




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
July 10, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: July 4, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 6924 Mumford Road, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot size and left side yard setback requirements of the Halifax Peninsula Land Use Bylaw to permit legal occupancy of a 4 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 6924 Mumford Road in Halifax. The property is zoned R-2, General Residential, in the Halifax Peninsula Land Use Bylaw. A construction permit was issued in 1986 for construction of a duplex and the building was converted since that time, without benefit of a permit, to a four unit dwelling.

In response to enforcement action in May, 2006, the owner applied for a variance of the lot area from 8,000 square feet to 5,291 square feet; and, the left side setback from 6 feet to 5 feet, to have the lot and building conform to the land use bylaw requirements for a four unit dwelling.

This Variance was refused by the Development Officer on June 7, 2006 and subsequently appealed.

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 clearly established by 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 increases, 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 was refused.

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

The zone permits up to four units, dependent on frontage, lot area and side yard setbacks. The area and setbacks found on this property meet the requirements for a two unit residential property. Only three properties within the 30 metre setback have a larger lot area, one of which belongs to a church, while another is zoned R-3 and owned by HRM. The immediate area consists of mainly single unit dwellings on lots of appropriate size. Therefore, the difficulty experienced is general to the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?
Lot consolidation was approved and a subsequent construction permit was issued in 1986 for the purpose of constructing a duplex. Sometime after the building was built, two extra units were added illegally. This is a clear intentional disregard of the Land Use Bylaw at the time the additional units were added in the basement.

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.

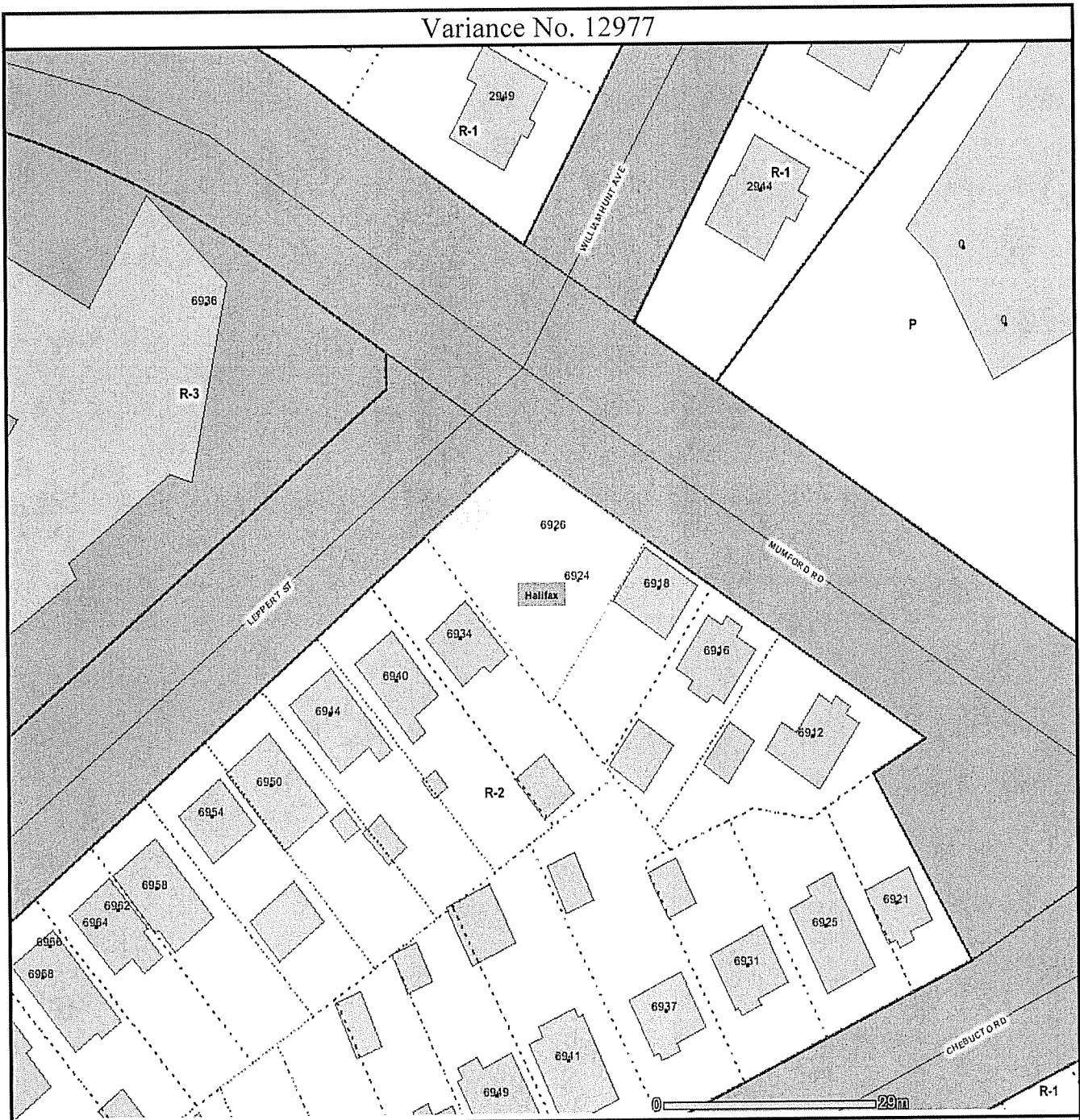
ATTACHMENTS

1. Location Map
2. Refusal Letter
3. Appeal from Cesar Saleh, W.M. Fares Ltd.

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)



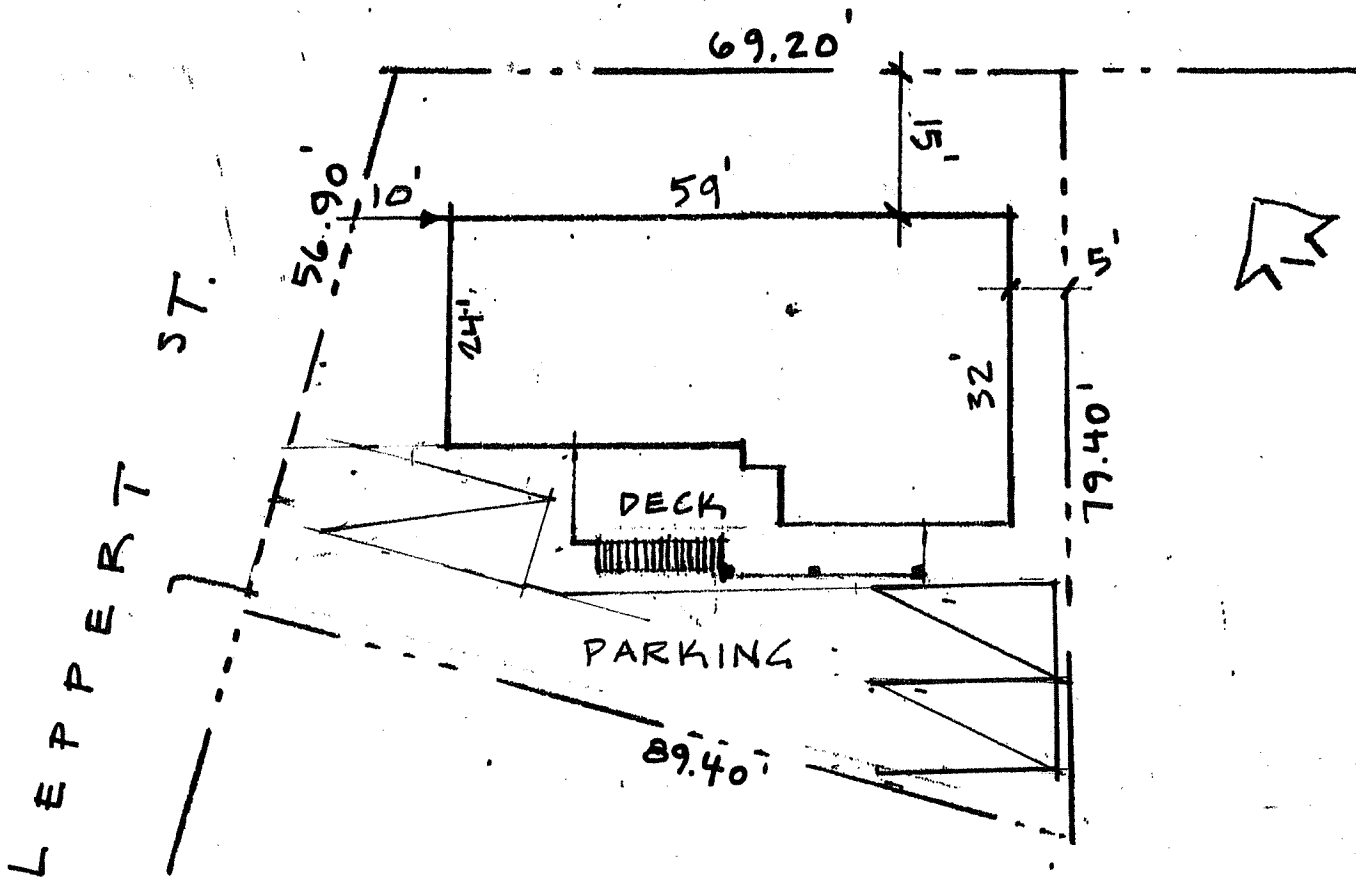
HALIFAX
REGIONAL MUNICIPALITY

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

Legend

Selected Features	Height Precinct	Final
Civic Numbers	Subdiv Project Planning Apps	Government Property
Streets	Concept	Municipal
Parcels	Tentative	Provincial
Building	Prelim cont	Federal
Zoning		Lakes
Plan Areas		

MUMFORD ROAD



SITE PLAN 1"-20'

CIVIC 6924 MUMFORD RD,
HALIFAX

MARCH 06



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

June 7, 2006

W.M. Fares and Associates Inc.
480 Parkland Drive
Suite 205
Halifax, NS
B3S 1P9

Dear Sir:

RE: Application for Variance, File No. 12977 - 6924 Mumford Road, 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 Land Use Bylaw* as follows:

Location: 6924 Mumford Road, Halifax
Project Proposal: Legalizing two illegal units
Variance Requested: Vary lot area from 8000 square feet to 5291 square feet, and left side yard setback requirement from 6 feet to 5 feet

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.**

The R-2 zone for which this property falls within is explicit in the number of units permitted. The zone permits up to four units, dependent on frontage, lot area and side yard setbacks. Three categories of use are outlined, single unit dwellings, two unit dwellings and finally three and four unit dwellings. The area and setbacks found on this property meet the requirements for a two unit residential property. Only three properties within the 30 metre setback have a larger lot area, one of which belongs to a church, while another is zoned R-3 and owned by Halifax Regional

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W.M. FARES AND ASSOCIATES INC.

June 7, 2006

Municipality. The immediate area would be considered to be mainly single unit dwellings. Therefore, we can say with assurance that the difficulty experienced is general to the area.

Lot consolidation was approved August 5th, 1986 for the explicit purpose of constructing a duplex. The applicant of the day signed the subdivision application form attesting to such a proposal. Sometime after the building was built, two extra units were added illegally. This is a clear intentional disregard on the Land Use Bylaw at the time the additional units were added in the basement.

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use Bylaw, (b) the difficulties experienced is general to the area, and (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw, therefore your request for a variance has been refused.

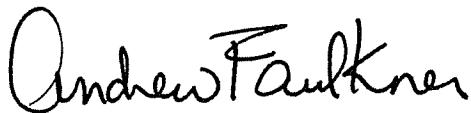
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**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 *June 17, 2006*.

If you have any questions or require additional information, please contact this office at **490-4402**.

Sincerely,



Andrew Faulkner
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Sheila Fougere



Architecture, Engineering, Project Management & Development

480 Parkland Drive, Suite 205
Halifax, Nova Scotia B3S 1P9

Tel: (902) 457-6676
Fax: (902) 457-4686

June 16, 2006

Andrew Faulkner, Development Officer
Halifax Regional Municipality
6960 Mumford Road
Halifax, NS
B3J 3A5

**Re: Application for Minor Variance 12977 – at civic 6924 Mumford Road,
Halifax**

Dear Mr. Faulkner,

Please be advised that the owner of the subject property wishes to appeal your decision to deny a minor variance at the subject site.

We base our appeal on the following:

- The existing building has been constructed 20 years ago.
- It offers affordable housing in a high demand area of Halifax
- The building is well maintained and always has good tenants
- The existing 4 units is in a duplex like structure which is compatible with surrounding uses.
- The present owner has hired us as a design consultant to produce design drawings, and submit for a building permit in order to make the existing use conforming.

Yours truly,

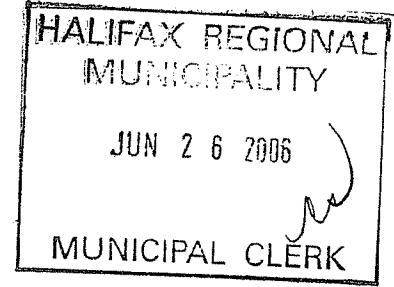
A handwritten signature in black ink, appearing to read 'C. Saleh', is written over the typed name 'Cesar Saleh, P.Eng.'.

Cesar Saleh, P.Eng.
W. M. Fares and Associates Inc.

cc: Jennifer Weagle



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



June 23, 2006

W.M. Fares and Associates Inc.
480 Parkdale Drive
Suite 205
Halifax, NS
B3S 1P9

Dear Sir:

RE: Case No. 12977 - Variance at Civic No 6924 Mumford Road, Halifax

This is to confirm that your appeal of the above variance application has been received by this office.

Your objection may be presented to the Peninsula Community Council on Monday, July 10, 2006 at 7:00p.m. at the Council Chambers at City Hall, 1841 Argyle Street, Halifax.

Should you require further information, please do not hesitate to contact this office at 490-4402

Sincerely,

per 
Andrew Faulkner,
Development Officer

cc: *Councillor Sheila Fougere*
Jan Gibson, Municipal Clerk

June 23, 2006

Dear Assessed Owner:

RE: Application for Variance 12977 - at civic 6924 Mumford Road, Halifax

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

Location:	6924 Mumford Road, Halifax
Property Owners:	Nabeit Ahmar
Project Proposal:	Legalizing two illegal units
Variance Requested:	Vary lot area from 8000 square feet to 5291 square feet, and left side yard requirement from 6 feet to 5 feet

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 the variance (a) violates the intent of the Land Use Bylaw, (b) the difficulties experienced are general to properties in the area, and (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw. Therefore the variance application has been refused.

The applicants have appealed the Development Officer's refusal of the application for variance, pursuant to Section 236(4) of the **Municipal Government Act**.

The appeal will be heard by the Peninsula Community Council on **July 10, 2006** in the Council Chambers at **City Hall, 1841 Argyle Street at 7:00 p.m.**

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ASSESSED OWNER
June 23, 2006

If you have any questions or require additional information, please contact this office at **490-6796**.

Sincerely,



afn
Andrew Faulkner
Development Officer

cc. Jan Gibson, Municipal Clerk
Sheila Fougere, Councillor District 14