

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 refuse an application for a variance at civic 5762 Harbourview Drive, Halifax

ORIGIN

Pursuant to Section 251 (4) of the Halifax Regional Municipality Charter any person served notice of a refusal 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 refuse an application for a variance from the requirements of the land use bylaw for property at 5762 Harbourview Drive, Halifax

RECOMMENDATION

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

BACKGROUND

The subject property is zoned R-1 Single Dwelling Zone, South End Secondary Plan in the Halifax Peninsula Land Use By-law.

On January 11, 2010 an application was received to vary maximum lot coverage from 35 percent to 38.5 percent and increase the maximum gross floor area permitted from 4,500 square feet to 7,908.75 square feet, an increase of 75 percent more than permitted.

The proposal is to remove an existing single family dwelling and replace it with a new single family dwelling with attached garage.

DISCUSSION

The *Halifax Regional Municipality Charter* 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 ?

One of the goals of the planning policies adopted for the established neighborhoods 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 neighborhoods, and will seek to ensure that any change it can control will be compatible with these neighborhoods.”

A proposal to increase the lot coverage and gross floor area by an additional 75 percent is not in keeping with the existing neighborhood

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

Yes, the difficulty experienced is general to the properties in the area. This is an established neighborhood of mostly modest, single family homes on well kept lots. Most lots in the neighbourhood have similar setbacks, lot areas and frontages as this property. These property owners would have the same constraints if they also applied to increase the gross floor area by 75 percent.

Based on this assessment it is felt that the difficulties associated with this proposal is general to properties in the area.

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 refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

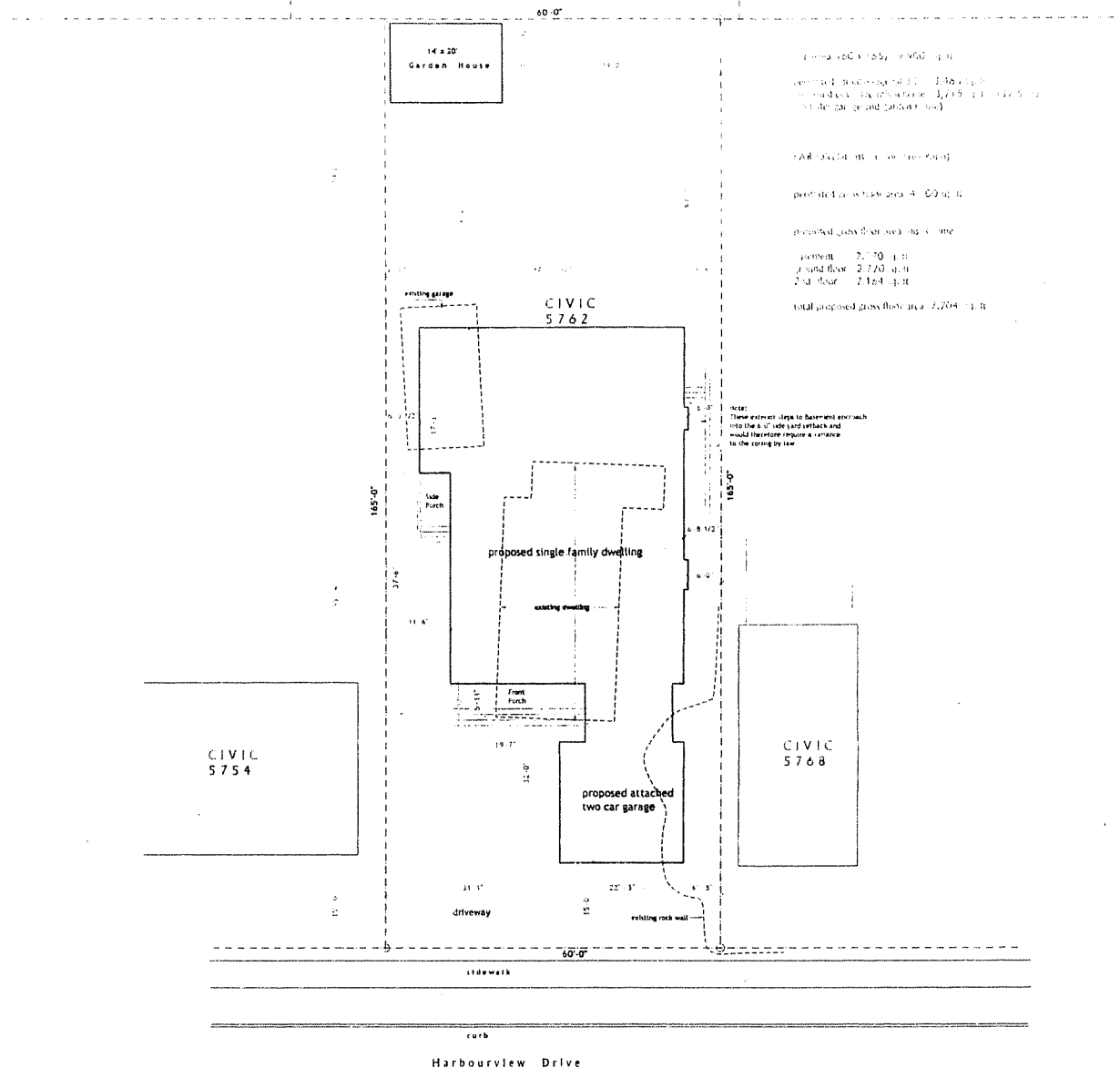
ATTACHMENTS

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

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: Liz Scott, Development Technician - 490-4409



1st floor 260 x 155 = 40,200 sq ft
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 3rd floor 260 x 155 = 40,200 sq ft
 4th floor 260 x 155 = 40,200 sq ft
 5th floor 260 x 155 = 40,200 sq ft
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 99th floor 260 x 155 = 40,200 sq ft
 100th floor 260 x 155 = 40,200 sq ft

note:
 these exterior steps to basement over walk
 into the 6'0" side yard setback and
 would therefore require a variance
 to the zoning by law

Site Plan
 1" = 20'0"
 0 5 10 20 40 feet
 note: drawing may have been reduced - use graphic scale

Proposed New Dwelling for
 5762 Harbourview Drive
 Halifax, Nova Scotia

