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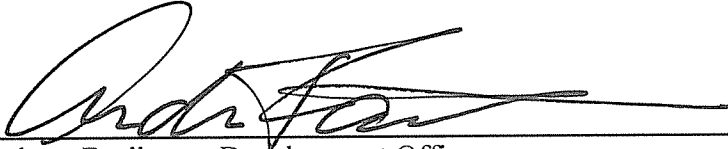


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
May 7, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: April 27, 2007

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance #13680 - 6024 Lady Hammond Rd, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the sideyard setback and lot frontage requirements of the Halifax Peninsula Land Use Bylaw to permit construction of an addition to a single unit dwelling to create a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The above noted application proposes an addition to a single unit dwelling to create a two unit dwelling. This property is regulated under the *Halifax Peninsula Land Use By-Law* and is currently zoned R-2 (General Residential Zone). The following sections of the *Land Use Bylaw* pertain to this application. A two unit dwelling is permitted in the zone subject to the following conditions:

Section 43E(a) of the R-2 zone requirements state:

"buildings erected, altered or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:

	<i>Lot Frontage</i> <i>(Ft.)</i>	<i>Lot Area</i> <i>(Ft.)</i>	<i>Side Yard</i> <i>(Ft.)</i>
<i>R-1 Uses</i>	<i>40</i>	<i>4000</i>	<i>4</i>
<u>duplex</u>	<u>50</u>	<u>5000</u>	<u>5</u>

The proposal does not meet the following requirements:

- minimum frontage requirement of 50 feet; **existing 31 feet**
- minimum right side yard setback of 5 feet; **existing is 2 feet**

A variance application was received March 8, 2007, and was refused March 15, 2006 and subsequently the applicant appealed the refusal.

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 believes the intent of the regulations is clear, requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard R-2 guidelines require a lot area 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.

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."

The Development Officer believes that further reduction in lot frontage and setbacks to allow additional units would violate the intent of the bylaw.

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 and lot frontage 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) five out of the eight single unit dwellings appear they would also have difficulty meeting side yard setbacks and frontage. The Development Officer believes the difficulty experienced is general to properties in the area and the variance was refused.

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

There is no intentional disregard.

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 deny the variance.
2. Council could overturn the decision of the Development Officer and approve the variance.

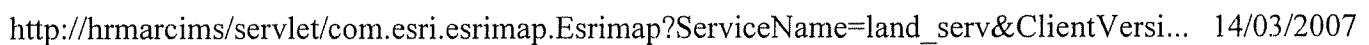
ATTACHMENTS

1. Location Plan
2. Notification Letter
3. 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: Brenda Seymour - Development Technician (490-4046)



April 17, 2007

Dear Assessed Owner:

Re: Variance Application No. 13680
Property at 6024 Lady Hammond Rd

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variance as per requirements of the Municipal Government Act, Section 236.

This will advise that the Development Officer for the Halifax Regional Municipality has refused a request for a variance from the requirements of the Land Use Bylaw for *Halifax Peninsula Land Use Bylaw* as follows:

Property Owners:	Todd Samson
Location:	6024 Lady Hammond Rd
Project Proposal:	Converting from single unit dwelling to a two unit dwelling
Variance Requested:	Vary Right Side Yard setback from 5 ft to 2 ft
	Vary Lot frontage from 50ft to 31 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; and (b) the difficulty experienced is general to properties in the area.

The applicant has appealed the Development Officer's refusal of the application for variance.

The appeal will be heard by the Peninsula Community Council on May 7, 2007 at the Council Chambers, 3rd floor at City Hall, 1841 Argyle Street at 7:00 p.m.

If you have any questions or require additional information, please contact Brenda Seymour, Development Technician at **490-4046**.

Sincerely,



Andrew Faulkner
Development Officer

cc.

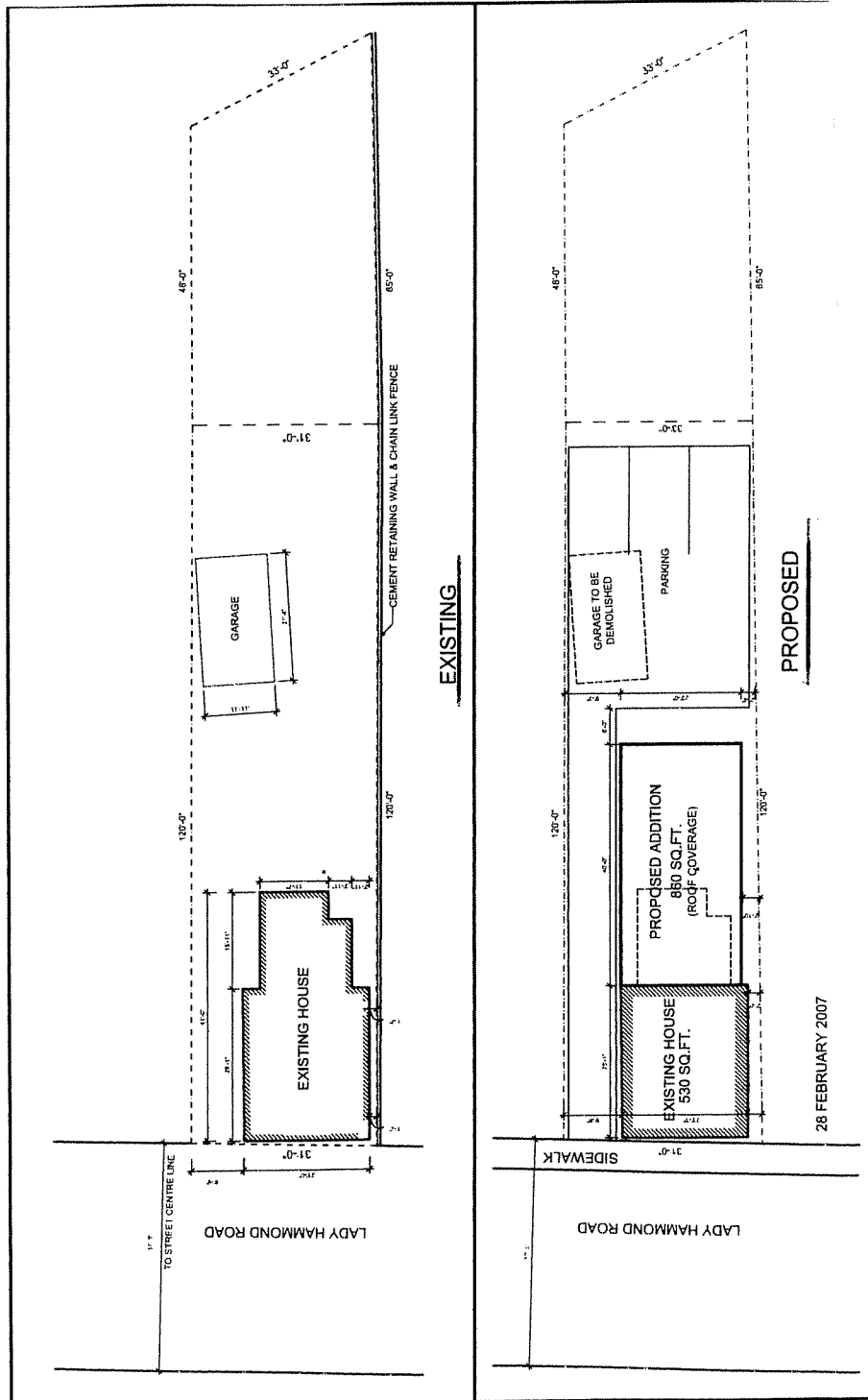
Jennifer Weagle, Municipal Clerk
Councillor Patrick Murphy (District 11)

DATE: March 29, 2007

SUBJECT: Variance Application #13680
6024 Lady Hammond Road

SITE PLAN

To vary right sideyard setbacks from 5ft to 2ft
To vary lot frontage from 50 ft to 31 ft



March 27, 2007

Municipal Clerk
C/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
P.O Box 1749
Halifax, NS B3J 3A5

Dear Mr. Faulkner:

RE: Variance Application No. 13680
Property at 6024 Lady Hammond Rd

I would like to appeal your decision of refusal to the Municipal Council for the variance proposal of 6024 Lady Hammond Rd.

My intentions are to convert a Single Unit Dwelling to a Two Unit Dwelling for the following reasons:

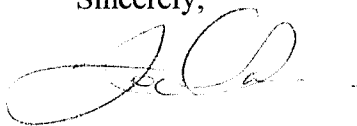
- Immediate family members would like to move in the area under the same dwelling without having to buy a new property. This alleviates the additional cost of buying real estate and brings members closer to family.
- To build an extension without the added facilities of a kitchen, power and privacy makes this initiative difficult.
- The renovation would improve the dwelling's appearance to a growing community and make better use of the vast property size.

The surrounding area has undergone changes over the last 2 years with development in both commercial and residential properties, some changes have been significant and no doubt required proposals reviewed by the city.

I'm asking for leniency on the Land Use Bylaw because I believe this project is ergonomically planned to compensate for those variances and I have support from my members in the community.

In closing, I would ask you to consider these reasons during your case review and keep an open mind with regards to it's feasibility.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Samson', with a stylized flourish at the end.

Todd Samson