

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

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

**DATE:** February 22, 2010

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a variance at civic 1119 Rockcliffe Street, Halifax

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**ORIGIN**

Pursuant to Section 251 (3) of the Halifax Regional Municipality Charter any person served notice of an approval of a variance may appeal the decision of the Development Officer to the Municipal Council.

This report deals with an appeal of the Development Officer's decision to approve an application for a variance from the requirements of the land use bylaw for property at 1119 Rockcliffe Street, Halifax

**RECOMMENDATION**

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

## **BACKGROUND**

The subject property is zoned R-1 Single Dwelling Zone, South End Secondary Plan under the Halifax Peninsula Land Use By-law. This property is 5,919 square feet in area. Section 26D allows lots with a size between 5,500 and 7,000 square feet, a maximum Gross Floor Area of 3,300 square feet or a Floor Area Ratio of 0.55, whichever is greater.

The proposal is to renovate and construct additions to an existing single family dwelling. The habitable space behind the garage in the basement of this single family dwelling is the portion that has increased the gross floor area past the maximum allowed. All other requirements of this zone have been met.

## **DISCUSSION**

The *Municipal Government Act* sets out guidelines under which the Development Officer may not 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 ?**

It is the opinion of the Development Officer that the variance does not violate the intent of the Land Use Bylaw for Halifax Peninsula.

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. The layout and design of the home indicates that this building will be used as a single family dwelling. That is not an issue with this application.

Secondly; to prohibit disproportionately large homes in traditional neighbourhoods. The existing building does not exceed the GFA. The above ground portion of the proposed residence does not exceed the GFA. The applicant could achieve the GFA with this proposal should they build on a crawl space. However, in consideration of the first objective of GFAR and the fact that the second objective is achieved with the above ground construction, it is the opinion of the Development Officer that the proposed changes to this existing single family dwelling are in keeping with the intent of GFA and with the character of the neighbourhood.

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

No, the difficulty experienced is not general to the properties in the area. The current house is approximately sixty (60) years old and has had no recent renovations. It is currently the smallest home and is out of scale with the neighbourhood. Homes in the buffer area have various lot sizes ranging from 4,321 square feet to 17,500 square feet. There is no consistency within the neighbourhood in terms of GFA

**Is the difficulty experienced a result of an intentional disregard for the requirements of the land use bylaw?**

The property owner has applied for the Variance prior to any construction, the difficulties are not a result of intentional disregard of the requirements of the land use 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 approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

**ATTACHMENTS**

1. Site plan
2. Approval letter
3. Notification list
4. Appellant letters
5. Notification letter

**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.

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