

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: January 27, 2009

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a variance -1405 Edward Street, Halifax

ORIGIN

Pursuant to Section 236(4) of the Municipal Government Act 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 1405 Edward Street, Halifax

RECOMMENDATION

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

BACKGROUND

The subject property is zoned R-2 General Residential Zone under the Halifax Peninsula Land Use By-law.

In 1992, a minimum standards complaint was reported at 1405 Edward Street. Inspection reports from 1992 indicate that the dwelling was being used as a rooming house. Renovations, including plumbing and electrical work were done without permits. At this time, a kitchen had been added to the attic to create an attic unit. Throughout 1993, inspectors were unable to gain access to the premises for the purposes of conducting inspections. Inspection reports from 1993 and 1994 indicate that the dwelling was being occupied illegally as a rooming house with seven rooms separately rented. Each room had a kitchenette. The authorized use was determined to be a single unit dwelling. Letters from the building inspectors indicated what work had to be done in order to correct the problem.

Currently, HRM has an enforcement case open on this property with our land use compliance division. To rectify this situation, the owner must bring this property into compliance which means converting to a use permitted in the zone. He does not meet the left side yard, right side yard, and frontage requirements for the R-2 zone. Owners of the property have applied for a variance of these requirements on three separate occasions; the first application on March 7, 2007 was refused by the Development Officer, and the refusal was subsequently appealed by the applicant. Council met to hear the appeal on June 11, 2007, and upheld the Development Officer's decision. The second application was made on August 29, 2007. The Development Officer refused the variance on September 26, 2007. The owner appealed that decision on October 3, 2007. Council met on November 5, 2007 and subsequently upheld the Development Officers decision to refuse the application. The owner applied for a third time on September 22, 2008. The Development Officer refused the variance on September 25, 2008. The owner appealed that decision on October 6, 2008. Council met on October 20, 2008 and subsequently upheld the Development Officers decision to refuse the application. The owner applied for a fourth time on November 5, 2008, the Development Officer refused the variance on November 23, 2008. The owner appealed that decision on December 2, 2008.

DISCUSSION

The *Municipal Government Act* 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 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 character of this neighbourhood is primarily Single Unit Dwellings. Thirteen out of twenty of the properties within the notification area for the variance are single family homes. A proposal to increase the intensity of the use of the subject property violates the intention of the MPS and subsequently, the Land Use Bylaw by allowing a two unit dwelling in a neighbourhood that is predominantly characterized by single family homes.

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

The difficulty experienced is general to properties in the area. Most dwellings in the neighbourhood have similar setbacks and frontage as this property.

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

The present application is to resolve an old violation, however, the present owner is aware of this violation and continues to operate this dwelling as a rooming house. The creation of the rooming house and continued use is intentional disregard for the land use by-law and the variance was refused.

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.

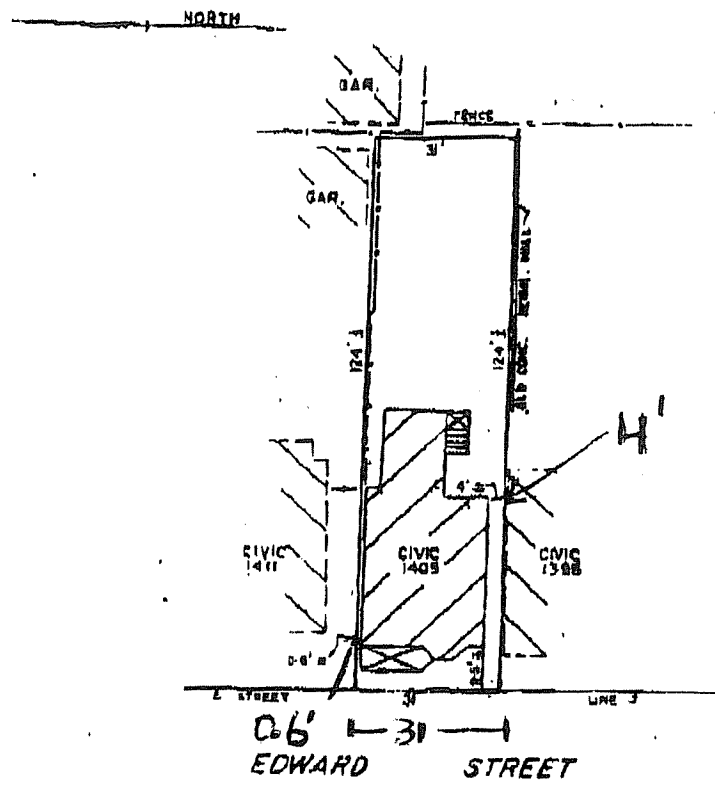
ATTACHMENTS

1. Site plan
2. Refusal letter
3. Appellant letter

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



November 24, 2008

Tim Moore
1479 Lower Water Street #190
Halifax, NS
B3J 3Z3er

Dear Mr. Moore:

RE: Application for Minor Variance 15032, 1405 Edward Street, Halifax

This will advise you that as the Development Officer for the Halifax Regional Municipality I have refused your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 1405 Edward Street, Halifax
Project Proposal: Convert Single Unit Dwelling to Two Unit Dwelling
Variance Requested: Left Yard Setback 0.6 feet (5 feet required)
Right Yard Setback 4 feet (5 feet required)
Lot Frontage 31 feet (33 feet required)

Section 235(3) of the **Municipal Government Act** states that:

No variance shall be granted where:

- (a) the variance violates the intent of the Development Agreement or 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 Development Agreement or Land Use Bylaw.**

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (a) the variance violates the intent of the Land Use Bylaw;
- (b) the difficulty experienced is general to properties in the area
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw

Page 2

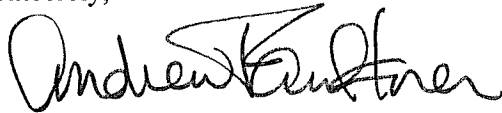
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before *December 4, 2008*

If you have any questions or require additional information, please contact this office at 490-5660.

Sincerely,



Andrew Faulkner,
Development Officer

cc.

Julia Horncastle, Acting Municipal Clerk
Councillor Sue Uteck, District 13

PREMIERE EXECUTIVE SUITES

1479 Lower Water Street, Suite 190 Tel: (902) 420-1333
Halifax, NS Fax: (902) 420-9600
B3J 3Z3 www.premieresuites.com

December 2, 2008

Mr. Andrew Faulkner
Development Officer
HRM Development Services, Western Region
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Dear Andrew:

Re: Variance Application– 1405 Edward Street, Halifax

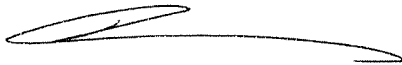
Please accept this letter as an appeal of the decision to refuse my variance application to convert the existing building at 1405 Edward Street to two dwelling units.

In support of the application, please note the following points:

- I have letters of support from 8 neighbours;
- The lot is in excess of the bylaw requirements for two dwelling units;
- The conversion to 2 dwelling units will reduce the number bedrooms in the building;
- The building will be owner occupied; my son will occupy it when he returns from school overseas, as he occupied it before going overseas;
- In the 5 years my son or I have owned the building, there has not been one complaint of noise or other behavior;
- Abutting properties are permitted internal conversions to multiple dwelling units;
- The proposal is compatible with the current 50/40 percentage mix of single and duplex/triplex dwellings on the block;
- The neighbourhood is mixed use containing both residential and non-residential uses;
- The application is consistent with the Peninsula Centre and Regional Plans and ,
- There was no intentional disregard for the Land Use Bylaw.

I would like the opportunity to make a brief presentation to Community Council when they are considering this item.

Yours truly,



Tim Moore
Chairman

Home away
from Home

Providing Furnished Corporate Housing Coast To Coast