



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Peninsula Community Council**  
**June 12, 2006**

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** June 2, 2006

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application for a  
Variance - 3318 Connaught Avenue, Halifax

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a variance from the Rear Yard Setback requirements of the Halifax Peninsula Land Use Bylaw which if granted, would permit subdivision of an existing lot to create one lot plus a remainder.

**RECOMMENDATION**

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

## **BACKGROUND**

The subject property is located at 3318 Connaught Avenue in Halifax. The property is zoned R-2, General Residential Zone in the Halifax Peninsula Land Use Bylaw.

This Variance was refused by the Development Officer on May 4, 2006. Subsequently, the applicant appealed the Development Officers decision on May 11, 2006.

The variance application came about in support of a preliminary subdivision application. The subdivision application proposed to create two lots, Lot 1-A having a lot area of 3928.4 square feet, and Lot 1-B having a lot area of 4001.6 square feet. Lot 1-A did not meet the minimum lot area and minimum rear yard setback requirements, which are 4000 square feet and 20 feet, respectively. The applicants have expressed an interest in purchasing a piece of their neighbour's property to increase the lot area for Lot 1-A to meet the minimum lot area requirement, if the variance was granted.

Varying the lot area requirement for a subdivision is not an option. Instead, it would need to be done under the Lot Modification process, found under section 99(5) of the Land Use Bylaw. Therefore, if the Peninsula Community Council overturns the variance refusal by the Development Officer, only the variance on rear yard setback would be granted. The applicants would thus have to decide whether to proceed with a purchase of a piece of the neighbour's property or pursue a lot modification through the planning process. The average rear yard setback was calculated to be 15.1 feet, based upon the information submitted in support of the variance application.

## **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 ?**

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 area lots was undertaken. It was determined that the proposed subdivision would result in the creation of the only internal lot within the block; all other lots front either on Connaught Avenue or Micmac Street (East-West orientation). There are currently no lots fronting exclusively on Regent Street. Neighbourhood blocks are composed of a series of back to back lots, respecting the original grid pattern. The proposed subdivision would result in Lot 1-B having to its sides the backyards of two other lots. This was seen as a significant departure from the established block pattern within the neighbourhood. Granting the variance would enable the subdivision to occur and therefore was seen to violate the intent of the bylaw.

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

The property at 3318 Connaught Avenue is subject to the same restrictions as all other parcels. Properties found within the same block and fronting on Connaught Avenue all have a lot depth of approximately 38 metres. Meanwhile, properties fronting on MicMac Street have lot depths of approximately 32 metres. All lots within a radius of 30 metres have sufficient rear yard setbacks. Therefore 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 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 subdivision.

**ATTACHMENTS**

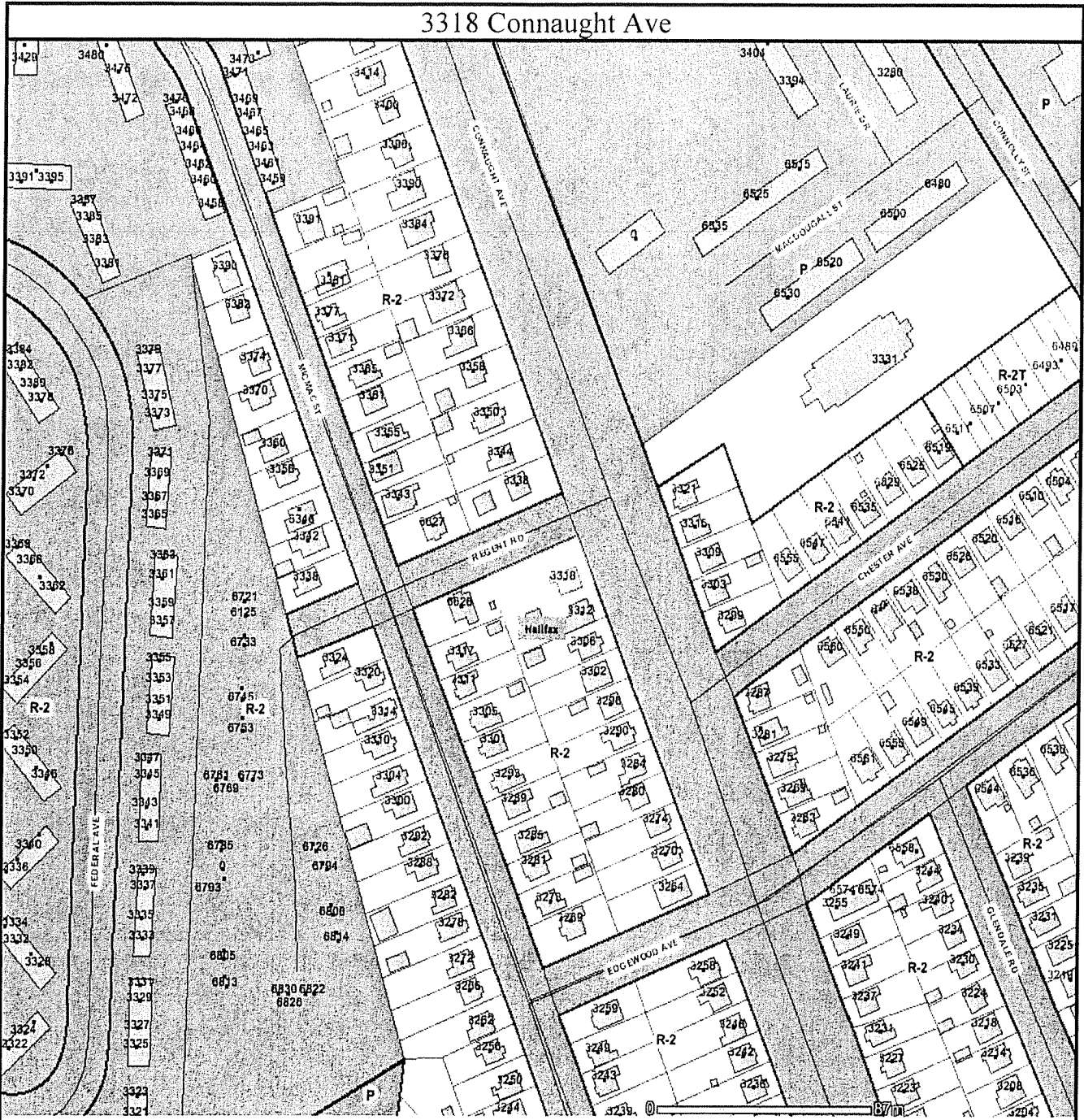
1. Site Plan showing proposed subdivision
2. Refusal Letter
3. Appeal letter from Bernie Ploudre and Jill Olscamp, 3318 Connaught Avenue

**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)

3318 Connaught Ave

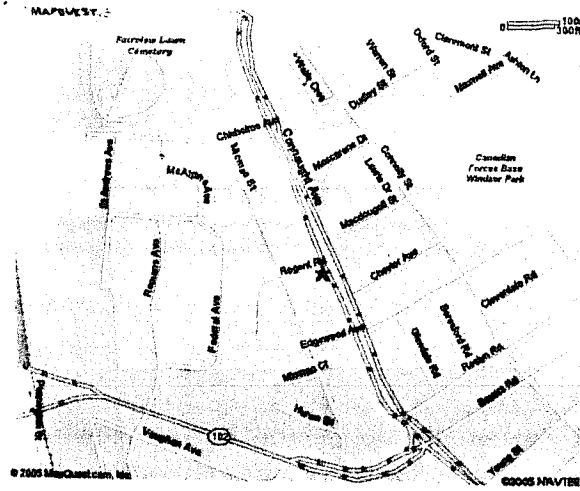


This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email [civicadd@halifax.ca](mailto:civicadd@halifax.ca).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

PRELIMINARY SUBDIVISION Plan

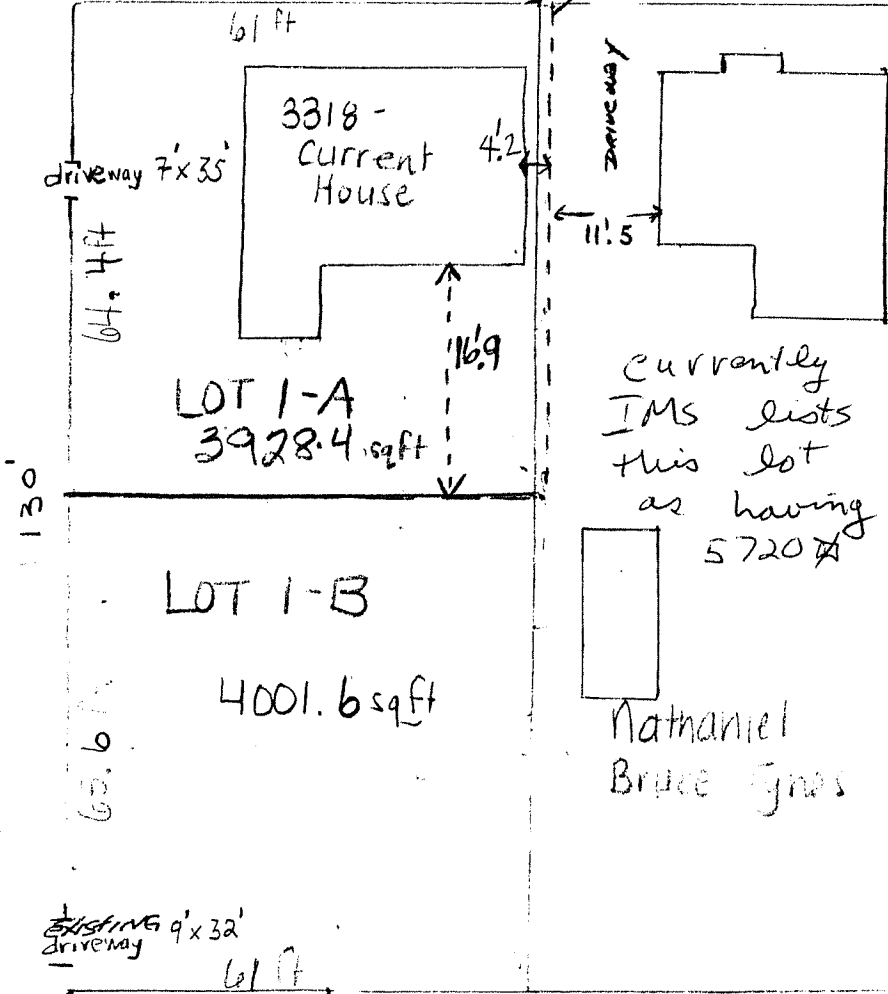
SHOWING LOTS 1-A + 1-B

A Subdivision of Lands of  
 JILL A OLSCAMP +  
 BERNARD G FLOURDE  
 3318 Connaught Ave  
 Halifax, NS B3L3B3



CONNAUGHT AVE

current line  
 proposed servitude



• If approved we plan to purchase 12 sq. ft. from our neighbor, Nathaniel Bruce Tjos. This extra footage will allow our property to be subdivided into two 4000 sqft lots needed for RZ zoning

currently IMS lists this lot as having 5720 sqft

Nathaniel Bruce Tjos

January 4, 2006

SCALE

1 cm = 10 ft

----- Property to be purchased

Buildings on properties are NOT to scale see Attached.

Terrance Paul ALLAN

Heather Ann MacNeil

May 11, 2006

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

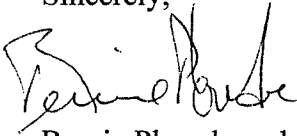
Dear Mr. Faulkner,

**RE: Appeal of variance refusal, file no. 12749 – 3318 Connaught Avenue, Halifax**

This letter will advise you of our notice to appeal your departments' decision to refuse our request for a variance in our proposal to subdivide our land.

We look forward to pleading our case to Council in the very near future. Please advise us in writing should you require further information or to confirm our appeal date and time.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernie Plourde and Jill Olscamp". The signature is written in a cursive style with some loops and flourishes.

Bernie Plourde and Jill Olscamp

cc. Patrick Murphy, Councillor



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

May 4, 2006

Bernard G. Ploudre

Dear Mr. Ploudre:

**RE: Application for Variance, File No. 12749 - 3318 Connaught Avenue, 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:** 3318 Connaught Avenue, Halifax  
**Project Proposal:** Subdivision of land  
**Variance Requested:** Vary rear yard setback requirement from 20 feet to 15.1 feet and lot area from 4000 square feet to 3928 square 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, and (b) the difficulties experienced is general to the area, 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:

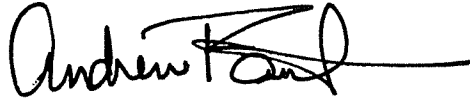


**Municipal Clerk  
c/o *Andrew Faulkner*, Development Officer  
Halifax Regional Municipality  
Development Services - *Western Region*  
P.O. Box 1749  
Halifax, NS B3J 3A5**

**Your appeal must be filed on or before *May 13, 2006*.**

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 line extending to the right.

Andrew Faulkner  
Development Officer

cc.

Jan Gibson, Municipal Clerk  
Councillor Patrick Murphy