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Chebucto Community Council
July 5, 2010

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY:

For 

Andrew Faulkner - Development Officer

DATE: June 23, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance 16145 - 72 Main Avenue (PID 40021016)

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot frontage and lot area requirements of the Halifax Mainland Land Use By-law to permit the construction of a duplex dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 72 Main Avenue in Halifax (see Attachment 1). The property is zoned R-2 (Two-Family Dwelling) under the Halifax Mainland Land Use By-law. The property is currently vacant.

The subject property is approximately 4,000 square feet and has 40 ft of frontage along Main Avenue. On May 12, 2010 the applicant, Geoff Keddy and Associates, applied for a variance to reduce the frontage and lot area requirements to develop a two unit duplex. The R-2 Zone of the Halifax Mainland Land Use Bylaw requires a minimum lot area of 5,000 square feet and a minimum lot frontage of 50 feet.

On August 19, 2009, the same applicant applied for a development permit to construct a three unit apartment building. This would have involved consolidating the subject property with neighbouring property, 70 Main Avenue, and developing 2 other units horizontally from the existing single unit dwelling located on 70 Main Avenue. This was denied as the R-2 Zone does not permit a three unit dwelling.

DISCUSSION

The *Halifax Regional Municipality Charter* 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.”*

Does the proposed variance violate the intent of the land use by-law?

The R-2 Zone of the Halifax Mainland Land Use Bylaw permits a two unit dwelling in the form of a duplex or a semi detached. However, the bylaw requires a minimum 5,000 square foot lot area and a minimum 50 foot lot frontage for a two unit dwelling to be located on the property.

Although the same lot area and frontage requirements are applied to a single unit dwelling, Section 14C of the general provisions of the Halifax Mainland Land Bylaw, allow the requirements for a single unit dwelling to be reduced to a lot area of 3,000 square feet and a lot frontage of 30 feet for lots that existed prior to Feb 7, 1982 (see Attachment 5). There is no similar provision within the bylaw that allows two unit dwellings to be constructed on smaller lots.

As the proposed duplex does not meet either of the lot area nor the lot frontage requirements it is of the opinion of staff that varying both requirements would violate the intent of the land use bylaw.

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

Within the surrounding neighbourhood there are various 4, 3 and 2 unit dwellings. However, the majority of those properties are either in another zone (the R-2P - General Residential Zone) or meet the requirements for a two unit dwelling in the R-2 Zone. There is a single property, located at 74 Main Avenue where a duplex exist on a property that does not meet the lot area nor the lot frontage requirements. However, this property has been in existence since at least the 1970s.

The R-2 Zoned portion of the block of 70 to 82 Main Avenue consists of mainly single unit dwellings, except for 74 Main Avenue, as already discussed. None of these properties within this block would meet the lot area nor the lot frontage requirements for a two unit dwelling. Of the properties backing this block on Ashdale Avenue 3 of the 5 properties would also not meet the requirements for a two unit dwelling.

Staff are of the opinion that the difficulty experienced is general to the properties in the area.

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

The applicant has utilized tools such as the development permit application to gain further information on what could be developed on the property. He has applied for this variance before he has completed any development on the property. There is no evidence of intentional disregard for the requirements of the land use bylaw.

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. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with the construction of a duplex dwelling.

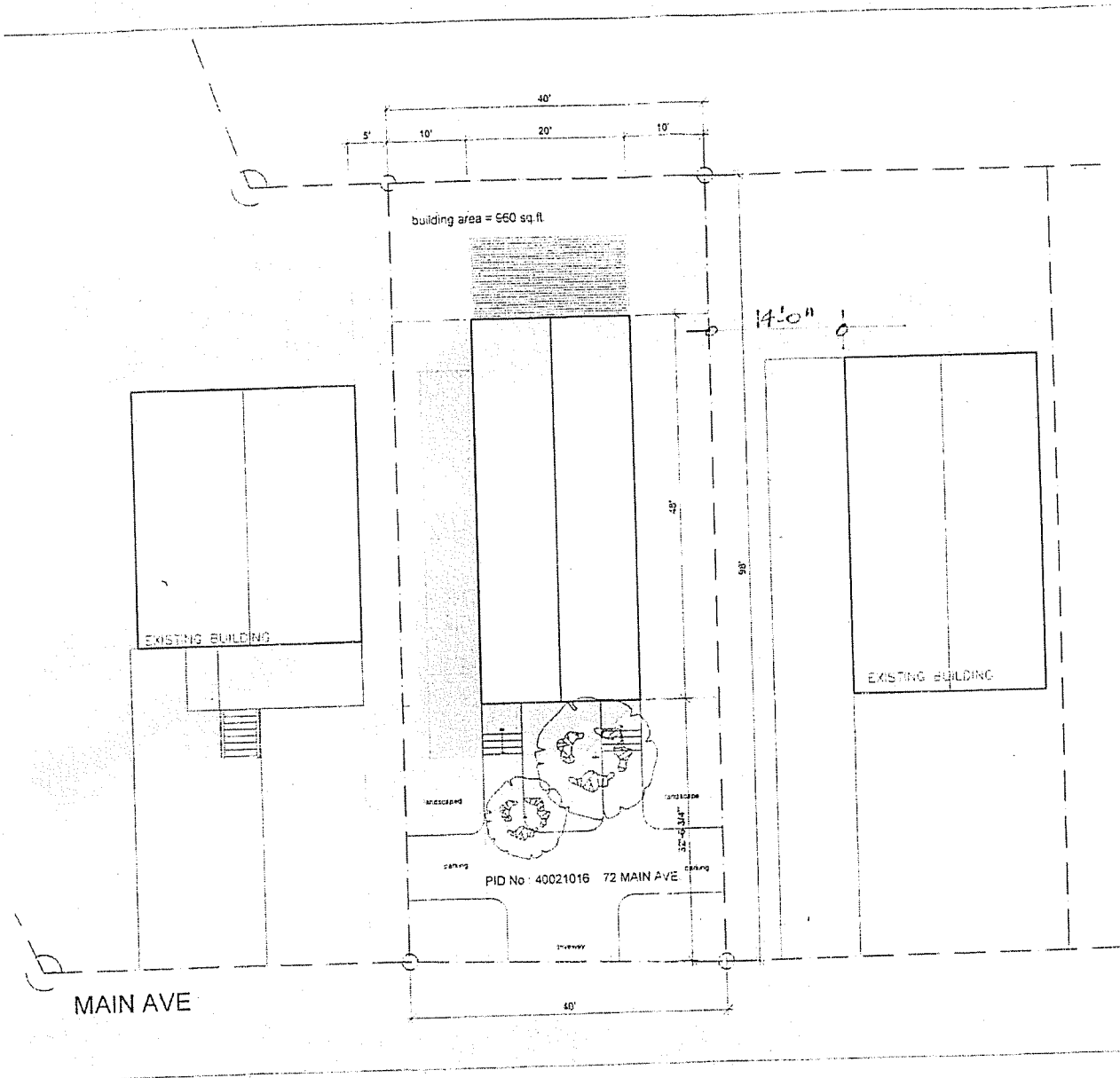
ATTACHMENTS

1. Location Map
2. Proposed Site Plan
3. Proposed Front Elevation Options
4. Proposed Side Elevation
5. Excerpts from the Halifax Mainland Land Use Bylaw

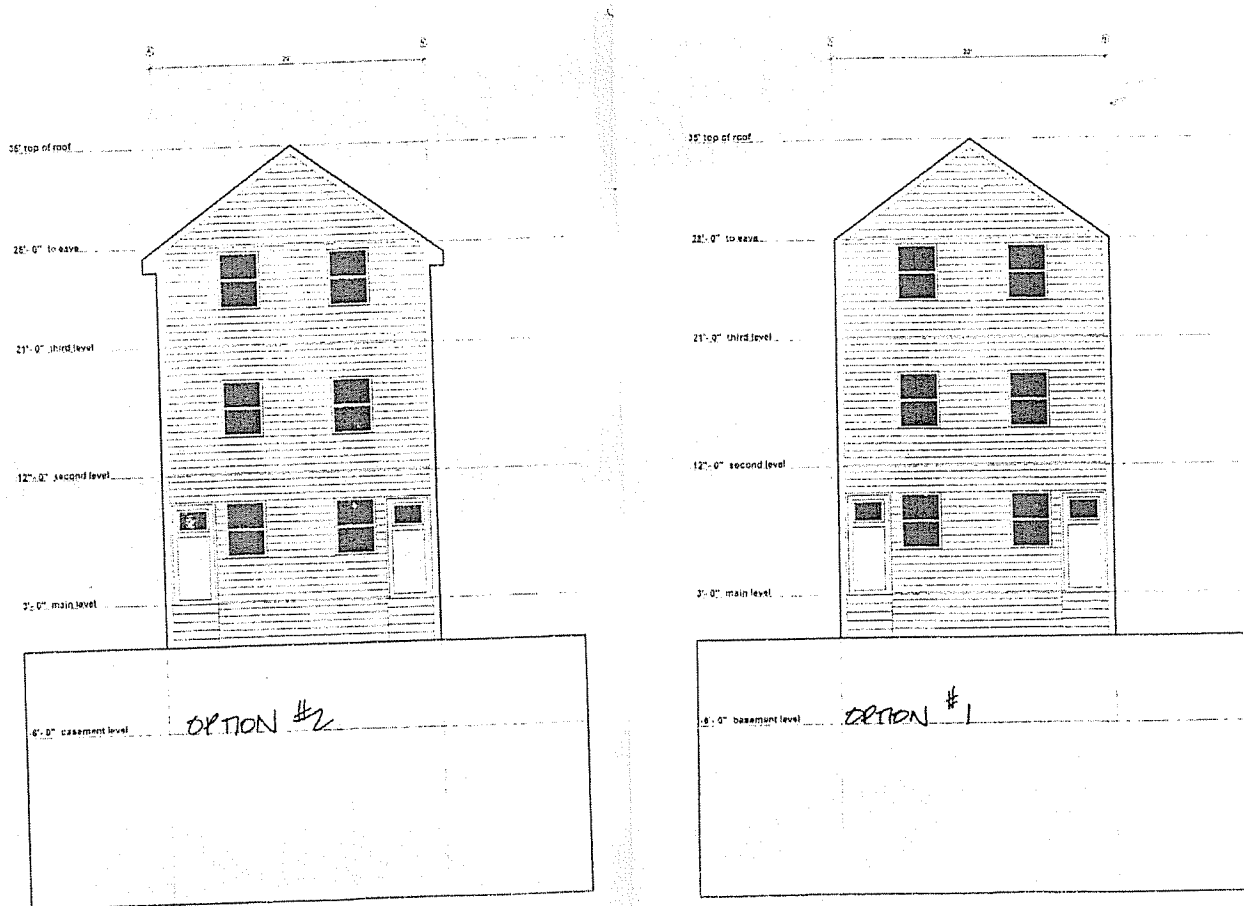
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jillian MacLellan - Development Technician (490-4338)

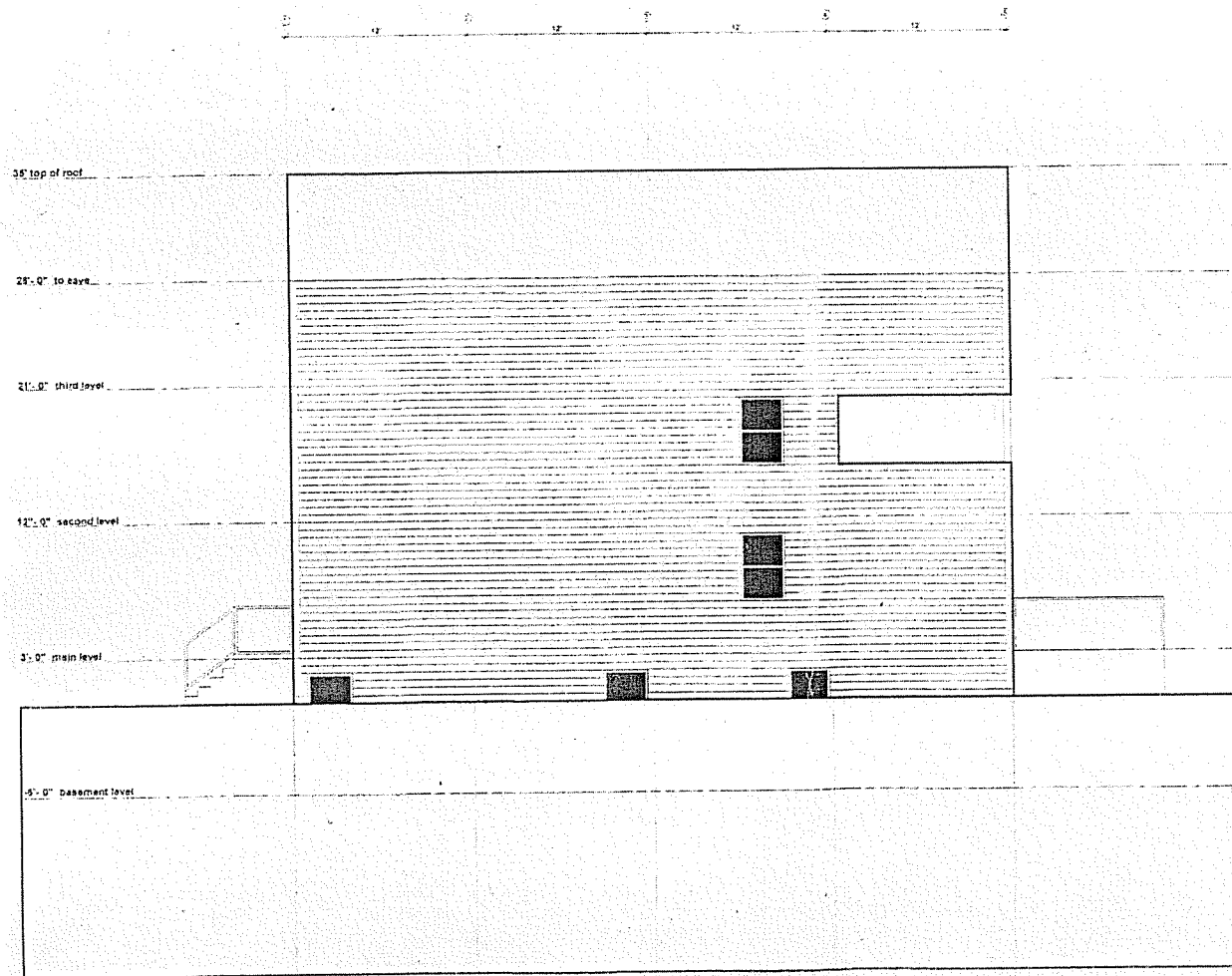
Attachment 2 : Proposed Site Plan



Attachment 3 : Proposed Front Elevation Options



Attachment 4 : Proposed Side Elevation



Attachment 5 : Excerpts from the Mainland Land Use Bylaw

GENERAL PROVISIONS

REDUCED LOT SIZE

14C Notwithstanding any section of this by-law, in the case of lots existing prior to the date of adoption of this section, the lot size and lot frontage requirements shall be reduced to 3,000 square feet and 30 feet, respectively, for single family residential uses.

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R-2 ZONE -TWO-FAMILY DWELLING ZONE

24(1) The following uses shall be permitted in any R-2 Zone:

- (a) all R-1 Zone uses;
- (b) a semi-detached dwelling;
- (c) a duplex dwelling;
- (d) (Deleted)
- (e) (Deleted)
- (f) in the "Fairview Area", conversions of existing buildings used for institutional purposes to a maximum of 4 units, provided that the height and floor area of the building are not increased.
- (g) uses accessory to any of the foregoing uses.

24(2) No person shall, in any R-2 Zone, carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1)

24(3) No person shall, in any R-2 Zone, use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1)

24(4) (Deleted)

R-1 USES IN R-2 ZONE

25 Buildings erected, altered or used for R-1 uses in an R-2 Zone shall comply with the requirements of an R-1 Zone.

25A (Deleted)

REQUIREMENTS

26 Buildings erected, altered or used for R-2 uses in an R-2 Zone shall comply with the following requirements:

- (a) Lot frontage minimum 50 feet except when a lot faces on the outer side of a curve in the street, in which case the minimum frontage may be reduced to 30 feet
- (b) Lot area minimum 5,000 square feet
- (ba) Notwithstanding clause (b), the minimum lot area for lots abutting an inland watercourse in the "Mainland South Area", shall be 6,000 square feet;
- (c) Lot coverage maximum 35 percent
- (ca) The maximum height shall be 35 feet
- (d) Floor coverage of 900 square feet living space, minimum
- (e) Every building shall be at least 12 feet from any other building and at least 8 feet from the rear and both side lines of the lot on which it is situated and at least 20 feet from any street line in front of such building;

ACCESSORY BUILDINGS

- (f) Notwithstanding the provisions of clause (e), a carport or a detached or attached non-commercial garage may be located not less than 4 feet from the rear and both side lines of the lot on which it is situated and shall be located 8 feet from any other building;
- (g) Notwithstanding the provisions of clause (f), any accessory building shall not require any side or rear yard nor any setback from any other building if such building is located entirely within the rear yard of the lot on which such building is located; provided, however, that such accessory building shall not be closer than 15 feet to any street line.

BUILDINGS ON CORNER LOTS

- (h) Where a building is situated on a corner lot, it shall be at least 10 feet from the flanking street line abutting such lot;

SEMI-DETACHED DWELLINGS

- (i) Notwithstanding the provisions of other requirements:
 - (1) For each unit of a semi-detached dwelling, the minimum lot frontage shall be 25 feet, the minimum lot area shall be 2,500 square feet, and the maximum lot coverage shall be not greater than 35 percent.
 - (2) Every semi-detached dwelling shall be at least 12 feet from any other building and at least 8 ft. from the rear and side lines of the lot on which it is situated and at least 20 ft. from any street line in front of such dwelling.
 - (3) Where a semi-detached dwelling is situated on a corner lot, such dwelling and accessory buildings or uses shall be at least 10 feet from the flanking street line abutting such lot.
 - (4) Notwithstanding subsection (2) where a lot containing a semi-detached dwelling is to be or has been subdivided so that each unit is on its own lot, there shall be no setback required from the common lot boundary.

DAY NURSERY

- (j) (Deleted)
- (k) (Deleted)

BOARDERS AND LODGERS

27 The keeping of not more than three boarders or lodgers in an R-2 Zone shall be permitted, but no window display or sign of any kind in respect to the use permitted by this section shall be allowed.

SIGNS

28 The exterior of any building in an R-2 Zone shall not be used for the purpose of advertising or erecting or maintaining any billboard or sign except the following:

- (a) one sign board not exceeding 6 square feet in size pertaining to the sale or rent of the building or lot;
- (b) one non-illuminated no-trespassing, safety, or caution sign not exceeding one square foot in size;
- (c) one non-illuminated sign not exceeding one square foot in area, indicating the name and the occupation, profession or trade of the occupant of the building;
- (d) one bulletin board for a church.
- (e) A sign not exceeding two square feet in size for a day care facility.
(RC - Mar 3/09; E - Mar 21/09)

DAY NURSERY - ADDITIONAL CHILDREN PROVISION

28A (Deleted)

28B (Deleted)