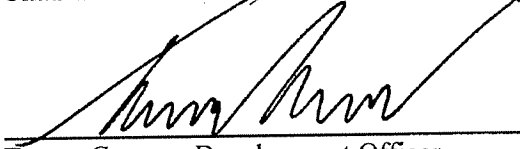


Peninsula Community Council  
June 13, 2011

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

**SUBMITTED BY:**   
Trevor Creaser, Development Officer

**DATE:** June 6, 2011

**SUBJECT:** Appeal of the Refusal of Variance Application #16923  
6456 Edgewood Avenue, Halifax

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**ORIGIN**

This is an appeal of the Development Officer's decision to refuse an application for variance of the minimum lot area, frontage and side yard setback required in the Halifax Peninsula Land Use Bylaw to legalize a two unit dwelling.

**RECOMMENDATION**

It is recommended that Council uphold the decision of the Development Officer to refuse the request for the variance.

**BACKGROUND**

The subject property is located at 6456 Edgewood Avenue, Halifax (refer to Attachment 1). This property is zoned R-2 (General Residential) under the Halifax Peninsula Land Use By-Law.

Staff determined when researching a request for zoning in April 2011 that the building contained an illegal dwelling unit. The authorized use of the building is a single unit dwelling. Records show an application to convert the existing building to two dwelling units was refused in 1988. As a result of this research, the matter was forwarded to the Land Use Compliance Section for further investigation.

The current owner purchased the property in 2000 with two units present.

As the property is not eligible to create the unit through an internal conversion, the owner made an application to vary the lot frontage, lot area and side yard setback on April 19, 2011 to legalize the two unit dwelling.

In review of the variance application, the property did not meet the following minimum requirements for a two unit dwelling in the R-2 zone:

	<b>Required</b>	<b>Existing</b>
<b>Min. Lot Frontage</b>	50 feet	40 feet
<b>Min. Lot Area</b>	5000sqft.	4000sqft
<b>Min. Sideyard Setback</b>	5 feet	4'10''

The Development Officer refused the variance on May 11, 2011 (refer to Attachment 3). This was subsequently appealed by the applicant (refer to attachment #4).

**DISCUSSION**

The *Halifax Municipality Regional 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 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

***(a) variance violates the intent of the land use bylaw;***

The purpose for the minimum required frontage and area and setbacks is to control the density. The intent of the bylaw is that when units are increased, so do the requirements for frontage, area and setbacks. It is the opinion of the Development Officer that legalizing this second unit would *violate the intent of the land use bylaw.*

***(b) difficulty experienced is general to the properties in the area;***

The size and configuration of this lot is consistent with other properties in the area. Generally, as the Attachment 1 illustrates, most lots in the area meet the requirements for a single unit dwelling which is 40' of frontage and 4000 square feet of lot area. Within the notification area there are four, two unit dwellings, the remaining are singles. Therefore the *difficulty experienced is general to properties in the area*

***(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."***

As the current owner purchased the property unaware of the illegal unit and has entered the variance process in good faith to legalize the second unit, *intentional disregard* was not a consideration for refusing the variance.

**BUDGET IMPLICATIONS**

There are no budget implications related to this variance.

**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**

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. 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. Uphold the decision of the Development Officer to refuse the application for variance.
2. Overturn the decision of the Development Officer, thereby allowing the variance.

**ATTACHMENTS**

1. Location map
2. Site Plan
3. Variance refusal Letter
4. Appeal Letter

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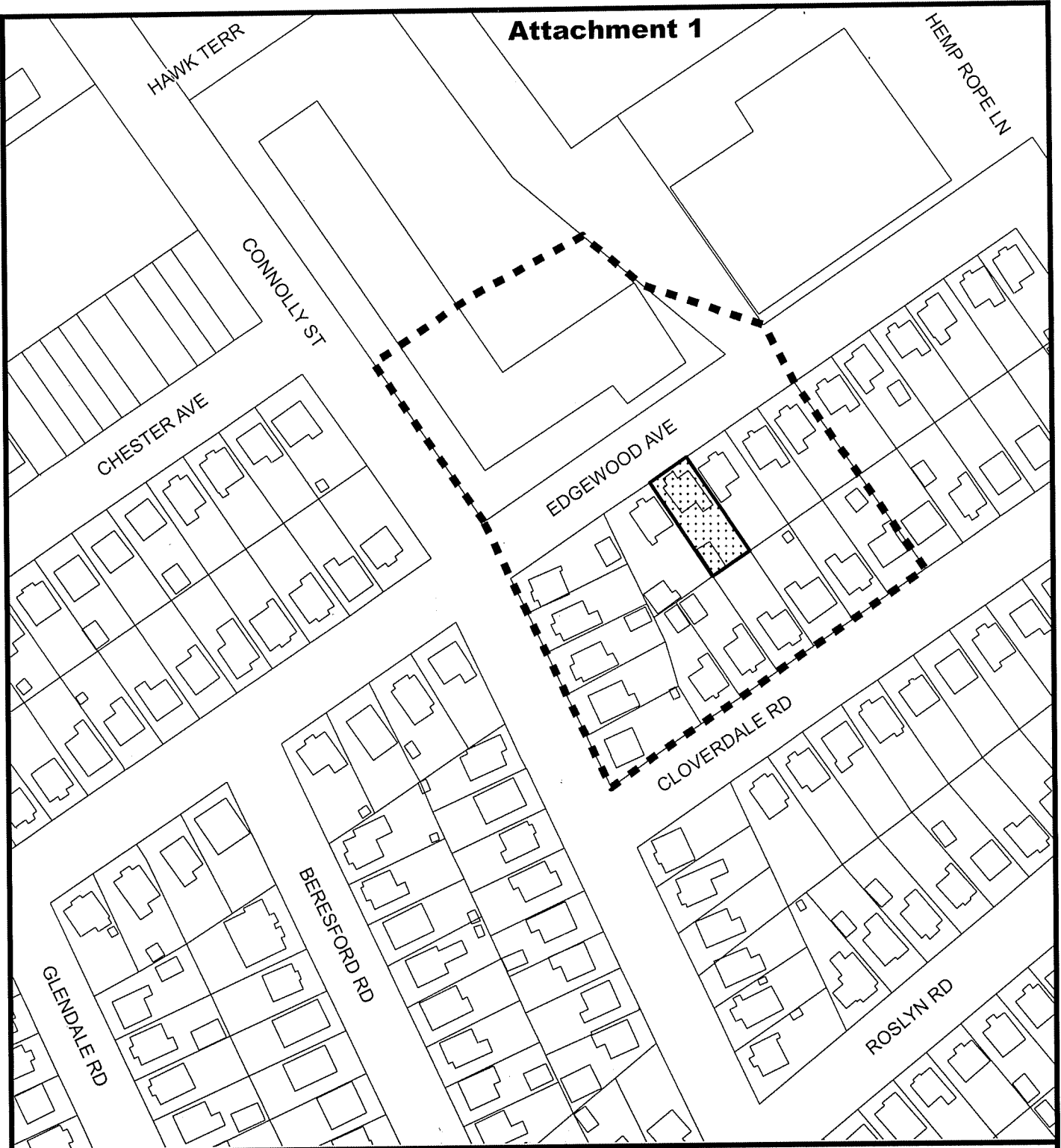
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by :            Connie Sexton, Development Technician: 869-4005

Report Approved by:            Trevor Creaser, Development Officer: 869-4235

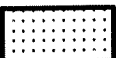
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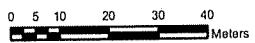
# Attachment 1



Map 1  
Notification Area



- - - - Notification Area
-  Subject Property



**Attachment 2**

Edgewood Ave.  
40'

Requested  
Variance 40'

Existing  
Two Unit Dwelling

Requested  
Variance 4' 10"

Requested  
Variance 4,000 sq. ft.

Lot Area  
4,000 sq. ft.

4' 10"  
100'

Map 2  
Site Plan



**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services

**ATTACHMENT 3**

May 11, 2011

Mr. Patrick Pottie  
6456 Edgewood Ave  
Halifax, NS B3L 2N8

Dear Mr. Pottie:

**RE: Variance #16923 -6456 Edgewood Avenue, Halifax**

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

Location:	6456 Edgewood Avenue
Project Proposal:	To legalize a dwelling unit within a single unit dwelling
Required Lot Area:	5000 square feet
Required Lot Frontage:	50 feet
Required Left side yard:	5 feet

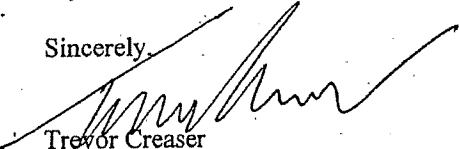
This application is refused as "A variance may not be granted where the difficulty experienced is general to the properties in the area". The properties in the area are all of a uniform size and configuration.

As well, "A variance may not be granted where the variance violates the intent of the land use bylaw". The intent of the bylaw is to not permit two unit dwellings on lots that are less than 5000 square feet in size and have less than 50 feet of street frontage.

In accordance with Section 251(4) of the Halifax Regional Municipality Charter, "*Where a variance is refused the applicant may appeal the refusal to the Council within seven days after receiving notice of the refusal, by giving written notice to the Clerk who shall notify the Development Officer*". Property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **May 18, 2011**.

If you have any questions or require additional information, please contact Connie Sexton at 869-4005.

Sincerely,

  
Trevor Creaser  
Development Officer

cc. Cathy Mellett, Municipal Clerk  
Councillor Jerry Blumenthal

MAY 11, 2011

TO: MUNICIPAL CLERK OFFICE HRM  
HRM File # 16923, DATED APRIL 19, 2011

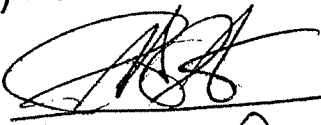
ATTACHMENT 4

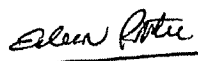
VARIANCE APPLICATION

A PPEAL OF DEVELOPMENT OFFICERS DECISION REJECTING  
MY REQUEST FOR A VARIANCE AT 6456 EDGEWOOD AVE.  
HALIFAX N.S. B3L2N8

PLEASE ACCEPT THIS LETTER AS NOTICE OF APPEAL OF THE  
DECISION OF THE DEVELOPMENT OFFICERS. TO REJECT MY APPLICATION.  
AT 6456 EDGEWOOD AVE. HALIFAX N.S. B3L2N8.  
I AM REQUESTING MY APPEAL TO BE PRESENTED TO THE  
COMMUNITY COUNCIL FOR A FINAL DECISION ON THEIR  
JUNE 2011 MEETING.

DATED THIS 11TH DAY OF MAY 2011

SIGNED   
APPLICANT ANDREK POTTE

SIGNED   
OWNER EILEEN POTTE

SIGNED   
OWNER CHRISTINE POTTE