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Peninsula Community Council
January 11, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: October 30, 2009

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance - 1670 Robie St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance for the Floor Area Ratio (FAR) requirements of the Halifax Peninsula Land Use Bylaw to permit a developed basement.

RECOMMENDATION

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

BACKGROUND

The subject property is located on the west side of Robie between Binney St and Jubilee Road (refer to attachment 1) and is zoned R-2 (General Residential) in the Peninsula Centre Secondary Plan, Halifax Peninsula Land Use Bylaw. The lot is approximately 4,000 square feet, which would be considered an average lot size for the immediate neighbourhood. The neighbourhood consists of properties on Robie Street, Binney Street, Jubilee Road and Edward Street.

An application for an addition to a Single Unit Dwelling was received on September 12, 2007. The application was initially denied based on the square footage being over the permitted Gross Floor Area Requirement. The applicant was advised of the variance process and he decided to amend his plans to comply with the by-law and proceed with construction to avoid delay. Subsequently a permit was issued. During routine inspection in July 2008 a stop work order was issued upon discovery that the owner had proceeded with construction in accordance with his original, refused, construction plans.

Subsequently, the owner made application for a variance of GFAR on July 14, 2008 which was refused by the Development Officer and whose decision was upheld on appeal to Peninsula Community Council.

In February 2009 the applicant applied for and received a variance to GFAR. The purpose of that variance was to provide a permanent staircase to access and develop approximately 400 square feet of existing attic space. The variance was issued with the caveat that the basement ceiling height be lowered to no more than 1.95 m to meet the terms of the original construction permit. The applicant complied with this request and the variance was issued with no appeals received.

In October 2009 an variance application proposing to convert the basement to habitable space was made. This proposal formed part of a previous variance which was refused and upon appeal, Peninsula Community Council upheld the Development Officer's refusal.

The applicant was notified in a letter dated October 9, 2009 that the variance was refused. An email from the applicant appealing the Development Officer's decision to refuse was received prior to the October 28, 2009 deadline (refer to attachment 2).

DISCUSSION

The *Halifax Regional Municipality Charter* 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 if:

- (a) the variance violates the intent of the land use bylaw;*
- (b) the difficulty experienced is general to the properties in the area;*
- (c) the 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 ?

The intent of the Floor Area Ratio is to twofold. To prevent large additions with multiple bedrooms, “quasi-rooming houses” and to prohibit large houses that are out of scale with the neighbourhood. Staff believe the design of this home would make it difficult to convert to a rooming house therefore that is not a consideration in this application. In regards to building mass, the proposal is larger than existing FAR’s for dwellings in the neighbourhood, and is in the top end of the scale for the FAR of existing dwellings. To permit the variance would not be consistent with the intent of the land use bylaw.

The Floor Area Ratio requirements of the Land Use Bylaw increase as the size of a lot increases. The required Floor Area Ratio (FAR) for the subject property is 0.70. This requirement was previously varied in March 2009 to 0.76 to accommodate a permanent stairway to an existing attic floor.

The proposed FAR is 1.09. It should be noted that although every dwelling in the study area is over the permitted FAR, when comparing lots of similar size (3500-4000 sq ft), the average FAR is 0.87. The FAR proposal of 1.09 considerably exceeds the FAR of similarly sized lots.

Neighbouring uses include several two unit dwellings, and single unit dwellings. There have been several variances for GFAR in the immediate area and just beyond. These variances have been relatively minor in nature and in no case did the variance set a precedence by becoming the largest dwelling in the neighbourhood as in the present case.

In consideration of the above the Development officer believes the proposed variance violates the intent of the land use by-law and the variance was refused.

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

All dwellings in the study area exceed FAR requirements to some extent. However, all other owners would require a variance to achieve the FAR proposed in this variance and therefore the difficulty experienced is general to properties in the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

Although there was originally intentional disregard, the owner did make changes to the basement to lower the ceiling height and comply. There is currently no intentional disregard.

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.
2. Council could overturn the decision of the Development Officer and grant the variance.

ATTACHMENTS

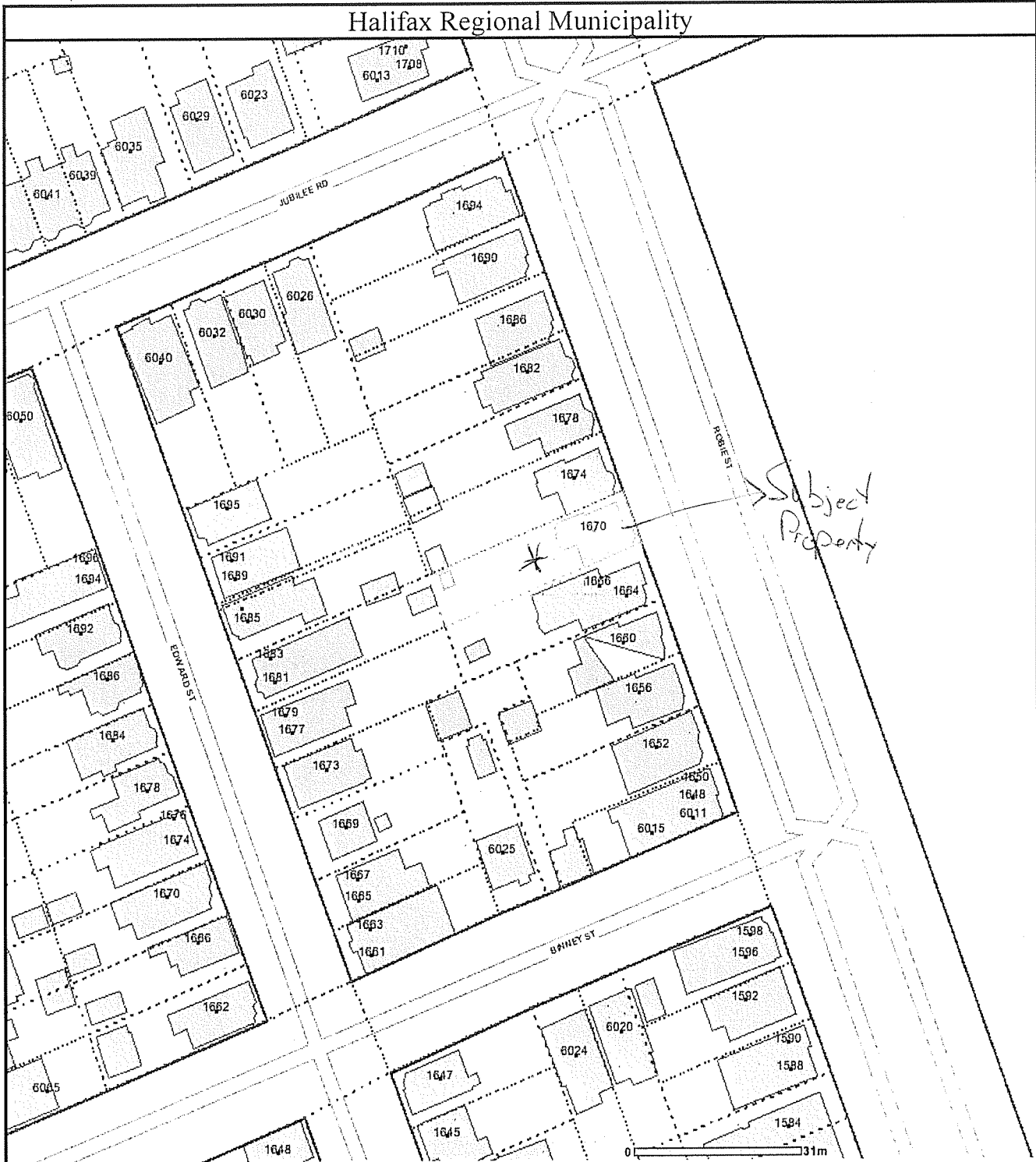
1. Location Map
2. Appeal Email
3. Front Elevation

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)

Attachment 1

Halifax Regional Municipality



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. Date of map is not indicative of the date of data creation.

Attachment 2

From: Fouad Abi Daoud <abidaoud@eastlink.ca>
To: Mike Cowper <cowperm@halifax.ca>
Date: 27/10/2009 12:20 pm
Subject: Object to decision

I am formally objecting to your decision not to grant me the variance under GFAR under the grounds that single family homes in the area that have applied for a variance under GFAR have been granted the variance.

Sent from my iPhone

