

**Peninsula Community Council**  
July 11, 2011

**TO:** Chair and Members of the Peninsula Community Council

**SUBMITTED BY:** Erin MacIntyre  
Erin MacIntyre, Development Officer

**DATE:** June 29, 2011

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application  
for variances at 3317 Robie Street, Halifax

**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse variances on the minimum lot area and frontage requirements of the Halifax Peninsula Land Use By-law (LUB) to permit a two unit dwelling.

**RECOMMENDATION**

It is recommended that Council upholds the Development Officer's decision to refuse the variances.

## **BACKGROUND**

### **Zoning:**

The property is zoned R-2, General Residential, under the Land Use By-law (LUB) for Halifax Peninsula.

### **Existing Use:**

The current use of the property is a single unit dwelling. The lot area and frontage are 3,000 sq.ft. and 30 feet, respectively, according to the deed description. No subdivision plan was located.

### **Proposal:**

The owner of the property wishes to renovate the existing building to increase the total number of residential units to two. Under Section 37 of the LUB, the required area and frontage for a two unit dwelling are 5,000 sq.ft. and 50 feet., respectively.

Variances were requested to reduce the area and frontage requirements to 3,000 sq.ft. and 30 feet., respectively.

## **DISCUSSION**

The *Halifax Regional Municipality Charter* sets out criteria in Section 250(3) under which the Development Officer may consider variances to land use by-law requirements. The criteria are as follows:

“A variance may not be granted if:

- a) The variance violates the intent of the development agreement or land-use by-law;
- b) The difficulty experienced is general to the properties in the area; or
- c) The difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law.”

In order to be approved, the proposed variances must not conflict with any of the above statutory criteria. An assessment of the proposals relative to these stipulations is set out below.

### **Do the proposed variances violate the intent of the land use by-law?**

The intent of the LUB is to restrict the number of units in the R-2 Zone depending on whether minimum lot areas and frontages can be met. For a two unit dwelling, the required area is 5,000 sq.ft., and the required frontage is 50 feet. The subject property is considered undersized, even for a single unit dwelling, as the current standards are 4,000 sq.ft. for the area and 40 feet for the frontage.

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

Within the established notification area (30 metres from any portion of the subject property), there are a total of 16 lots, including the subject property. These lots vary in area from 3,000 sq.ft. to 6,000 sq.ft., according to IMS mapping. The subject lot, together with a second lot have

the lowest area at 3,000 sq.ft. Every other lot has an area of at least 3,300 sq.ft., 7 of which have exactly 3,300 sq.ft. Lots of 3,300 sq.ft. or more may qualify for internal conversion to a two unit dwelling under Section 41 of the LUB. Only two lots have an area of 5,000 sq.ft. or more, which is the required area for a duplex. Section 41 provides for internal conversion from a single unit dwelling to a two unit dwelling with a lot area of 3,300 sq.ft. if there are not more than 6 habitable rooms; if there is no increase in height or volume and the external dimensions of the building have not changed since October 25, 1985; and if one separately accessible parking space measuring at least 8 feet by 16 feet is provided on the lot for each dwelling unit.

The search in the permit history within the notification area revealed the following: 8 properties contain a single unit dwelling; 6 properties contain two unit dwellings; one property has two buildings, each containing 3 residential units; and no records were found for one of the properties. If the properties containing single unit dwellings were to apply for a permit for a second dwelling unit, they would face the same challenges. The issue of not meeting the requirements for frontage and area for a duplex is general to the area.

**Is the difficulty experienced the result of intentional disregard to the requirements of the land use by-law?**

The difficulty experienced was not an intentional disregard to the requirements of the LUB and was not a consideration in the decision.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variances were refused as they were determined to be contrary to the provisions of the *HRM Charter*, in relation to the intent of the Land Use By-law and since the difficulty experienced is considered general to properties in the area.

**BUDGET IMPLICATIONS**

There are no budget implications related to this variance.

**FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

**COMMUNITY ENGAGEMENT**

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to speak to staff's recommendation.

### ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variances. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance requests.

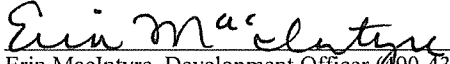
### ATTACHMENTS

1. Site Plan
2. Refusal Letter
3. Appeal Letter

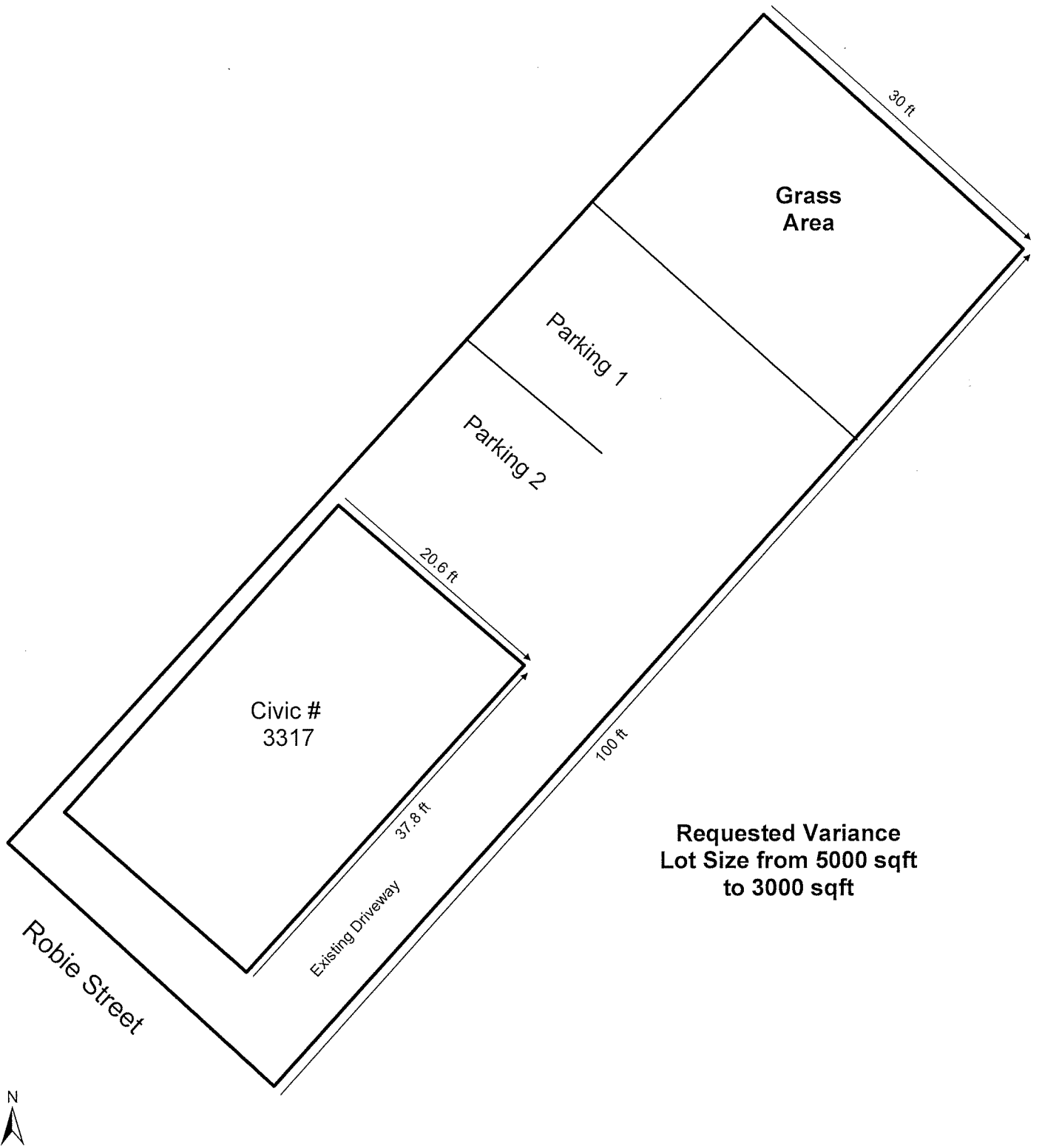
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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Marc Ouellet, Development Technician (490-5985)

Report Approved by:   
Erin MacIntyre, Development Officer (490-4341)

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**Requested Variance  
Lot Size from 5000 sqft  
to 3000 sqft**

## Attachment 1 Site Plan



HRM does not guarantee the accuracy of any base map information on this plan.

COMMUNITY DEVELOPMENT - EASTERN REGION

**Attachment 2**

June 9, 2011

Dean Russell Shea  
3317 Robie Street  
Halifax, NS  
B3K 4R3

406-3121 fax.

Dear Mr. Shea:

**RE: Application for Variance, File No. 16752 - 3317 Robie Street, Halifax, NS**

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* as follows:

<b>Location:</b>	3317 Robie Street, Halifax
<b>Project Proposal:</b>	To convert existing single unit dwelling to a two unit dwelling
<b>Variance Requested:</b>	Vary area requirement for a two unit dwelling from 5,000 sq.ft. to 3,000 sq.ft.

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

**A variance may not be granted if:**

- (a) the variance violates the intent of the development agreement or land use by-law;
- (b) the difficulty experienced is general to properties in the area; or
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, and (b) the difficulty experienced is general to properties in the area. Therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter** 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:

.../2

PAGE 2  
Mr. Shea, FILE 16752  
June 9, 2011

**Attachment 2 cont.**

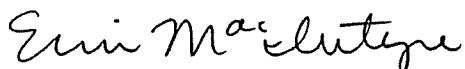
Municipal Clerk  
c/o *Erin MacIntyre*, Development Officer  
Halifax Regional Municipality  
Development Services - *Eastern Region*  
P.O. Box 1749  
Halifax, NS B3J 3A5

fx 490-4661  
Attn: Erin

**Your appeal must be filed on or before June 20, 2011.**

If you have any questions or require additional information, please contact Marc Ouellet at **490-5985**.

Sincerely,



Erin MacIntyre  
Development Officer

cc. Cathy Mellett - Municipal Clerk  
Councillor Jerry Blumenthal

## Attachment 3

June 13, 2011

Erin MacIntyre, Development Officer  
Halifax Regional Municipality  
Development Services -- *Eastern Region*  
P.O. Box 1749  
Halifax, NS B3J 3A5

Dear Mrs. MacIntyre,

**RE: Application for Variance, File No.16752 – 3317 Robie Street, Halifax, NS**

I would like to appeal the decision to convert my existing single unit dwelling to a two unit dwelling. I would need to vary the area required for a two unit dwelling from 5000 square feet, to 3000 square feet.

I am appealing based on the fact that I am approximately 300 square feet short to conduct an internal conversion of my existing property.

I applied for variance, in order to be allowed to conduct an internal renovation although I am under the allowed square footage of 3300 square feet. The decision came back, that if I met all other requirements to conduct an internal conversion, this would allow me to move forward.

I have met all requirements to conduct an internal renovation to two units until the city came back to inform me that it would have to be variance to 5000 square feet, and also informed me that I could not get variance to 3300 square feet. My problem with this is that it took the city of Halifax nearly five months to make me aware of this, after telling me I was able to do so and after I had applied for my building permit and was all but through the process.

Why was this not made clear to me upon applying? I am currently only short a very small amount of square footage and would like to hear council's opinion of this.

Kindest regards,



Dean Russell Shea  
3317 Robie Street  
Halifax, NS  
B3K 4R3