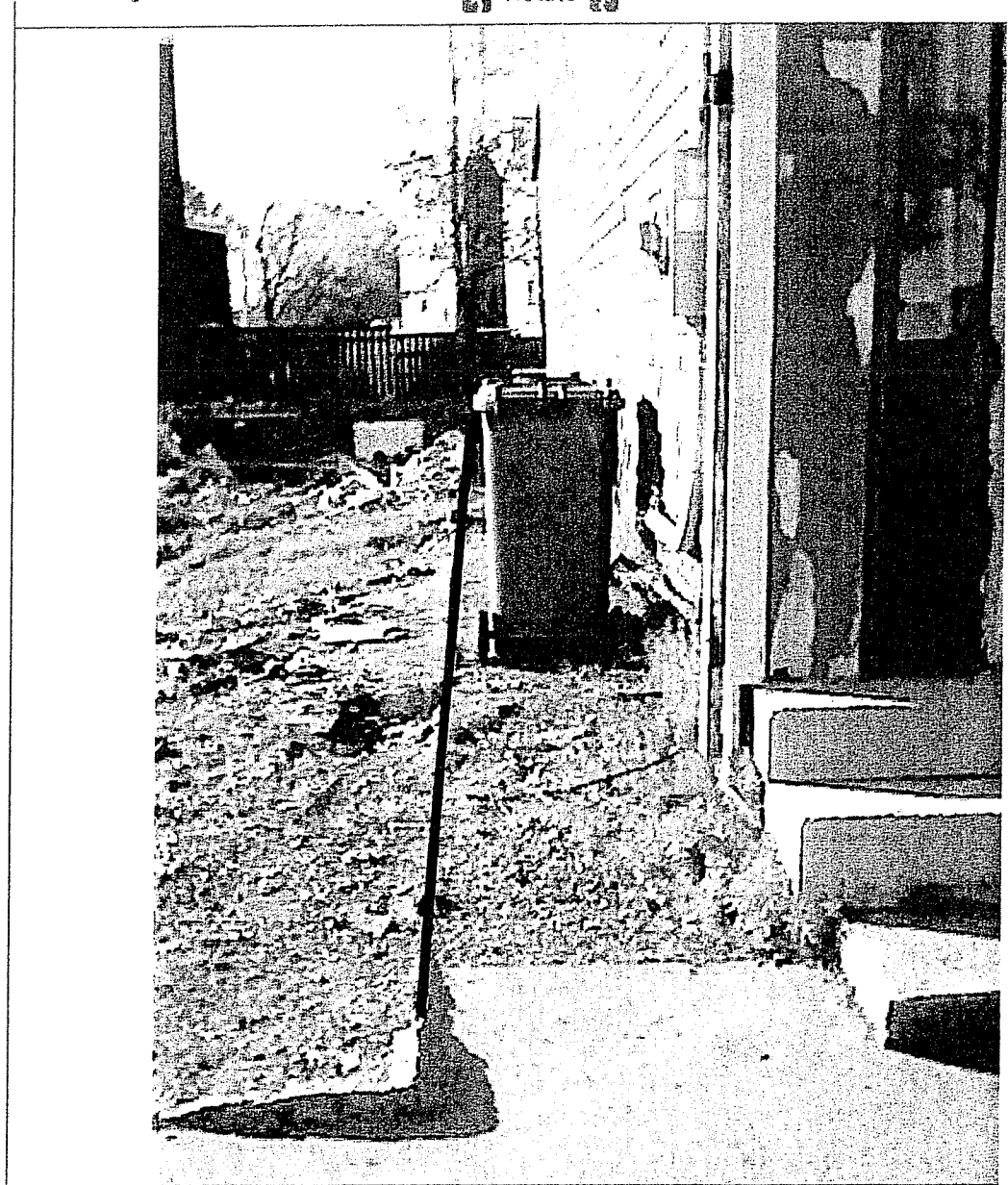




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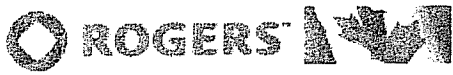


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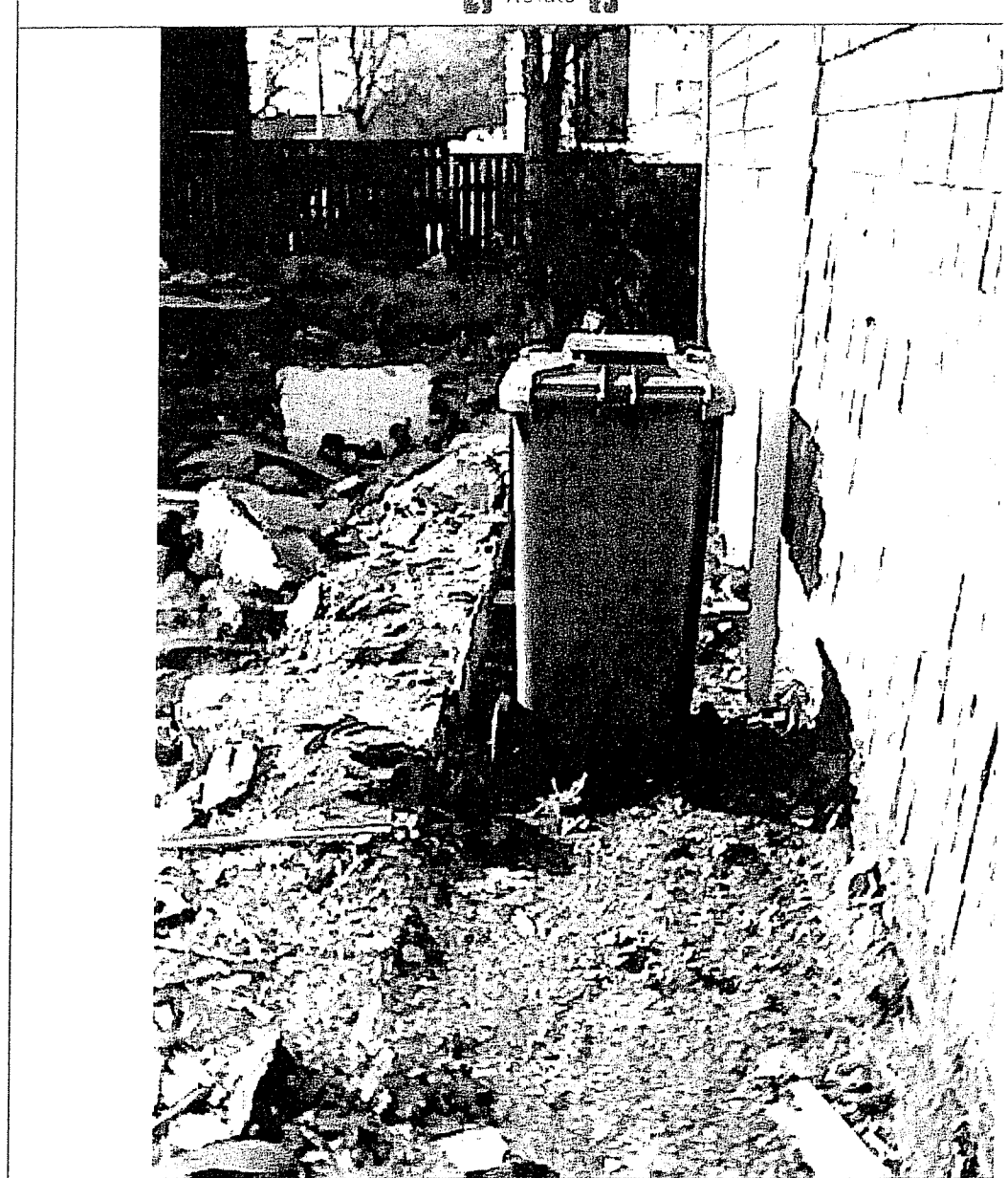




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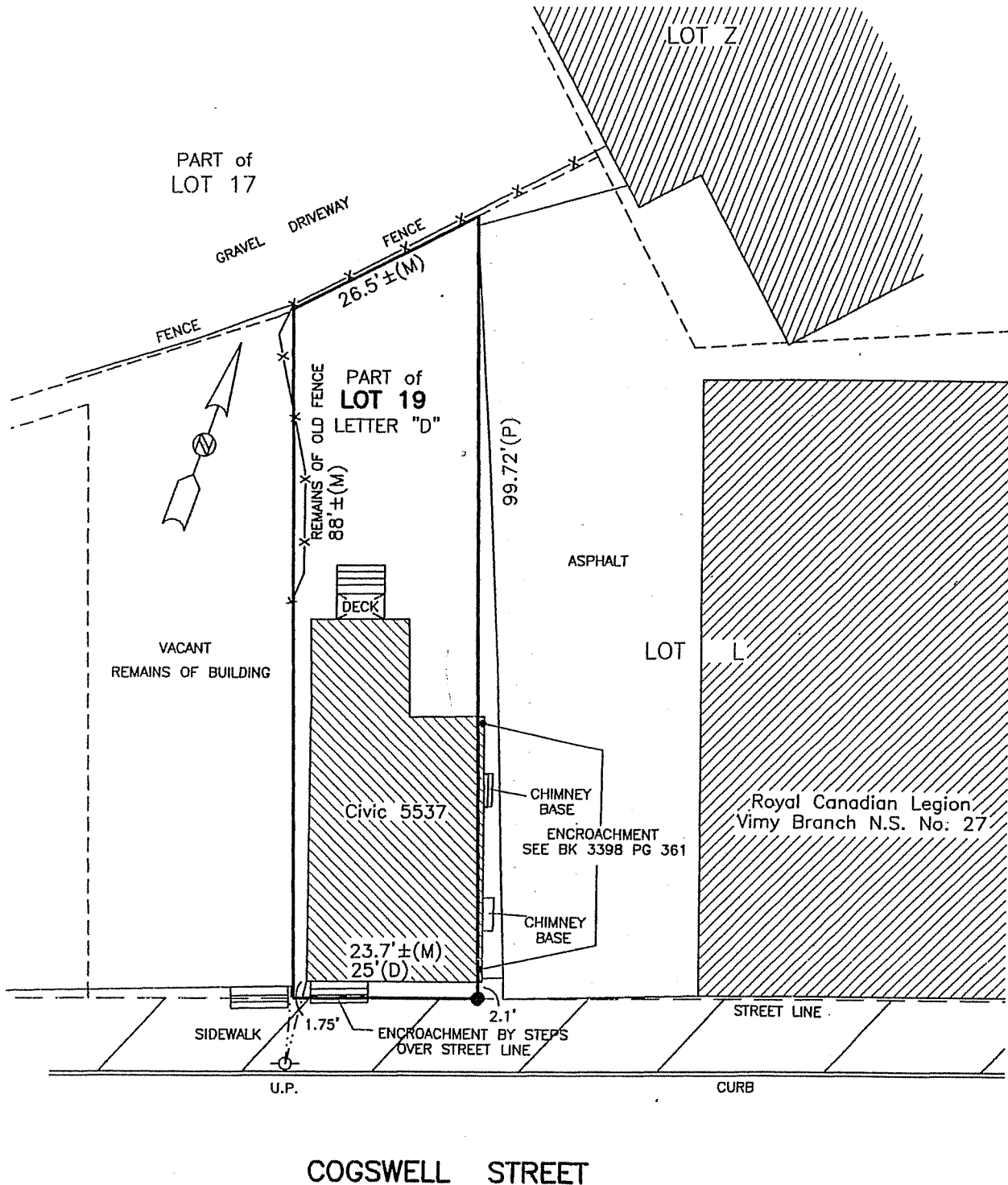
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SURVEYOR'S LOCATION CERTIFICATE



⊙ = SURVEY MARKER FOUND ○ = IRON BAR/PIPE FOUND

SCALE: 1"=20'

(D) = DEED DISTANCE (P) = PLAN DISTANCE (M) = MEASURED DISTANCE O/W = OVERHEAD WIRES U.P. = UTILITY POLE

CERTIFIED TO: **ROBIN STEWART**

RE: CIVIC 5537 COGSWELL STREET, PART OF LOT 19, LETTER D MAYNARDS FIELD
HALIFAX, NOVA SCOTIA

(1) THE DWELLING SHOWN HEREON IS NOT LOCATED ENTIRELY WITHIN THE BOUNDARIES OF THE SUBJECT LANDS AS SAID BOUNDARIES ARE DEFINED BY DEED RECORDED AT BOOK 6923 PAGE 691
PLAN OF DIVISION OF CAPT. MAYNARDS FIELD, DATED JULY 1843, PREPARED BY HUGH MCKENZIE

(2) APPARENT ENCROACHMENTS. EAST SIDE OF DWELLING AS NOTED ON THE DIAGRAM.