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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

**Peninsula Community Council
Special Meeting November 23, 2005**

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner - Development Officer

DATE: November 15, 2005

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 1612 Cambridge Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the Gross Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit construction of an addition to a single 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 1612 Cambridge Street in Halifax (see location plan - Attachment 1). The property is zoned R-1, Single Family Zone, South End Secondary Plan in the Halifax Peninsula Land Use Bylaw.

On October 14, 2005, a permit application was received for "Addition to the second floor as well as changing the layout of other floors" at 1612 Cambridge Street (see site plan and elevations - Attachment 2). A Building Permit was issued on October 27, 2005, as a result of an administrative error, without benefit of a full Development review. The review, completed on November 2 found that the proposed addition resulted in a Gross Floor Area Ratio (GFAR) of 76%. The permitted GFAR is 50%. The construction, now underway, was immediately stopped and a variance application was submitted on November 3. The variance was refused on November 4 (see refusal letter - Attachment 3).

The applicant was advised of the refusal on November 4 and subsequently appealed the Development Officer's decision.

One letter and one email of support have been received from abutting neighbours. Please see Attachment 4.

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.

It should be noted that the GFAR makes no distinction between "invisible mass", that is sub-grade basement area and "visible mass" which would be floor area above the grade. In this case approximately 2,000 square feet of floor area is in the basement and not "visible mass". Given the definition of Gross Floor Area which includes basement area this was not a consideration in the review.

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 of housing stock in the immediate area was undertaken. Floor areas were determined using building permit records 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 and GFAR for nearby properties. It is noted whether the calculation is based upon permit information or on-site assessment. The property subject to the variance is bold.

Civic Address	Floor Area (sqft)	Lot Area (sqft)	GFAR
1600 Cambridge St.	1708 (permit)	4900	35%
1606 Cambridge St.	3017 (permit)	5100	60%
1628 Cambridge St.	3200 (assessment)	4752	70%
1612 Cambridge St.	6170 (permit)	8100	76%
1613 Cambridge St.	2000 (assessment)	3240	65%
1623 Cambridge St.	1743 (permit)	3276	55%
6515 Geldert St.	3648 (permit)	5500	70%
6516 Geldert St.	2500 (assessment)	6180	45%
6530 Geldert St.	2200 (assessment)	6000	40%
6540 Geldert St.	1752 (permit)	6000	30%

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. Therefore, the property at 1612 Cambridge Street is subject to the same restrictions as all other parcels regardless of their size.

As the difficulty experienced is general to all properties in the area the variance was refused.

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 and this was not a consideration when refusing the variance application.

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 refuse the variance.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with construction.

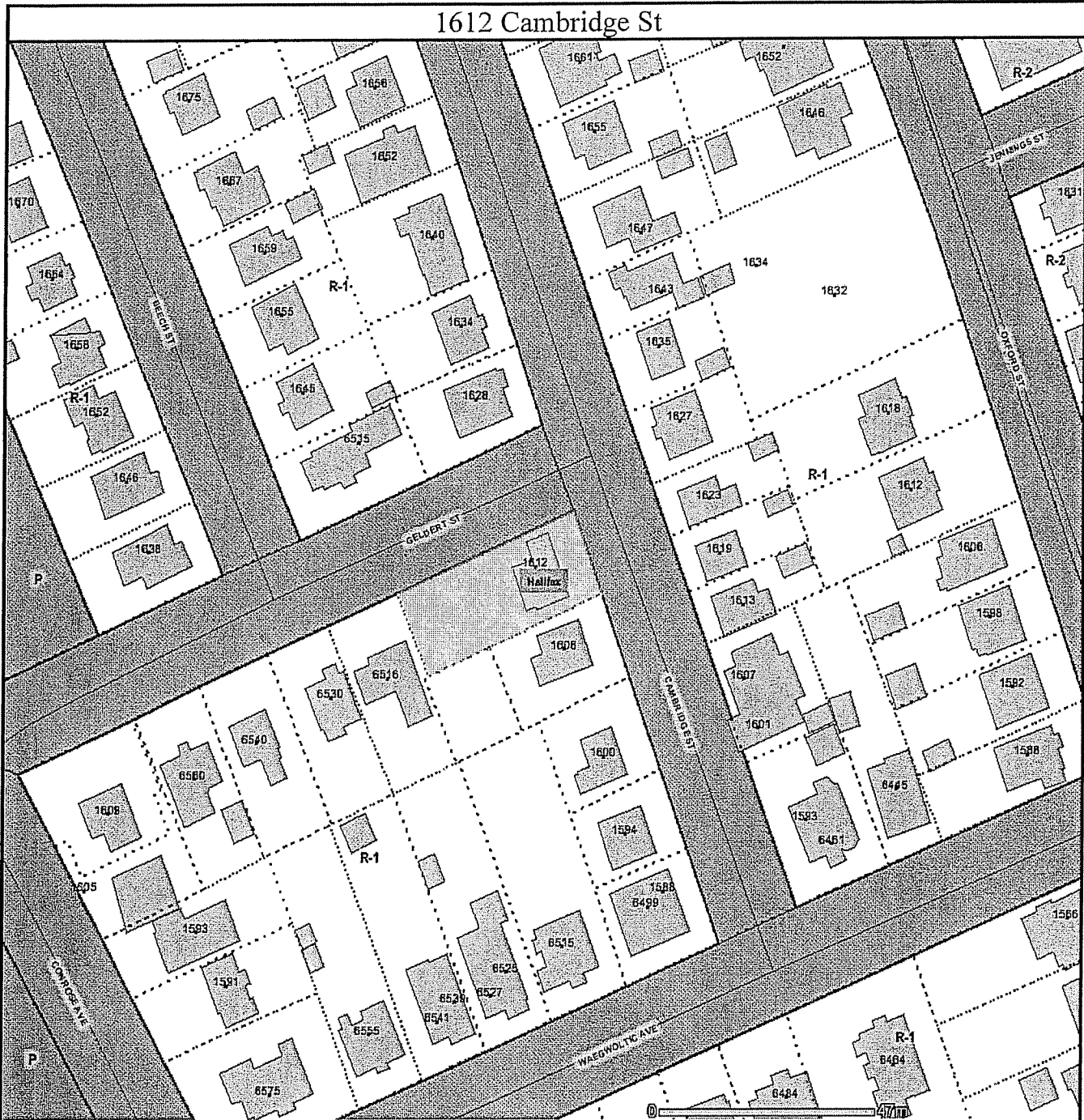
ATTACHMENTS

1. Location Map
2. Site Plan and Elevations of proposed construction
3. Refusal Letter
4. Letter of support from Cynthia Lank and Frank Nardi, 1613 Cambridge Street
Email of support from Kenneth and Janet Adams, 1635 Cambridge 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)



HALIFAX
REGIONAL MUNICIPALITY

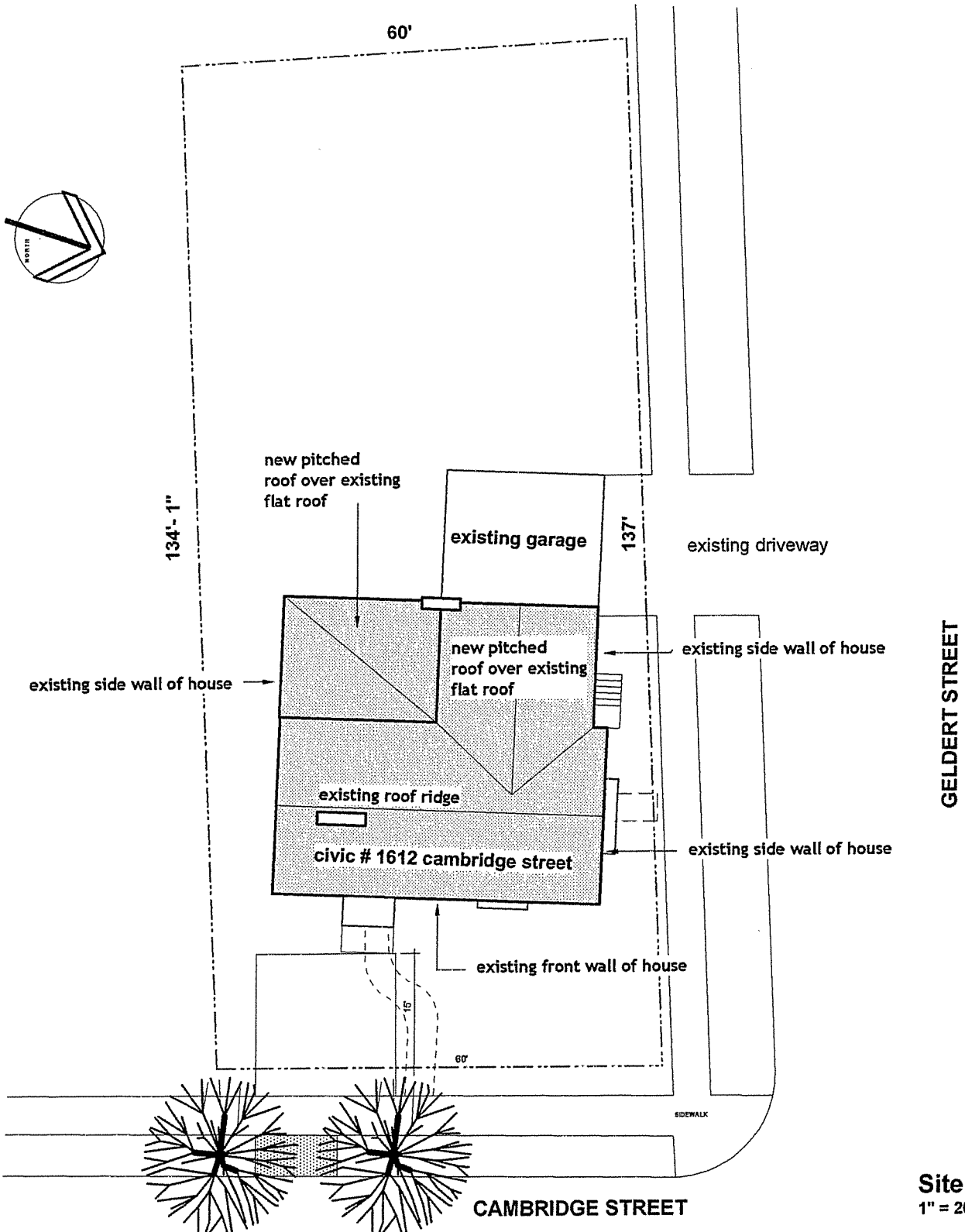
This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.
User: geoinfo@halifax.ca

Legend

Selected Features	Zoning	Federal
Civic Numbers	Plan Areas	Lakes
Streets	Government Property	
Parcels	Municipal	
Building	Provincial cont	

LOT AREA APPROX. 8140 SQUARE FEET
BUILDING FOOTPRINT APPROX. 2120 SQUARE FEET

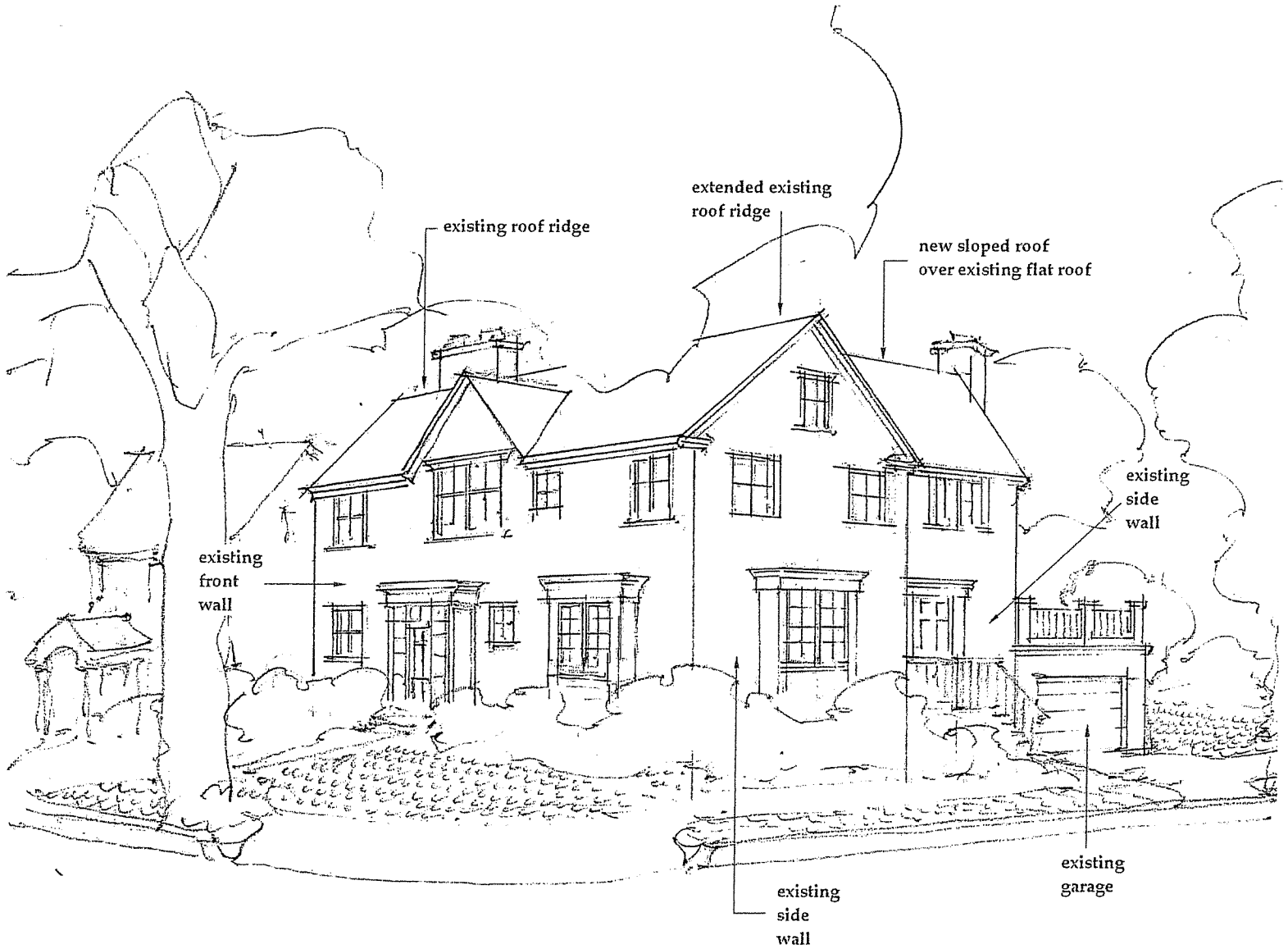
ALL SITE DIMENSIONS TAKEN FROM 1996 LOCATION CERTIFICATE BY THOMPSON CONN



Proposed Alterations to 1612 Cambridge Street - Application No. 12425

Site Plan
1" = 20'

michael grunsky
ARCHITECT
INCORPORATED
Nov. 3, 2005



Sketch Perspective

N.T.S.

michael grunsky
ARCHITECT
INCORPORATED

Nov. 3, 2005

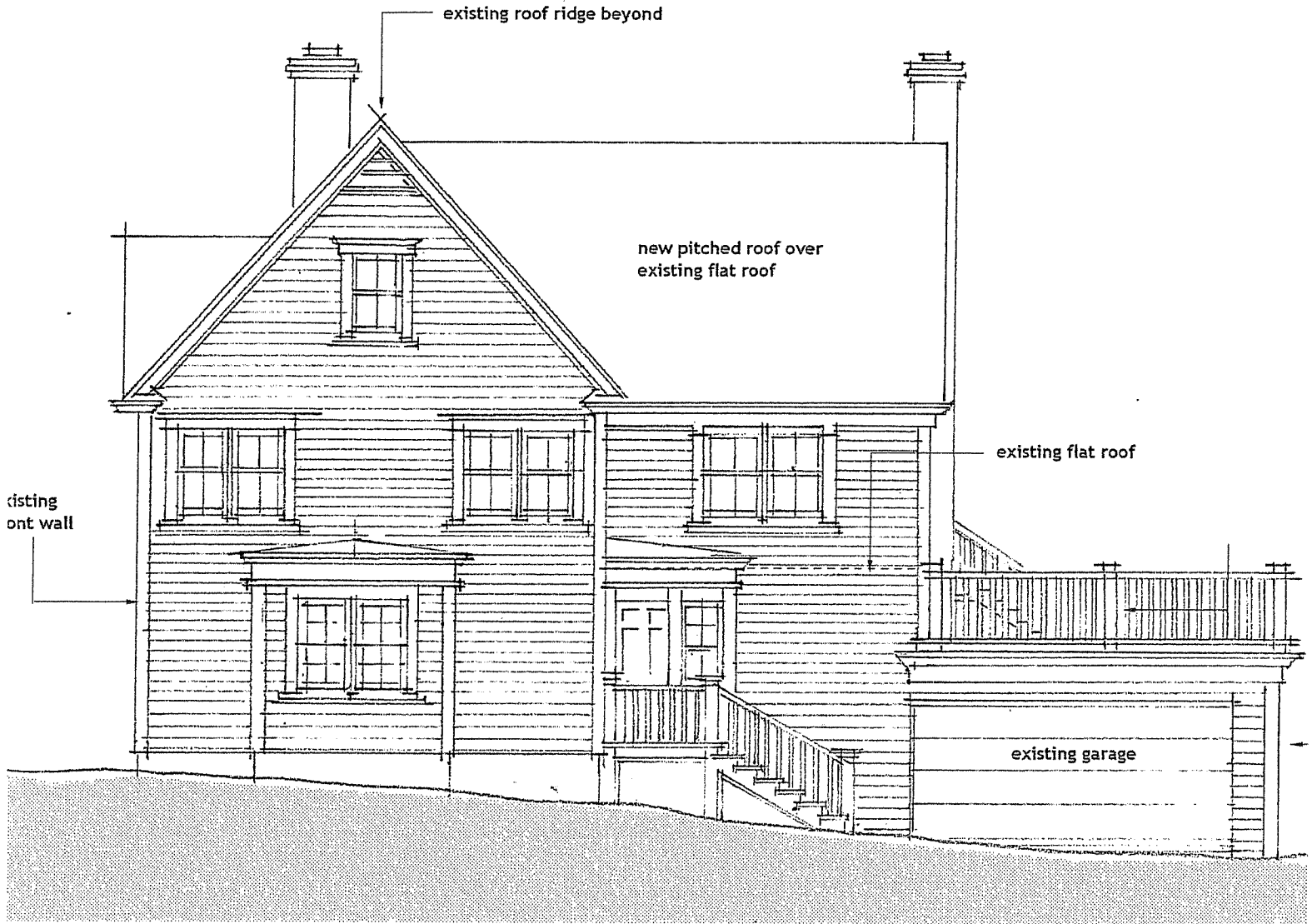


**East Elevation
(front)**

1" = 8'-0"

michael grunsky
ARCHITECT
INCORPORATED

Nov. 3, 2005



**North Elevation
(side)**

1" = 8'-0"

michael grunsky
ARCHITECT
INCORPORATED

Nov. 3, 2005



**West Elevation
(rear)**

1" = 8'-0"

michael grunsky
ARCHITECT
INCORPORATED

Nov. 3, 2005



PLANNING & DEVELOPMENT SERVICES: WESTERN REGION

November 4, 2005

Paula Cesar-Rittenberg & David Rittenberg
1612 Cambridge Street
Halifax, NS B3H-4A5

Dear Sir and Madam:

RE: Application for a Variance No. 12425 - 1612 Cambridge Street, 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 the Halifax Peninsula Land Use Bylaw as follows:

Location: 1612 Cambridge Street
Project Proposal: construct addition to existing residence
Variance Requested: relaxation of Gross Floor Area Ratio of 4,050 square feet to 6,170 square feet (5,166 square feet existing)

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 violates the intent of the land use bylaw and the difficulty experienced is general to properties in the area.

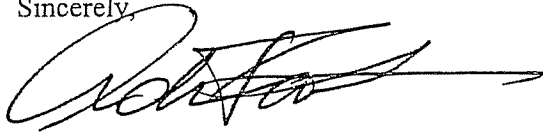
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5
Phone: (902) 490-4402

Your appeal must be filed on or before *November 12, 2005*.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Faulkner', with a long horizontal flourish extending to the right.

Andrew Faulkner
Development Officer

cc. Municipal Clerk
Councillor Sue Uteck

November 10, 2005

Andrew Faulkner, Development Officer
Planning and Development Services — Western Region
Halifax Regional Municipality
6960 Mumford Road
PO Box 1749
Halifax, NS B3J 3A5

Re: Application for variance #12425 – 1612 Cambridge Street, Halifax

Dear Mr. Faulker,

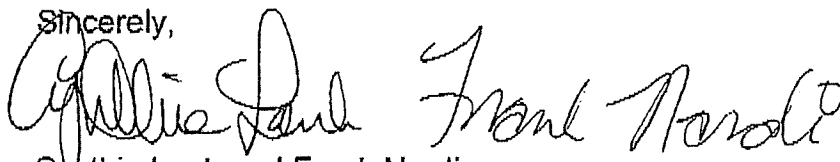
We recently received notice that David and Paula Rittenberg have appealed your office's refusal of their application for variance. As we understand it, they applied for a building permit, which was issued and they commenced work. The permit was then withdrawn, and reissued, but does not permit them to work to their original design.

As neighbours of the Rittenbergs, we are writing to support their appeal and urge your office to allow them to proceed with original proposed addition to their home. We base our support for them on three issues:

- 1) The footprint of their home will not change, so the proposed home will not occupy a disproportionate amount of their lot.
- 2) The proposed renovations will greatly enhance the aesthetics of the home.
- 3) As homeowners and taxpayers we are concerned that a building permit can be granted, then withdrawn. The Rittenbergs commenced work in good faith, only to have their permit withdrawn mid-construction. If the permit was issued in error, the city should accept responsibility for that error and allow construction to proceed as planned. Homeowners cannot be left facing considerable expenses and delays because of an administrative error. We all need confidence in the system, and the city's action in this case is a frightening prospect for any homeowner considering a renovation.

We urge the city to allow the Rittenbergs to proceed with the renovation they undertook with the full approval of the city. Please ensure that all individuals copied at the bottom of this letter receive a copy of this letter.

Sincerely,



Cynthia Lank and Frank Nardi
1613 Cambridge Street
Halifax, NS B3H 4A5
Tel: 446-2631

Cc: David and Paula Rittenberg
Councillor Sue Uteck
Municipal Clerk

From: adamsjk <adamsjk@eastlink.ca>
To: <faulkna@halifax.ca>
Date: 11/10/2005 1:29pm
Subject: Application for Variance No. 12425-1612 Cambridge Street

Dear Mr. Faulkner:

We understand the need for rules for land use but also believe that judgment should be applied in administering the law. The renovation proposed by the Rittenbergs is one that transforms a house that is not so attractive to one that is a good addition to the streetscape. Not only do we have no objection to the proposed change but strongly support it.

Let's hope the HRM doesn't decide to apply the "percentage of floor area in relation to the lot size" to our home since we violate the percentage rule by some measure.

Sincerely,

Kenneth A. H. and Janet S. Adams
1635 Cambridge Street

