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Variance No. 15234
6421 Cork Street



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
April 6, 2009

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: March 25, 2009

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance #15234 - 6421 Cork Street,

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the lot coverage and setback requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to an existing institutional building.

RECOMMENDATION

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

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BACKGROUND

This development proposes to consolidate two residential lots, demolish one existing Single Unit Dwelling (SUD) and then construct an addition to an existing building for use as a church/temple. The use is permitted in the R-2 zone in the Halifax Peninsula Land Use Bylaw.

As there is a change in use of the building from residential to institutional, any non-conforming setback rights are extinguished and the setback requirements of the R-2 Zone apply. The proposed sideyard is three feet eight inches (four feet required). The proposed rear yard set back is fifteen feet to accommodate steps at the rear of the building (twenty required). The proposed building on the consolidated lots will have a lot coverage of 51% (35% required).

A variance application was received February 26, 2009 and was refused March 13, 2009 and subsequently the applicant appealed the refusal.

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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 where the:

- (a) variance violates the intent of the development agreement or 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 development agreement or 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.”

The proposed variance would change the character of the neighbourhood. The existing residential property at 6420 Young Street is one of five contiguous residences from 6416 to 6438 Young Street. Immediately across the street all properties contain low density residential uses. 6421 Cork Street is one of three low density residences. The proposed construction would effectively “split” this neighbourhood, resulting in the loss of continuous residential development on Young Street and the loss of one of three residences on Cork Street. The residence at 6416 Young Street would become isolated both visually and in use. The residential character of properties at 6421 to 6429 Cork Street will become even more isolated by construction of a “wall” reaching from Cork Street to Young Street.

Only six of the twenty-four properties in the notification area have lot coverage in excess of the 35% requirement. Of those six properties, three are low density residential and three are commercial. The land use by-law has different lot coverage requirements for commercial zones and therefore, those lots were not considered in this review.

The three residential lots which exceed the coverage requirements are of a similar lot size as existing residential lots in the neighbourhood and a comparison of those lot coverages with the proposed two lot consolidation would be inappropriate. The proposal to create a lot twice the typical size; then to exceed the lot coverage by 16% would be a significant deviation from the neighbourhood norm and does not meet the intent of the land use by-law and the application was refused.

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Although the land use by-law does not regulate tree retention there is the added neighbourhood impact of removing the mature trees from the rear yard of 6420 Young Street and replacing them with a building extending from Young Street to Cork Street effectively changing the look and feel in the neighbourhood backyards.

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

Lot coverages within the 30m buffer zones for 6421 Cork and 6420 Young both were examined and it was determined that 18 of the 21 residential properties complied with the maximum of 35% lot coverage. Therefore, the difficulty experienced is general to the properties in the area and the variance was refused.

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

There is no intentional disregard.

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

ATTACHMENTS

1. Location/Existing Building Plan
2. Refusal Letter
3. Site and Elevation Plans
4. Appeal Letter

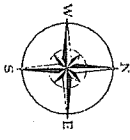
INFORMATION BLOCK

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.

Report Prepared by: Connie Sexton- Development Technician (490-4338)



Existing Building Coverage



1:1,000

User: sextone
Print Date: Mar 26, 2009

This map was produced for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions.

For further information on civic address, street, street name or community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civcadd@halifax.ca.

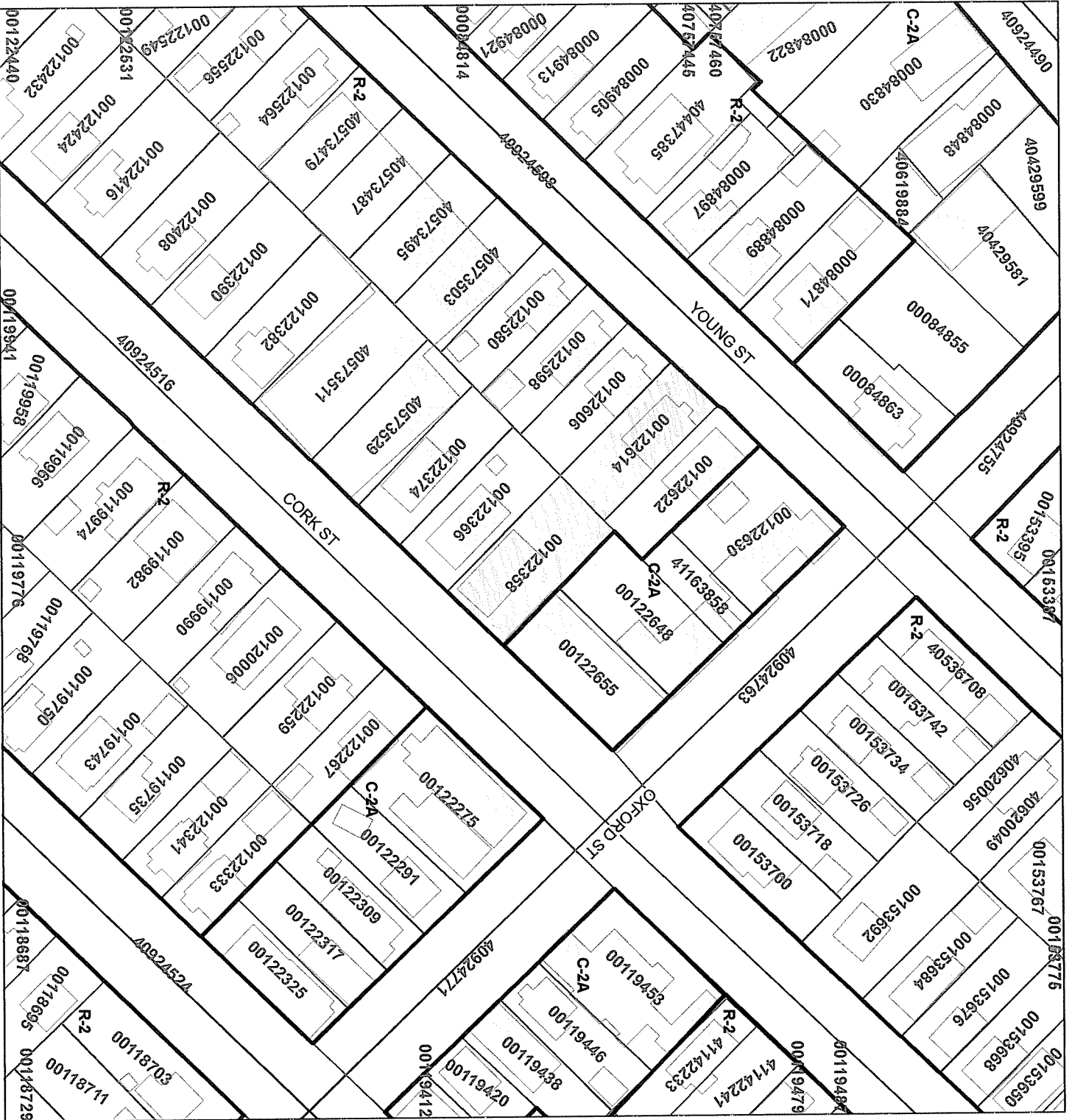
For further information on sewer infrastructure please contact Halifax Water Engineering at 490-6204 or email engineering_dept@halifaxwater.ca.

For further information on zoning data please contact HRM Planning & Development Services at 490-4494 or email zoninginquiries@halifax.ca.

For further information regarding any other aspect of this plot please contact HRM Geographic Information Systems & Services at 490-6568 or email geoinfo@halifax.ca.

Date of map is not indicative of the date of data creation. Scale of map is valid only if printed at 11x8.5 inches.

Projection is Modified Transverse Mercator Zone 5.



March 13, 2009

Mr. K.J. Gandhi, Architect
Innovation Architects Ltd.
182 Bedford Highway
Halifax, NS B3M 0A4

Dear Mr. Gandhi:

RE: APPLICATION FOR VARIANCE NO. 15234 - 6421 CORK STREET

This letter is to advise you that your application for a variance to locate an institutional building closer to the side property line, the rear property line, and to vary lot coverage has been **refused**.

The following sections of the Land Use bylaw pertain to your application:

Required lot coverage 35%	Requested variance 51%
Required side yard set back 4 feet	Requested variance 3'8"
Required rear yard set back 20 feet	Requested variance 15' from rear once consolidation occurs

Section 250 (3) of the **Halifax Regional Municipality Charter** 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.**

The intent of the bylaw in the Halifax Peninsula, is to maintain the character and stability of the neighbourhood. Six of the nineteen properties located within a 30 meter radius do not meet the lot coverage requirements of the Peninsula Land Use Bylaw. Therefore, the difficulty experienced is general to the properties in the area. In addition, the requested 51% lot coverage violates the intent of the Land Use By Law. The R-2 zone attempts to maintain a reasonable amount of open space on residentially zoned properties through the maximum lot coverage requirement of 35%.

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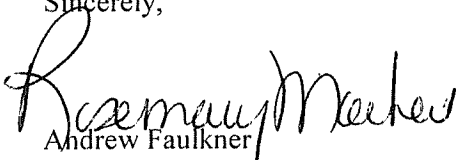
Pursuant to Section 251 of the **Halifax Regional Municipality Charter** you have the right to appeal the decision of the Development Officer to Community Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before *March 27, 2009*.

If you have any questions or require additional information, please contact Connie Sexton at this office at (902) 490- 4338.

Sincerely,


Andrew Faulkner
Development Officer

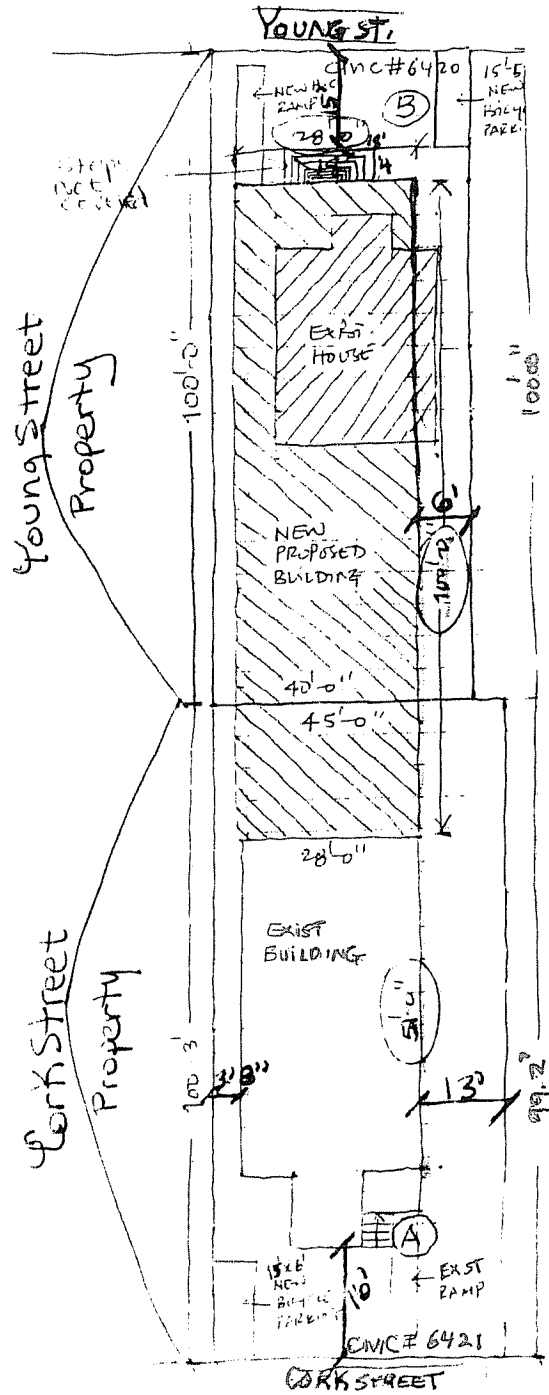
cc. Municipal Clerk
Jennifer Watts, Councillor District 14

DATE: March 25, 2009

SUBJECT: Variance Application #15234
6421 Cork Street

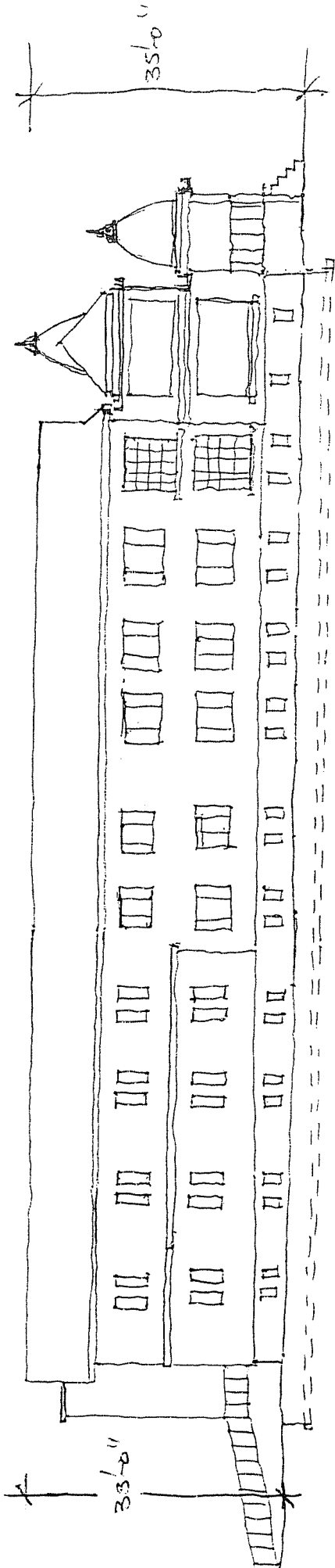
SITE AND ELEVATION PLANS:

To vary: Lot Coverage from 35% to 51%
Left yard set-back from 4 feet to 3 feet 8 inches
Rear yard set-back from 20 feet to 15 feet

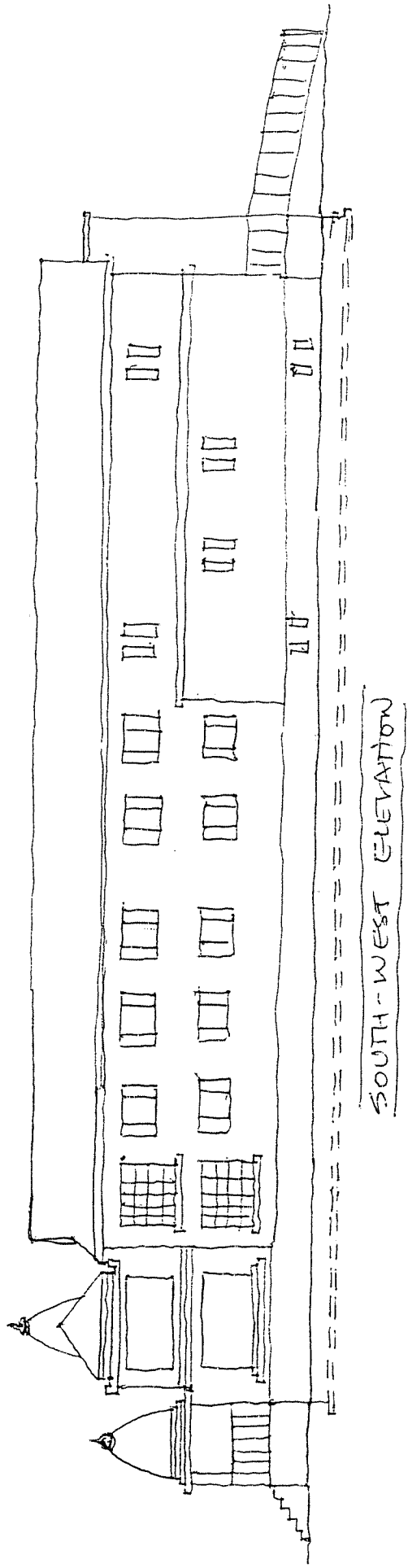


Elevation Plan

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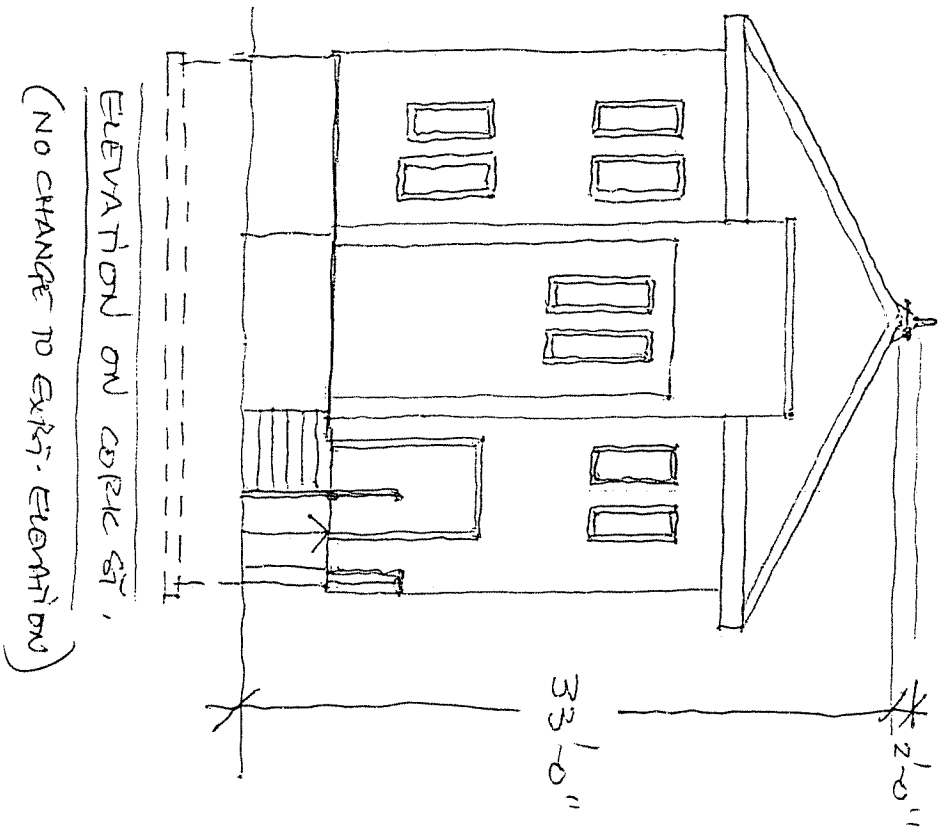
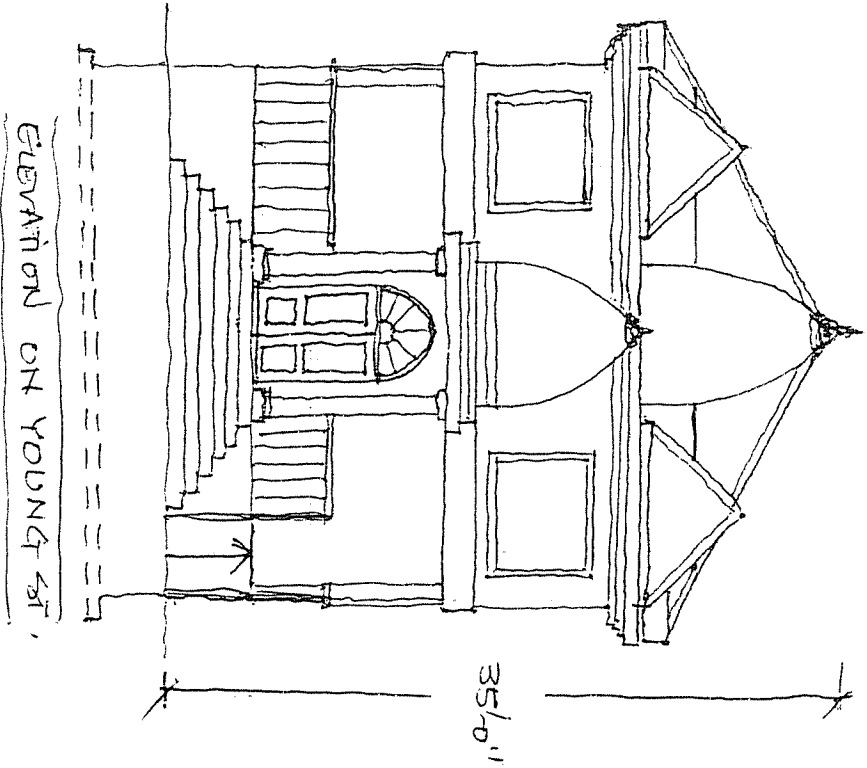


NORTH - EAST ELEVATION



SOUTH - WEST ELEVATION

Elevation Plan



INNOVATION ARCHITECTS LTD.

182 BEDFORD HIGHWAY HALIFAX NS B3M 0A4 TEL: (902) 832 9400 FAX: (902) 445 2634

March 17, 2009

Andrew Faulkner, Development Officer
C/O Municipal Clerk
Halifax Regional Municipality
Development Services – Western Region
P.O.Box 1749
Halifax, NS, B3J 3A5

Re: APPEAL TO YOUR DECISION OF REFUSAL TO VARIANCE
APPLICATION No. 15234 – 6421 CORK STREET

Dear Mr. Faulkner,

We are in receipt of your letter dated March 13, 2009. This letter is to appeal your decision to refuse our above variance application.

The above property which our client wants to develop is a Hindu Temple with most of its activity carried out on Sunday Mornings. Activities include Sunday prayers and Sunday classes. The current temple on Cork Street is becoming smaller for the present congregation and the Temple Society needs to extend the prayer hall. The Temple Society runs on voluntary services and manages its activities with donations and charity from the congregation. The congregation consists of relatively elder population and therefore current location of the temple is very appropriate.

When the property on Young Street backing the current temple became available in the market the Temple Society saw this as only possible way to be able to extend the temple premises to accommodate the current congregation.

There are minimum 9 properties in close vicinity of the above property, both on Cork Street as well as Young Street which have well over 35% lot coverage. Some of these properties have as high as 95% lot coverage. Most of the properties in the same block as the above property, both on Cork Street as well as Young Street have neither 20' front yard setback nor the side yard required by the current zoning bylaws.

The neighbouring corner lot, 3008 Oxford Street was approved two year ago for an extension and the building now have lot coverage in excess of 90%.

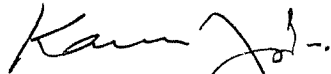
It would be unfair to the Temple Society not to allow a lot less coverage and front yard and side yard setbacks than what has been allowed to most of the neighbouring properties.

The activities performed by the Temple Society are of a very quiet nature and limited to Sunday Mornings. They do not pose any disturbance to the neighbours. Our proposed

building is much less in both length and width dimension than several other buildings currently existing in the same block.

We request that our variance application is approved.

Yours truly,

A handwritten signature in black ink, appearing to read 'K.J. Gandhi', with a stylized flourish at the end.

K.J. Gandhi (K.J.)
Architect, NSAA