

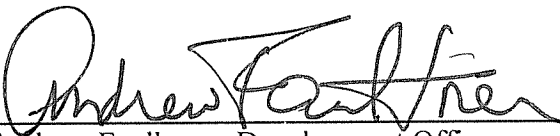
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 9, 2009

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: January 29, 2009

SUBJECT: Appeal of the Development Officer's decision to approve an application for
a Variance -2280 Gottingen St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance to vary the right sideyard setback as a result of angle control requirements in the RC-3 Zone of the Halifax Peninsula Land Use By-law to permit the construction of a 48 unit residential building.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 2280 Gottingen Street. The right portion of the property is zoned RC-3, High Density-Residential/Commercial (see location map - Attachment 1). The left portion of the property is zoned C-2 General Business. This property is in the Peninsula North Area 8 Secondary Plan Area.

On November 28, 2007 the applicant applied for a variance to construct a 48 unit residential dwelling. The building is an elongated apartment house which has the appearance of townhouses.

The left portion of this property lies in the C-2 Zone, Peninsula North Area 8 where angle controls and side yard setbacks do not apply. However, the right portion of the property, located in a different zone, is subject to the angle control requirements of the RC-3 Zone. The proposal complies in all respect with the Land Use By-law with the exception of the right side lot line. Applying angle controls to that side lot line would result in a 20.8 foot setback. The development permit application was refused on this basis and the developer applied for a variance.

Following approval of the variance and due notice to neighbours a Letter of Appeal was received from the adjacent property owner at 2308-2310 Gottingen Street.

DISCUSSION

The *Municipal Government Act* 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 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 ?

In many cases, the intent of a specific regulation in a land use bylaw can be quite general in nature and determining the intent sometimes requires subjective judgement. This property falls under Residential Commercial Mix in the Municipal Planning Strategy and this is reflected in the applicable zones. In this case, staff believe the intention of the MPS as carried out in the land use by-law, is to maintain and promote a *medium rise form of residential and commercial development* in this area by including a height limit restriction and applying the mixed use commercial and residential zoning. Mass is limited through height, in this case a height precinct of 50 feet. Furthermore, the Peninsula North Area 8 Secondary Plan Area clearly is permissive in nature, encouraging much needed development in that community. The Development Officer believes this application is consistent with the broad objectives and intent of the land use bylaw.

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

The land use by-law has created a unique condition on this property by splitting the lands with two zones. The C-2 General Business Zone permits zero lot line development with no requirements for parking, density control or open space. The second zone, RC-3 permits a residential and commercial mix, but applies development controls. Staff do not believe the difficulty is general to the area..

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?
There is no intentional disregard for the requirements of the land use bylaw.

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

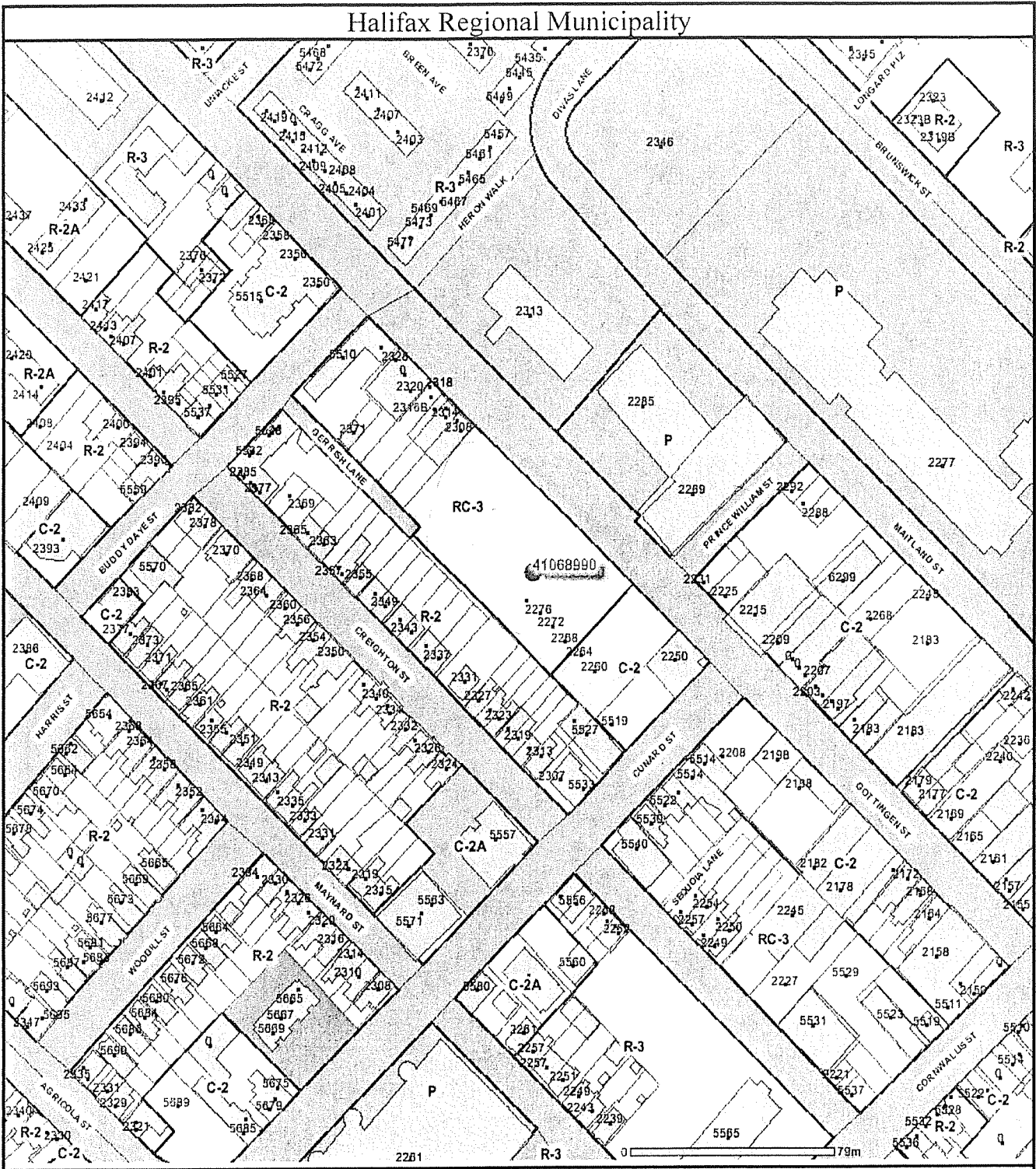
1. Council could uphold the decision of the Development Officer to approve the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and deny the application.

ATTACHMENTS

1. Location Map
2. Site Plan
3. Elevation Plan
4. Appeal Letter

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: Brenda Seymour, Development Technician (490-4046)



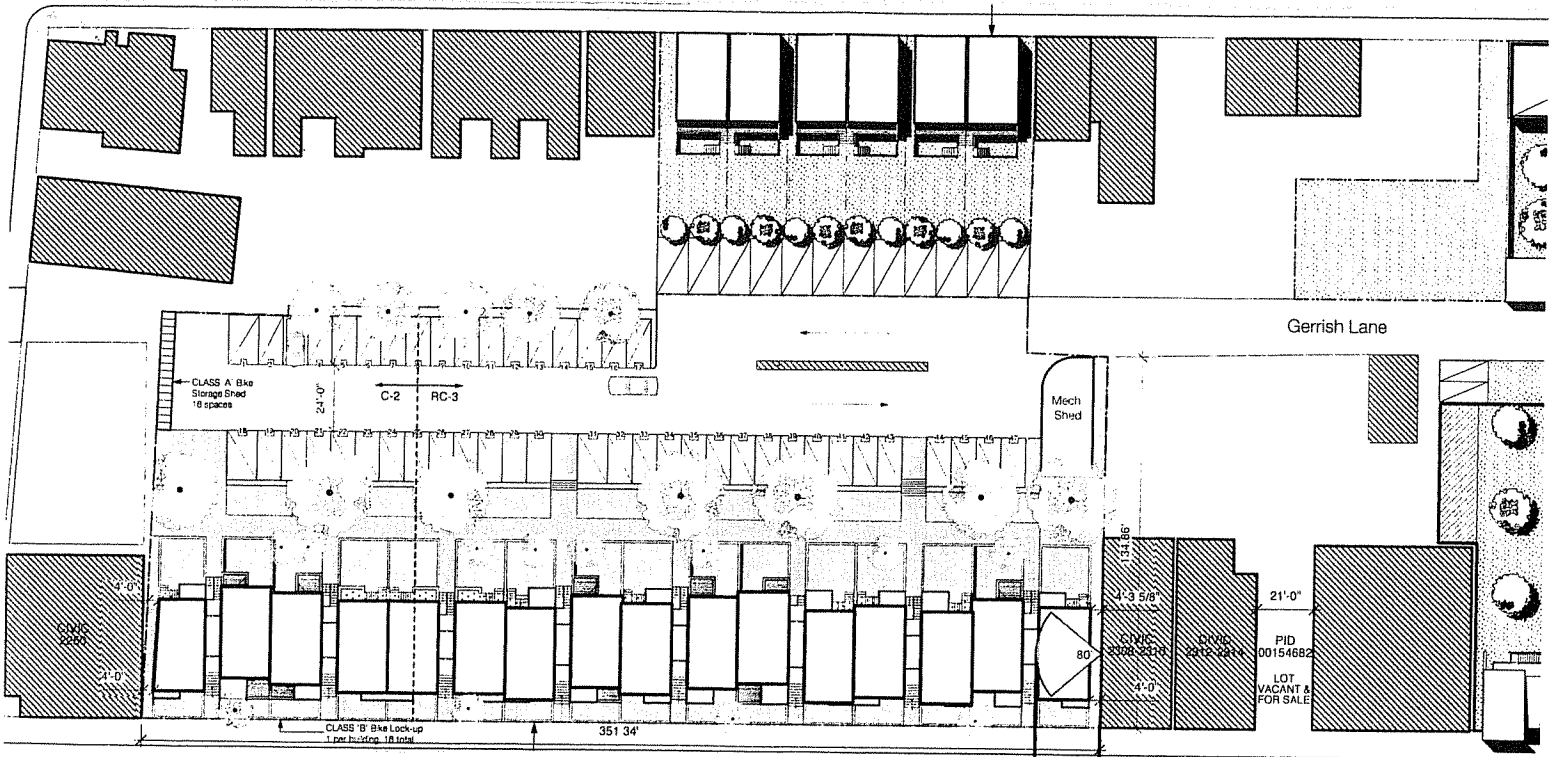
This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

DATE: December 31, 2008

SUBJECT: Application for Variance, File No. 15086 - 2280 Gottingen St, Halifax
Proposal to construct 48 residential unit building

SITE PLAN

Variance: Vary **right** sideyard setback from 20.8 feet to 4 feet
As a result of angle control requirements in the RC-3 Zone, a 20.8 foot setback would normally be required for a structure 36 feet in height (right side only) Left side is zoned C-2, Peninsula North Area 8, where angle controls do not apply.

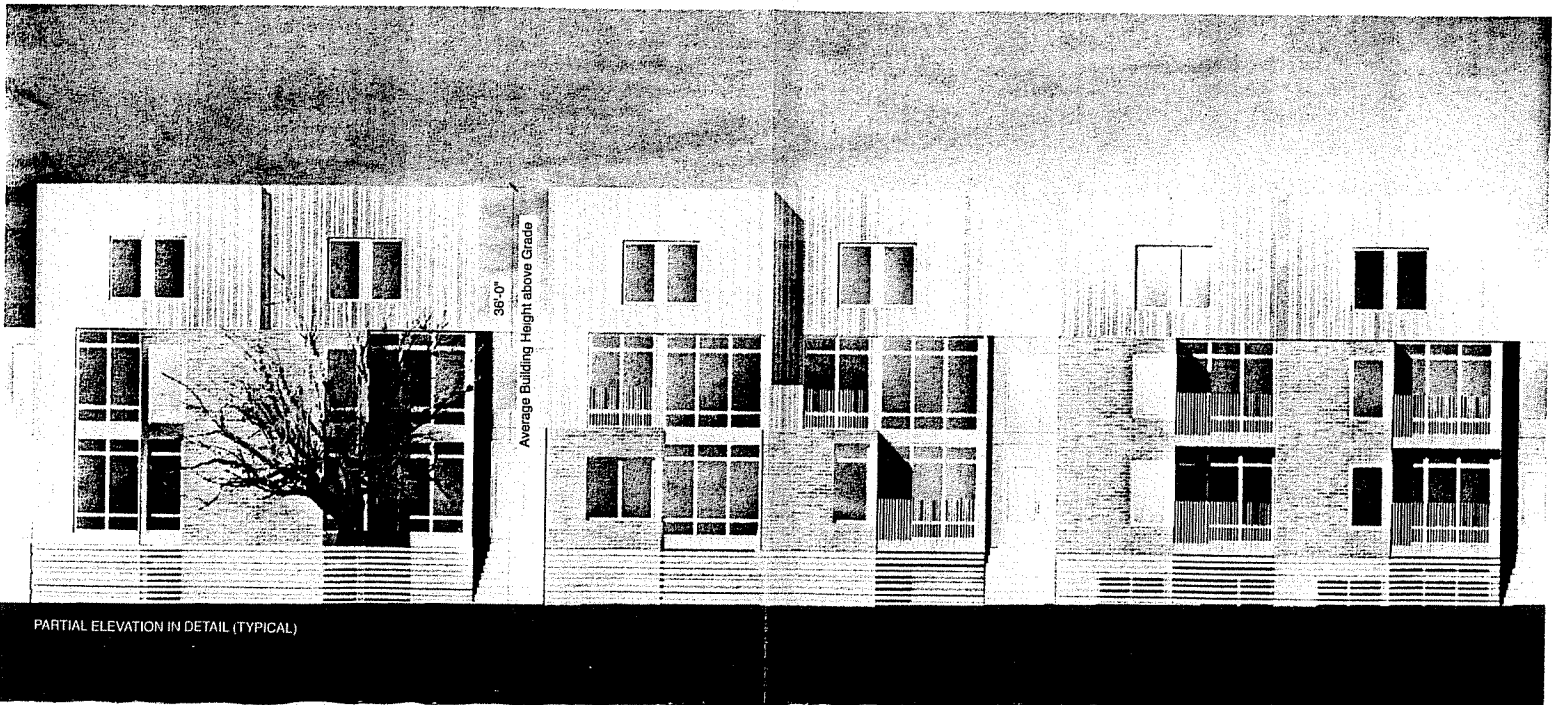


DATE: December 31, 2008

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ELEVATION PLAN

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PARTIAL ELEVATION IN DETAIL (TYPICAL)

Jan 18 / 09

RECEIVED JAN 19 2009

#15006
2280 Gottingen St.

Najat Chediac
956 Herring Cove Rd.
Halifax, N.S.
B3J 1P2

Municipal Clerk
C/O Andrew Faulkner, Development Officer, Halifax Regional Municipality.
Planning and Development-Western Region
P.O. Box. 1749, Halifax, N.S.
B3J 3A5

As of an owner of 2308-2310 Gottingen St. I ask that this variance not be allowed to go forward. For the following reasons this is a safety issue inhibiting reasonable access to the building. There is also the issue that eliminates my right to be able unload goods and furniture, etc. This building was original approved for 20.8 from my building I see no reason for any change if this to be allowed to go forward I will be denied the right to enjoy the property I worked so hard to purchase. I thank you in advance for notifying me of your decision so as to me allow the time to seek legal help should I need it.

Sincerely,

Najat Chediac

