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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
November 10, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

A handwritten signature in black ink that reads "Andrew Faulkner". The signature is written over a horizontal line.

Andrew Faulkner - Development Officer

DATE: November 3, 2008

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance - 6054 Cunard Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot area, lot frontage, lot coverage, and front and left side yard requirements of the Halifax Peninsula Land Use By-law to permit conversion of a two unit dwelling to a three unit dwelling at 6054 Cunard Street in Halifax.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 6054 Cunard Street in the North End of Halifax. (see location plan - Attachment 1). The property is zoned R-2, General Residential, Peninsula North Secondary Plan Area 1.

There is a long history of enforcement action beginning in the late 1980's against the property. At that time there was a four unit dwelling where only a two unit dwelling was authorized. To solve the violation, the owner of the day, Ms Ella Corbin, entered into a Development Agreement with the City of Halifax, which proposed a staged removal of two of the dwelling units.

The DA required that the owner convert the four unit dwelling to three units by October 11, 1992. On December 17, 1991, Occupancy Permit No. 23437 was issued "to occupy three unit dwelling (converted from four units to three units)". The second provision of the agreement required that the building be converted to two dwelling units "prior to the property being sold" or October 11, 1995, whichever came first. No application was ever received to remove the third unit nor did staff follow up at the 1995 deadline. The third unit remains to this date.

The present owner of the property purchased the property as a three unit dwelling after obtaining a zoning confirmation letter from our office. Unfortunately, the last record we have is that the authorized use of the building is the Occupancy Permit issued in December of 1991 for a three unit dwelling and the DA was overlooked.

It was only after the property was purchased that the DA came to light and the owners are now trying to legalize the third unit. Should Council overturn the Development Officer's decision to refuse the variance, then the owner will take steps to have the 1990 Development Agreement removed from the title of 6054 Cunard Street and a Development Permit for three units can be issued.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use By-law requirements. Those guidelines are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use by-law;*
- (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 by-law."*

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 by-law?

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.

The lot at 6054 Cunard Street is 3,196 square feet where 8,000 square feet is required; the frontage 34 feet where 80 is required; the side yard and front setback would be reduced to three and 2 feet respectively. There is absolutely no change in the building footprint or building volume proposed with this application simply an approval of existing siting for a change of use from a two unit dwelling to a three unit dwelling.

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

There are several three or four unit dwellings in the same block as this property, however, most are single and two unit dwellings. The majority of the properties in the area are of similar lot size and frontage and would experience the same difficulty as the owner of 6054 Cunard Street should they wish to convert to a three unit dwelling.

Is the difficulty the result of intentional disregard for the requirements of the land use by-law?

The owners have made every effort to legalize the three unit dwelling once they became aware of the development agreement and it's implications. There has been no intentional disregard of the by-law.

BUDGET IMPLICATIONS

None.

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.

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 a request to Council remove the Development Agreement from the property and obtain a Development Permit for the existing three unit dwelling.

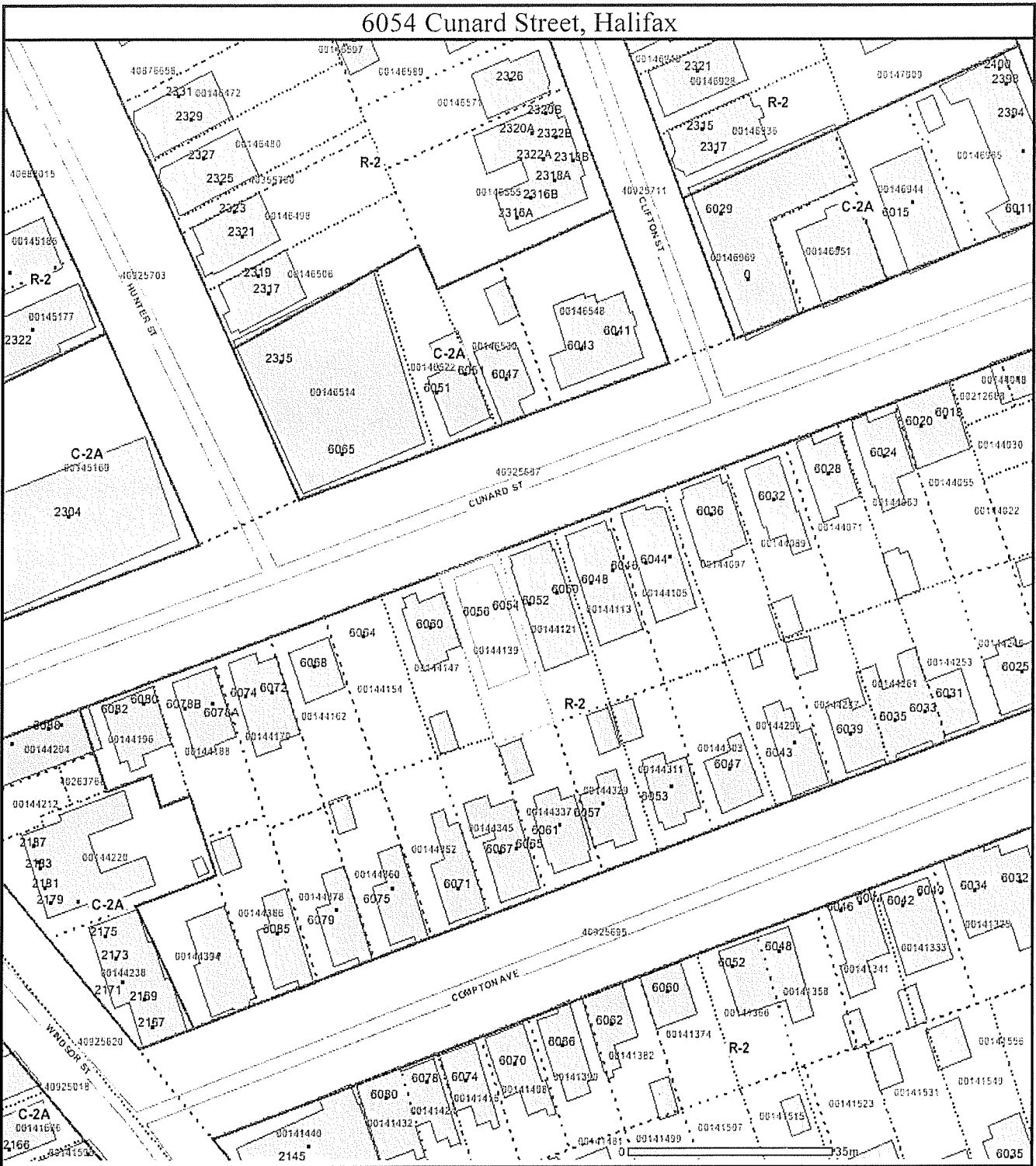
ATTACHMENTS

1. Location Map
2. Refusal Letter
3. Appeal Letter

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)

6054 Cunard Street, Halifax



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.

September 15, 2008

Kent Rodgers
Casey Rodgers Chisholm Penny
175 Main Street, Suite 203
Dartmouth, NS
B2X 1S1

Dear Mr. Rodgers:

RE: Application for Minor Variance 14712, 6054 Cunard Street, Halifax

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

Location: 6054 Cunard Street, Halifax
Project Proposal: Convert from two units to three units
Variance Requested: reduce lot area requirement from 8,000 square feet to 3,196 square feet
reduce lot frontage requirement from 80 feet to 34 feet
increase lot coverage maximum from 35% to 48%
reduce front yard from 15 feet to 2 feet
reduce left sideyard setback from 6 feet to 3 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 Development Agreement or 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 Development Agreement or Land Use Bylaw.**

It is the opinion of the Development Officer that the variance violates the intent of the land use by-law and the difficulty experienced is general to properties in the area.

The difficulty experienced also results from the intentional disregard for the requirements of the land use by-law as it was clearly stated in communication with a previous owner that the third unit was to be removed

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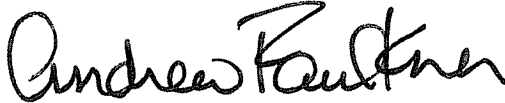
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**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 *September 25, 2008*

If you have any questions or require additional information, please contact this office at 490-5660.

Sincerely,



Andrew Faulkner,
Development Officer

cc.

Julia Horncastle, Acting Municipal Clerk
Councillor Sheila Fougere, District 14

CASEY RODGERS CHISHOLM PENNY
BARRISTERS AND SOLICITORS

PATRICK L. CASEY, Q.C.
RONALD V. PENNY, LL.B.
WILLIAM J. CHISHOLM, B.B.A., LL.B.
KENT W. RODGERS, B.Comm., LL.B.
GEORGE P. SMITH, CD., LL.B.
MICHAEL J. DUGGAN, B.Sc., LL.B.

175 Main Street,
Suite 203
Dartmouth, Nova Scotia
B2X 1S1

Telephone 902-434-6181
Fax. 902-434-7737

September 21, 2008

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

VIA REGISTERED MAIL

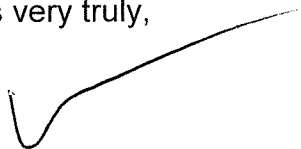
Dear Mr. Faulkner:

Re: Application for Minor Variance 14712
6054 Cunard St. Halifax

Pursuant to section 236(4) of the *Municipal Government Act* the decision of the Development Officer dated September 15, 2008 is hereby appealed on the basis that the decision is contrary to the zoning confirmation provided by Halifax Regional Municipality on January 31, 2006, the date of which superceded the date of the development agreement.

Additionally the applicant has not intentionally disregarded the requirement of the Development Agreement as they were advised by Halifax Regional Municipality both at the time of purchase and again in January 2006 that the zoning permitted three units as per the attached zoning confirmation letter.

Yours very truly,



Kent W. Rodgers



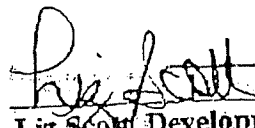
P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Fax to: 434-7737

DEVELOPMENT SERVICES - WESTERN REGION
ZONING CONFIRMATION LETTER

1. **DATE:** January 31, 2006
2. **CIVIC ADDRESS:** 6054-56 Cunard Street, Halifax.
3. **ZONE:** R-2 General Residential Zone, Peninsula North Area 1 for Halifax Peninsula Land Use Bylaw.
4. **AUTHORIZED (LEGAL) USE:** Is a three unit dwelling.
5. **HERITAGE STATUS:** Heritage properties are registered at the Registry of Deeds. It is important that you check the above noted address and if the property is registered, please contact the Heritage Office at 490-4436.
6. **BYLAW/ORDINANCE OR MINIMUM STANDARDS VIOLATIONS:** As the Halifax Regional Municipality is no longer providing this information, here are two suggested methods of obtaining this information:
 - (i) Hire a "private" inspector to review the building for deficiencies, or
 - (ii) Have the owner of the property provide a written disclosure that there are no violations.

HRM is only providing the zoning and the legal use of a property, and will no longer respond to matters concerning single family dwellings or any other inquiries.


Liz Scott, Development Technician

Attention: Kent W. Rodgers
Casey Rodgers Chisholm Penny
175 Main Street
Suite 203
Dartmouth, NS B2X 1S1