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8.2.1

Peninsula Community Council
June 13, 2011

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner, Development Officer

DATE: June 6, 2011

SUBJECT: Appeal of the Development Officer's decision to approve an application for a Variance 16878 – Lot 3 (PID 00127290), Russell Street, Halifax

ORIGIN

This is an appeal of the Development Officer's decision to approve a variance for the lot frontage and area of the Halifax Peninsula Land Use Bylaw to permit a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

A development permit application to construct a two unit dwelling on a vacant lot was received on February 3, 2011. The review indicated that the requirements for lot frontage and lot area for a two unit dwelling on this property in the R-2 Zone could not be met. The required frontage for a two unit dwelling is 50 feet and the required area for a two unit dwelling is 5,000 square feet. The existing vacant lot has 41 feet of frontage and 4100 square feet of lot area. The applicant applied for a variance for lot frontage and area on March 29, 2011 and the variance was granted on April 8, 2011. Subsequently, the variance was appealed.

Within the neighbourhood, development is not uniform in character with no consistent lot size, lot frontage, or use. The neighbourhood consists of a mix of single units, two units, multi-unit buildings, a special care home, a community centre, and a church.

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 ?

The intent of the R-2 Zone is to provide for two unit dwellings either through specific lot frontage and area requirements or where lot size and area is deficient, through internal conversion. This property is not eligible for a two unit conversion given that the lot is vacant and therefore the owner can only develop a two unit dwelling by relaxing the required frontage and area.

Permit records indicate that some undersized lots with dwellings have been converted from single units to two units. It appears from those records, that most of the single unit dwellings in the neighbourhood may be eligible for two unit conversion. This lot is of similar area and frontage as lots developed with two unit dwellings in the area and the by-law permits such lots to be developed. Therefore, the variance does not violate the intent of the land use bylaw.

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

The neighborhood has no consistency with respect to use or lot sizes. As discussed above, other properties in the area have successfully converted to two unit dwellings using the conversion clause. Others appear to be eligible convert into two unit dwellings without the need for a variance. In fact, the two properties next door to the vacant lot are currently two unit dwellings.

This variance application is for the only vacant lot in the area. The difficulty experienced by this applicant is therefore not experienced by neighbouring properties.

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

There has been no work done to this property prior to the application. Therefore, there has been no intentional disregard of the land use bylaw.

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, 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

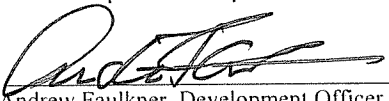
1. Council could uphold the decision of the Development Officer to grant the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

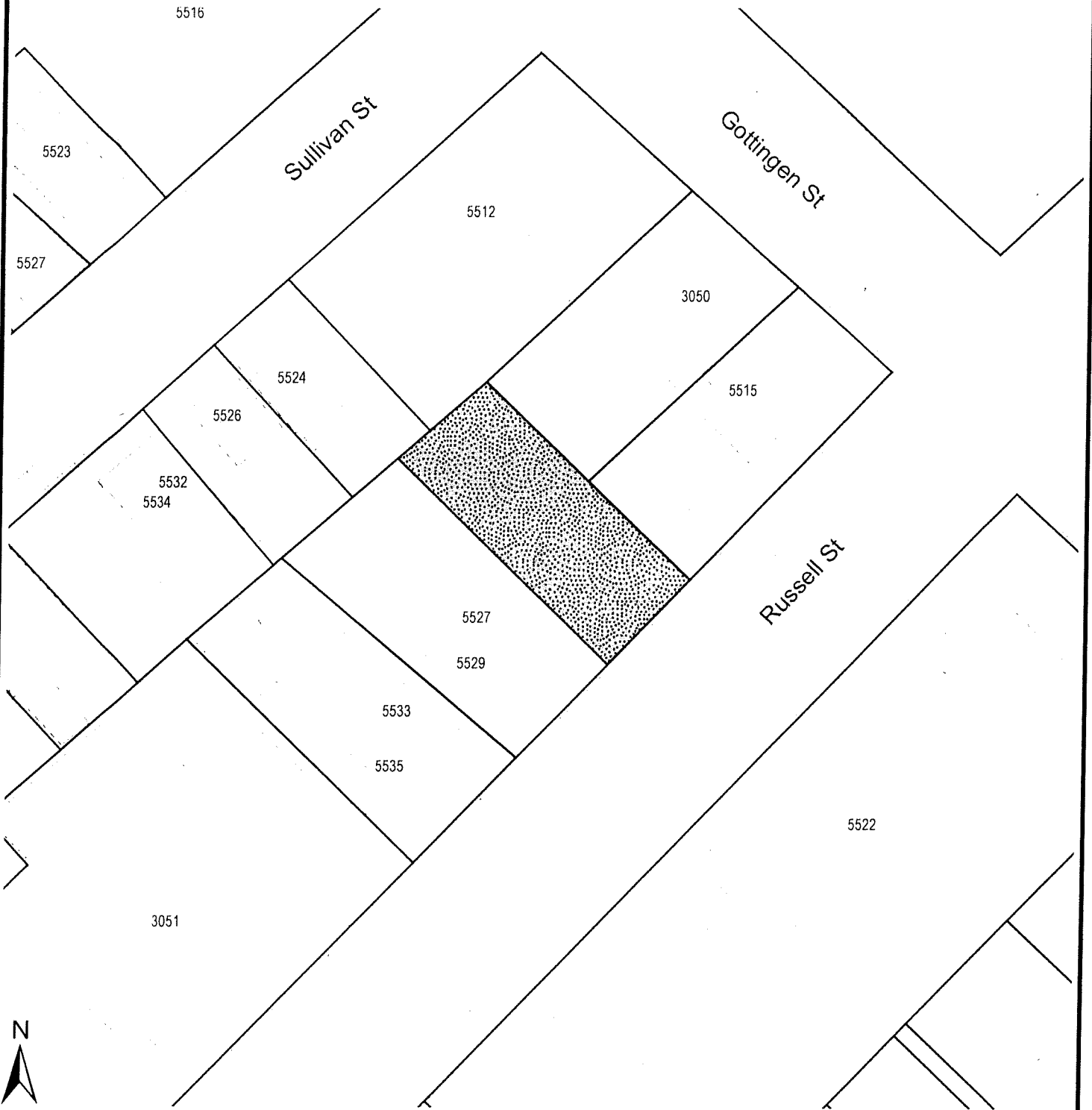
1. Location Map
2. Appeal letter
3. Site Plan
4. Elevations

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 : Shilo Gempton, Development Technician, 490-6796

Report Approved by: 
Andrew Faulkner, Development Officer, 490-4402


ATTACHMENT 1 – LOCATION MAP



Map 1 - Location

Lot 3, Russell Street
Halifax



 Subject property

HRM does not guarantee the accuracy
of any representation on this plan

ATTACHMENT 2 – APPEAL LETTER

David Pothier
5515 Russell Street
Halifax, NS

April 26, 2011
Andrew Faulkner, Development Officer c/o Municipal Clerk
Halifax Regional Municipality
Planning And Development – Western Region
PO Box 1749, Halifax, NS, B3J 3A5
clerks@halifax.ca

RE: Variance Application # 16878 (Russell Street)

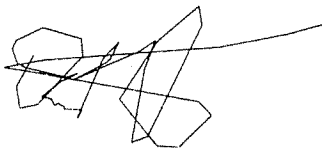
I would like to appeal the application for variance listed in the file quoted above.

I feel there are several points that should be taken into consideration. The first is that the indicated property was recently purchased in conjunction with the property of 5527 Russell Street. It would be logical to assume based on my review of the land use bylaws that utilizing the space available within both properties would have permitted the existing building consisting of 2 units to be expanded into a 4 unit structure with little or no variance required. Purchasing the property with the intention of building a 2-unit on the smaller lot shows an intentional disregard for the requirements of the law use bylaw.

Secondly, the proposed lot area and frontage meet only approximately 80% of the bylaw requirement. In this case, I feel it would be more prudent to pursue a single-unit building to lessen the impact on the surrounding home-owners. In the case of the diagrams provided, they indicate there would be 12 windows within 5 feet of our backyard and the backyard of our neighbor.

Thirdly, while I am in favor of the general development of the north end, I do feel that upon reading the land use bylaw, the overall intent is to ensure that land owners are able to adequately enjoy their property amongst their neighbors. The city is currently in the process of evaluating a development agreement for a property on the opposite side of Gottingen Street. This is a large scale, multi-unit building that will significantly increase the density of the area. I feel that it should not be necessary to concurrently override/vary the land use bylaw on both sides of long standing properties. Doing so may tend to put negative pressure on our overall property values and reduce the enjoyment of our properties.

Sincerely,

A handwritten signature in black ink, appearing to be 'David Pothier', written over a faint, irregular outline of a signature.

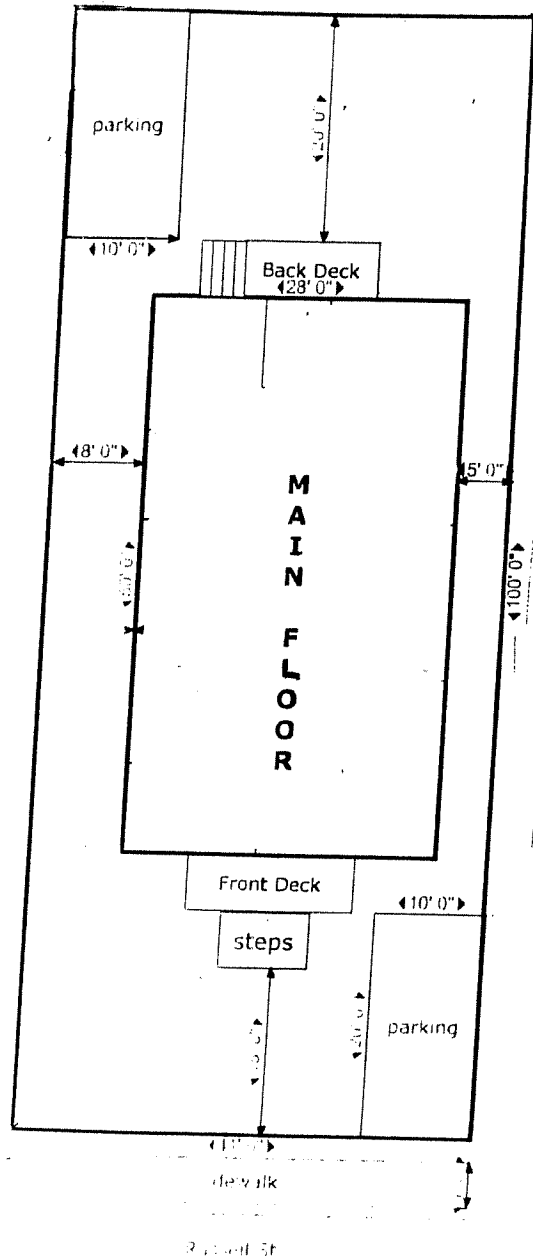
David Pothier

CC: Councillor Jerry Blumenthal – District 11

ATTACHMENT 3 – SITE PLAN

SUBJECT: Development Officer's decision to approve an application for a variance – Lot 3 Russell Street, to construct a two unit dwelling on a vacant lot. The applicant is proposing to vary lot area, lot frontage.

SITE PLAN

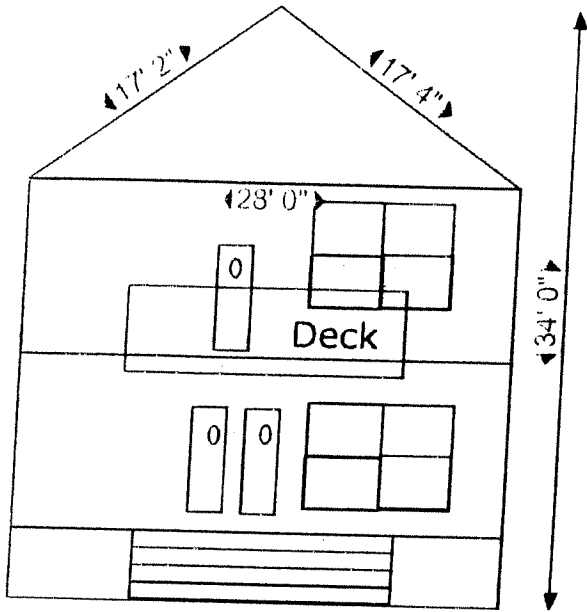


ATTACHMENT 4 – ELEVATIONS

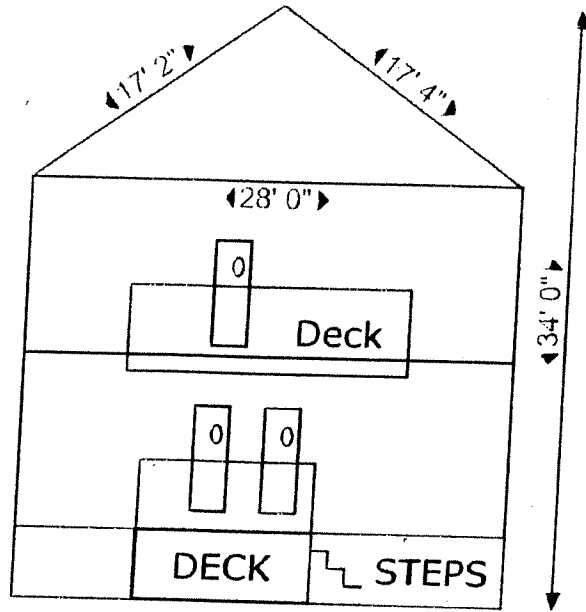
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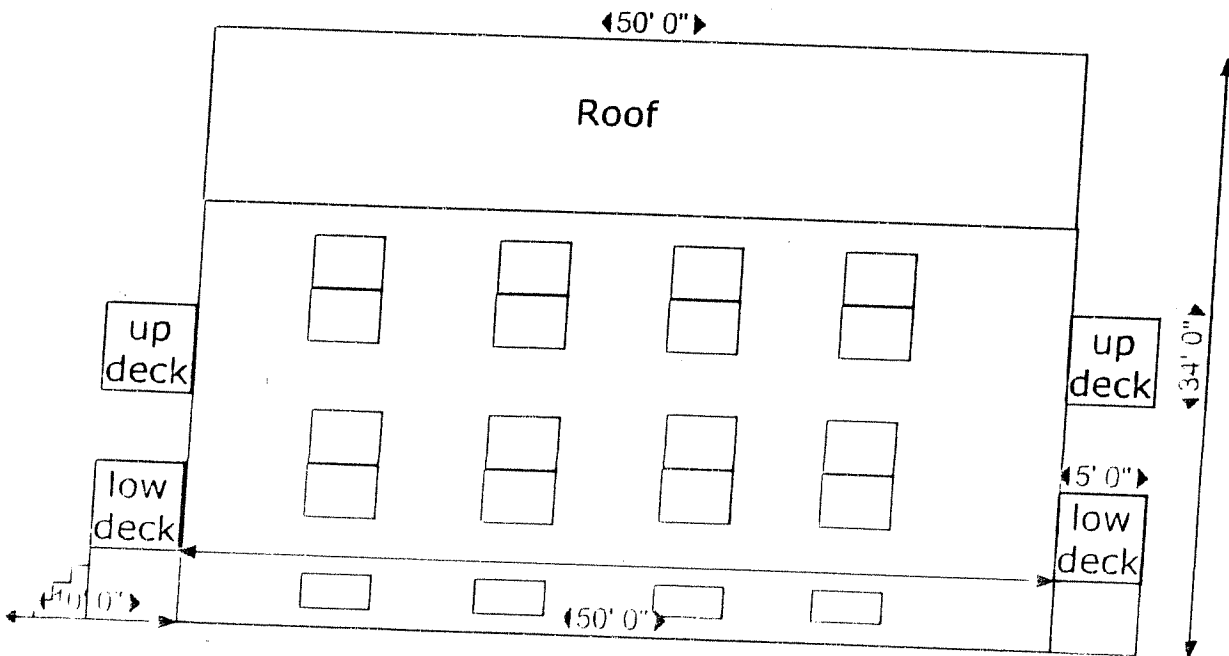
ELEVATIONS



Front View



Back View



East Side View