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PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Peninsula Community Council  
October 4, 2010

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

**SUBMITTED BY:**

A handwritten signature in black ink, appearing to be "Sean Audas", written over a horizontal line.

Sean Audas - Development Officer

**DATE:** September 27, 2010

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application for a Variance at 6127/6129 Shirley Street, Halifax.

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**STAFF REPORT**

**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a variance that proposes to exceed the Gross Floor Area Ratio requirement of the Halifax Peninsula Land Use By-Law at 6127/6129 Shirley Street, Halifax.

**RECOMMENDATION**

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

## **BACKGROUND**

### **Zoning:**

The property is zoned R-2, General Residential Zone under the Land Use By-Law for Halifax Peninsula, the secondary plan is Peninsula Centre.

### **Existing Use:**

The current use of the property is a two unit dwelling. The lot area is 5,000 square feet. The existing dwelling does not exceed the gross floor area ratio maximum which is 3,000 square feet. The gross floor area of the existing two-unit dwelling is 2720.2 sq.ft.

### **Proposal:**

The owner of the property wishes to build an additional floor to the existing dwelling. This addition has been proposed for a third unit. The proposal does not meet the Land Use By-Law criteria for Gross Floor Area Ratio (GFAR).

A Variance was requested to increase the gross floor area of the dwelling to 4080.3 sq.ft. which is 1080.3 square feet above the allowable floor area for this lot.

## **DISCUSSION**

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria 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 criteria. 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 ?**

- Section 26D of the Halifax Peninsula Land Use By-law sets out the provisions for Gross Floor Area Ratio.
- The intent of the gross floor area is to control an excessive number of bedrooms in a dwelling and limit this size of dwellings on small lots.
- The gross floor area allowed is 3,000 square feet, the variance requested is to allow an increase of gross floor area to 4080.3 square feet .
- There are two additional bedrooms proposed and the gross floor area of the dwelling would increase beyond the maximum allowed. The existing two-unit dwelling is in compliance with the GFAR requirement at 2720.2 sq.ft.

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

- There is no real standard for lots in the nearby area most range in size between 3000-4000 square feet, although a few are larger.
- The Development Officer feels that the GFAR maximum is not general to properties in the area and this was not a consideration for this application.

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

- The property owner has applied for the necessary permits and Variance request. No construction has started and it is not felt that this results in intentional disregard for the requirements of the land use by-law.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the Variance was refused as it was determined to be contrary to the variance provisions of the Halifax Charter.

As per the requirements outlined in the Halifax Charter, a written notice of the refusal was sent to the applicant . The appeal letter (Attachment 3) was received from the applicant within seven days of receipt of the written notice of refusal. Some of the points raised in the appeal letter are; significant improvements have already been made to this property since purchased in 2003, currently renovating the existing two-units, and neighboring property received a variance for a 3<sup>rd</sup> floor to their home.

**BUDGET IMPLICATIONS**

None.

**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**

The level of community engagement for a Variance request is limited because of legislative requirements. 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 Variance. This is recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the Variance request.

**ATTACHMENTS**

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

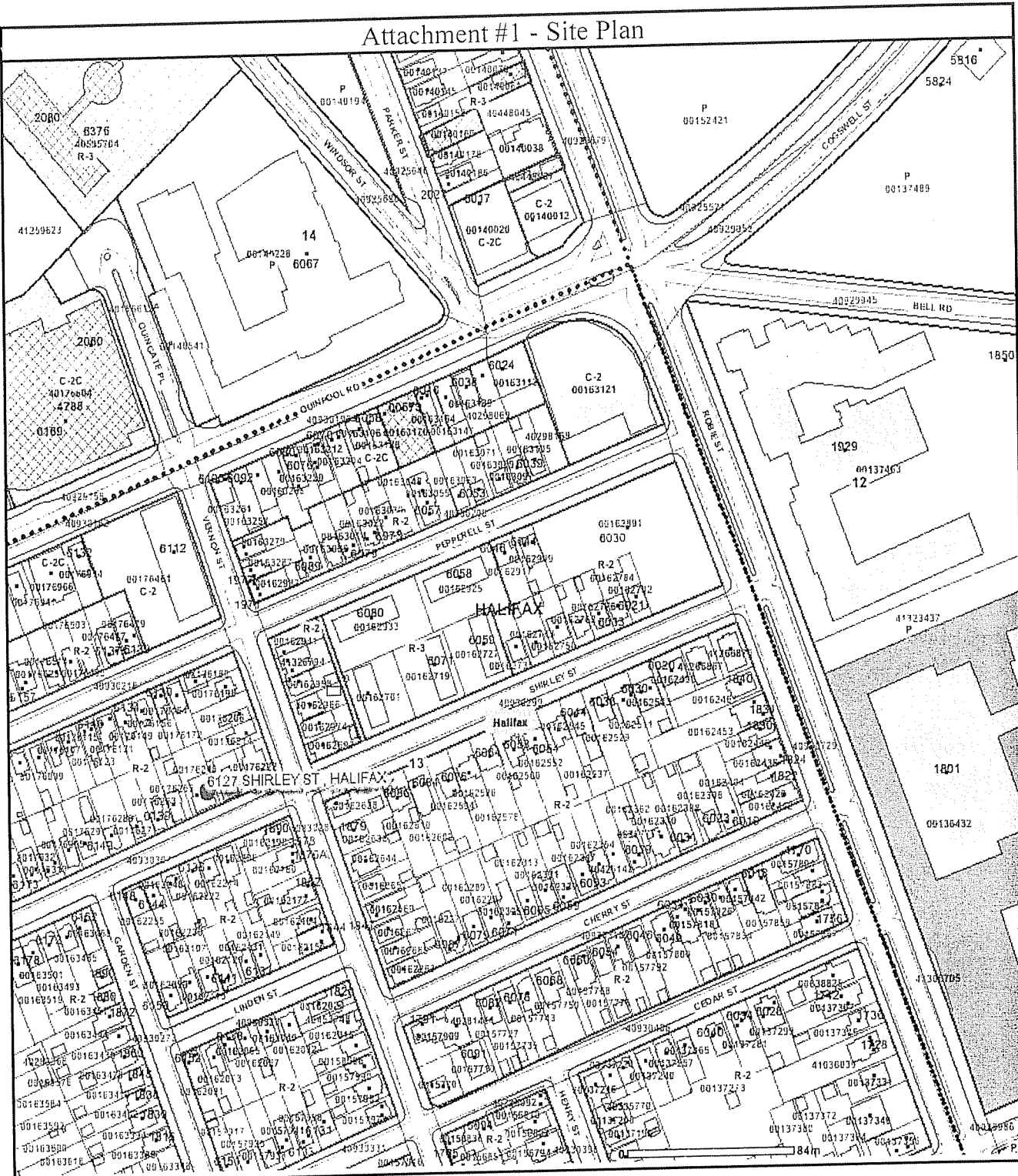
**INFORMATION BLOCK**

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: Mark Inness, Development Technician (490-6257)

Report Approved by: Sean Audas, Development Officer (490-4341)

# Attachment #1 - Site Plan



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](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation.



COMMUNITY DEVELOPMENT - EASTERN REGION

August 30<sup>th</sup>, 2010.

Brian Francis Rogers  
6127 Shirley Street  
Halifax, NS  
B3H-2N1

**COPY**

**RE: Application for Variance #16407 - 6127 Shirley Street**

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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:

**Location:** 6127/6129 Shirley Street  
**Project Proposal:** Addition of a 3<sup>rd</sup> floor, for a 3<sup>rd</sup> unit  
**Variance Requested:** To exceed the maximum allowed Gross Floor Area Ratio

Section 235(3) of the **Municipal Government Act** 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.

It is the opinion of the Development Officer that; (a) the variance violates the intent of the Land Use Bylaw.

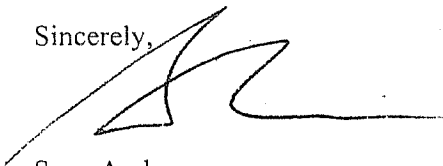
Pursuant to Section 251(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before September 9<sup>th</sup>, 2010.

If you have any questions or require additional information, please contact this office at 490-4341

Sincerely,

A handwritten signature in black ink, appearing to be 'Sean Audas', written over a horizontal line.

Sean Audas  
Development Officer

cc. Cathy Mallett, Municipal Clerk  
Councillor Sue Uteck, District 13

### Attachment #3 – Appeal Letter

03 September 2010

6129 Shirley St  
Halifax, NS, B3H2N1

Mr. Sean Audas  
Development Officer,  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS B3J3A5

Dear Mr. Audas:

RE: Application for Variance # 16407 – 6127 Shirley St

With reference to the above noted variance application we offer the following points to appeal the variance decision:

- The property was purchased in 2003. It was and is our intent to occupy this residence and to that end we have made significant improvements to the structure since its purchase. To date we have invested approximately \$50,000 in the building.
- We are currently undertaking a major renovation to the existing two units and wish to add a third storey, with a budget of \$250,000. We have sold our home on Walton Drive and are residing in temporary accommodations while awaiting completion of this renovation. This is indicative of the level of our commitment to our home on Shirley Street.
- All of the variance requests have been satisfied except for the GFAR. We are providing 3 off street parking spaces, bicycle racks and backyard green space.
- The design features a third storey unit, set back 11 ft from the front of the house, thereby maintaining the elegant façade of a 1920's duplex, contributing to the heritage appeal of Shirley Street.



- Our immediate next door neighbours required and received a variance to add a third floor to their home. Their lot size is considerably smaller than ours.
- If this appeal is delayed we **will** miss the 2010 building season. This is critical to this renovation and would necessitate postponing until the spring, with an associated extra cost and upheaval to ourselves and our tenant(s).
- We will rent 2 flats. The tenants we seek will be retired couples, young professionals, or small families. As we shall be occupying the middle floor of this residence, it is in our best interest to accept only those tenants who will cherish and respect the property and our investment.
- HRM has been encouraging residents to settle into the downtown areas. We are planning to do just that - utilizing one less vehicle, having the option of walking to grocery stores, drug stores, restaurants and medical appointments. We are **EXCITED** about this.
- The property value of this building will be increased, thereby increasing the tax base.

We are asking you to approve our planned renovation, and the variance required. We are happy to provide any follow-up information you may need. Attached are elevations of the proposed renovation.

Thank you for taking the time to review this appeal. We sincerely hope that you will reconsider the previous decision and await your prompt response to this request. Again, we cannot afford to miss this building season.

Regards,

Brian and Gillian Rogers

