

8.2 Variance Appeal Hearings:

8.2.2 Variance #15707 - 5236 South Street

- A staff report dated January 4, 2010 was submitted.

Ms. Brenda Seymour, Development Technician, outlined the staff report concerning the application for a variance for the rear yard setback, lot coverage and side yard setback of the Halifax Peninsula Land Use Bylaw to permit a rear yard addition to convert an illegal rooming house to a six-unit residential building. In her presentation she advised that the Development Officer approved the variance, however, it was appealed by the property owners at 5228 South Street.

Ms. Seymour responded to questions from Community Council.

In response to a question by Councillor Sloane, Ms. Seymour advised that there are four parking spots on the site.

In response to a question by Councillor Watts on how the residents of 5228 South Street access their property, Ms. Seymour referred to a photo and pointed out that on the left hand side of 5228 South Street there is a driveway, and the photograph shows that two cars are parked. She added that the driveway on the other side of the property is on the property of 5236 South Street and that the property line actually goes to the edge of the building of 5228 South Street.

There were no further questions of Community Council; and the Chair opened the variance appeal hearing.

Mr. Lee Hallett, 5228 South Street, addressed Community Council and advised that he and his business partner, Trevor Stienburg, own 5228 South Street. He added that he and his wife have lived in the building for 15 years, and that his business partner has lived there for the past year, and there are three other tenants. Mr. Hallett advised that he has done extensive renovations to the property. He noted that he has a good relationship with a neighbour who is selling his rooming house, and that he has had uninterrupted use of both driveways on either side of his property in and out, to get to his parking lot.

Mr. Hallett provided photos noting that the condominiums in the vicinity also share the throughway. He explained that if the variance is granted it will mean that he will have no parking, and can't access his building. He added that he has a driveway on the left however it is very narrow and has never been used to enter through, turn around, and drive back out—it has only ever been used to park a car on the side. Mr. Hallett advised that he obtained signed statements from the previous two owners indicating they also had uninterrupted use of both driveways on either side, illustrating that there was at least 25 years of uninterrupted use to cut across the parking lot of where they are now proposing to put an addition on the building. Mr. Hallett also advised that he had an issue with the regard to the 43 percent, the setbacks, and noted that if steps are erected on the left side, facing his building, this will leave very little space between the

two buildings. In closing, Mr. Hallett advised that his biggest concern is losing access to his parking lot.

Councillor Sloane questioned the Solicitor on the issue of any associated rights, given that there has been uninterrupted use of the access for the past 25 years.

In response, Mr. Randolph Kinghorne, Senior Solicitor, advised that, possibly, there may be some sort of squatters rights but this would not be the proper forum in which to raise the matter. He explained that to acquire prescriptive rights, it is essentially an adverse right that you have to show that you have done it and, eventually, that's been without permission, adding that if you enter someone's property with their permission, then you don't acquire any rights.

Mr. Kinghorne added that the evidence Mr. Hallett presented does not establish that these people had access to this property without the permission of the property owners. Mr. Kinghorne noted that Community Council should be mindful that even if there is a prescriptive right here, the fact that Community Council would grant a variance would not preclude them from raising that right in a court of law and they could have a court issue an injunction in spite of the variance to prevent construction from taking place.

Councillor Sloane questioned if it would be in order that Community Council defer this matter for a month to allow both parties to work things out.

Mr. Kinghorne advised that if Community Council felt it needed more time to deal with the matter, deferring would not be an issue, however, if the parties involved do not feel there is any value in further discussion, he questioned the point of delaying the decision.

Mr. George Ghosen addressed Community Council and advised that he was representing Fenwick Developments Limited, the property owner of 5236 South Street.

Mr. Ghosen began his remarks by providing background information on how his client acquired the property. He advised that the company was approached by the property owners of 5236 South Street to purchase it by court order, explaining that the property owner was asked to shut down the illegal rooming house, and Fenwick Developments Limited agreed to purchase the property as long as it was economically feasible and fits into the character of the neighbourhood. Mr. Ghosen added that three different drawings were prepared before city staff gave approval. Mr. Ghosen noted that variances of this type are not unique to the south end of Halifax and are approved as long as the open area and parking requirements are met. Mr. Ghosen advised that as of 4:30 p.m. today, they had a search carried out at the Supreme Court of Nova Scotia and there has been no right of titles, no property liens, no mechanic liens, no quieting of titles whatsoever to establish any clear right-of-way to that property in the back of the existing dwelling. Mr. Ghosen advised that he has spoken to the present owner, Mr. Stan Lewindowski, and he has advised that he has never given any permission for anyone to use the back part of his parking lot.

With regard to his proposal of the property Mr. Ghosen advised that their intention is to take an illegal rooming house and turn it into a six-unit development. He pointed out that, of all the letters staff sent out in their notification, only one has proposed an appeal

to this matter. In closing, Mr. Ghosen noted that, in looking at the property, there are three different driveways—his property has two driveways, one between 5236 and 5244 South Street, and 5244 has not appealed this development and they are probably just as impacted by the proposal. He added that the second driveway to the east is also his driveway and to his knowledge, the appellants have never used it, but they use the driveway that is two driveways over from their own. Mr. Ghosen advised that the appellant has their own driveway and access to their own parking lot, and although it is narrow, there are similar sized driveways in the area.

In response to a question from Councillor Sloane, Mr. John Salah, the project engineer hired by Fenwick Developments Limited approached Community Council and presented drawings depicting the elevations of the property in its current and proposed states.

The Chair called three times for anyone wishing to address Community Council; there being none it was **MOVED by Councillor Sloane, seconded by Councillor Watts that the variance appeal hearing close. MOTION PUT AND PASSED.**

Councillor Sloane moved to approve that Community Council uphold the decision of the Development Officer to approve the variance; however, there was no seconder and the motion was lost.

MOVED by Councillor Sloane, seconded by Councillor Watts that this variance appeal be deferred for one month. MOTION PUT AND PASSED.

7.1



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
January 11, 2010

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: January 4, 2010

SUBJECT: Appeal of the Development Officer's decision to approve an application for a Variance -5236 South St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance for the rear yard setback, lot coverage and side yard setback of the Halifax Peninsula Land Use Bylaw to permit a rear yard addition to convert an illegal rooming house to a six unit residential building.

RECOMMENDATION

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

BACKGROUND

In 2004, an unauthorized rooming house was identified at 5236 South St. The property is regulated under the *Halifax Peninsula Land Use By-Law* and is zoned R-2A (General Residential Conversion Zone). The property owner is in the process of being prosecuted for the illegal use. The above noted application by a potential new owner, proposes constructing a rear addition and converting to a six unit residential building. In the R2-A Zone, a Converted Multiple Dwelling House is permitted to a maximum of 14 self contained dwelling units.

In order to convert to the six unit dwelling, the following requirements must be met prior to approval:

Section 43AD Buildings altered or used for R-2A uses in the R-2A zone shall comply with the following requirements:

- | | |
|--|-------|
| <i>iv) Minimum side yard for additions</i> | 6 ft |
| <i>v) Minimum rear yard setback</i> | 20 ft |
| <i>vi) Maximum lot coverage</i> | 40% |

The variance application proposes:

- | | |
|--------------------------|---------------|
| <i>Side yard setback</i> | 4 ft |
| <i>Rear yard setback</i> | 5 ft 2 inches |
| <i>Lot coverage</i> | 43 % |

The variance application was approved by the Development Officer and the property owners within 30 metres were notified in accordance with the Charter. One appeal was received.

To address the appeal: The site plan provided with the application shows that the proposed addition is contained within the boundary lines of 5236 South St. (See attachment #3)

DISCUSSION

The *Halifax Regional Municipal 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.

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.

The intent of the bylaw is to keep buildings 20 feet from the rear property line. However, few of the dwellings in this neighbourhood appear to meet this setback.

The intent of the bylaw is to keep the lot coverage maximum at 40%. Again, few of the dwellings in the surrounding area, appear to meet this requirement.

Setbacks from property lines are intended to provide adequate building separation to maintain access, safety and privacy. The variance for the sideyard setback was required for the exterior side landing and steps. Staff do not consider that the proposal represents a level of departure from the intent of the bylaw that justifies refusal.

As the bylaw allows for consideration of conversion for up to 14 residential units, the proposal of 6 units to maximize the use of this property does not violate the intent of the bylaw.

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

Based on provincial mapping, it appears that most nearby properties may meet rear yard setbacks. However, when looking at the larger neighborhood on South St and Tobin St there are many buildings within the required rear yard setback. Therefore, the difficulty experienced is not necessarily general to the properties in the same block.

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

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.

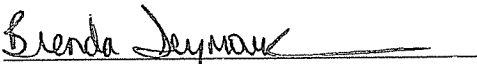
ALTERNATIVES


1. Council could uphold the decision of the Development Officer to 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/agenda.html>, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

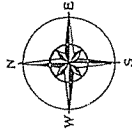
Report Prepared by : 
Brenda Seymour - Development Technician (490-4046)

Report Approved by: 
Andrew Faulkner - Development Officer (490-4402)

ATTACHMENT #1



Variance #15707



1:1,000

User: Brenda Seymour
Print Date: Jan 5, 2010

This map was produced for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions.

For further information on civic address, street, street name or community (CSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca.

For further information on sewer infrastructure please contact Halifax Water Engineering at 490-6204 or email engineering_dept@halifaxwater.ca

For further information on zoning data please contact HRM Planning & Development Services at 490-4494 or email zoninginquiries@halifax.ca.

For further information regarding any other aspect of this plot please contact HRM Geographic Information Systems & Services at 490-6568 or email geoinfo@halifax.ca.

Date of map is not indicative of the date of data creation. Scale of map is valid only if printed at 11x8.5 inches.

Projection is Modified Transverse Mercator Zone 5.



FILE REFERENCE: 107526
DELIVERY VIA: COURIER

Allen A. Campbell
Direct Dial: (902) 460-3462
Facsimile: (902) 463-7500
E-mail: acampbell@boyneclarke.ca

December 14, 2009

**Municipal Clerk
c/o Andrew Faulkner
Development Officer
HRM Planning and Development – Western Region
P.O. Box 1749, Halifax N.S.
B3J 3A5**

33 Alderney Dr.
Suite 700
Dartmouth, NS
Canada B2Y 2N4

Dear Mr. Faulkner:

CORRESPONDENCE
P.O. Box 876,
Dartmouth Main
Halifax, NS
Canada B2Y 3Z5

Re: Appeal of Variance, File No. 15707 – 5236 South St., Halifax

TEL: (902) 469-9500
FAX: (902) 463-7500
www.boyneclarke.ca

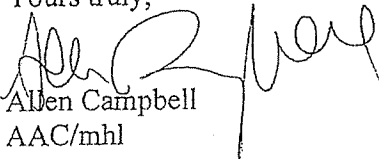
We are the solicitors for Wilson Lee Hallett and Trevor Stienberg, the owners of property at 5228 South St. and adjacent to the noted lands.

Our clients are appealing the approval of the variance for the noted property. Our clients' basis for the appeal is that the variance will adversely affect our clients use and enjoyment of their property. In particular, our clients and their guests and invitees have accessed their property and parking area via the driveway located on their property, as well as through the driveway located on 5236 South St. and/or 5243 South St. and through the parking area located on 5236 South St..

Our clients, and their predecessors in title have used this access for their property in excess of 20 years, and believe they have acquired prescriptive rights allowing the continued use of this access. The variance effectively cuts off this access and as such our clients will experience undue difficulty and hardship if the variance is allowed to remain.

Our client looks forward to providing further information with respect to this appeal as required.

Yours truly,


Allen Campbell
AAC/mhl

DATE: November 30, 2009

SUBJECT: RE: Application for Variance, File No. 15707 - 5236 South St, Halifax

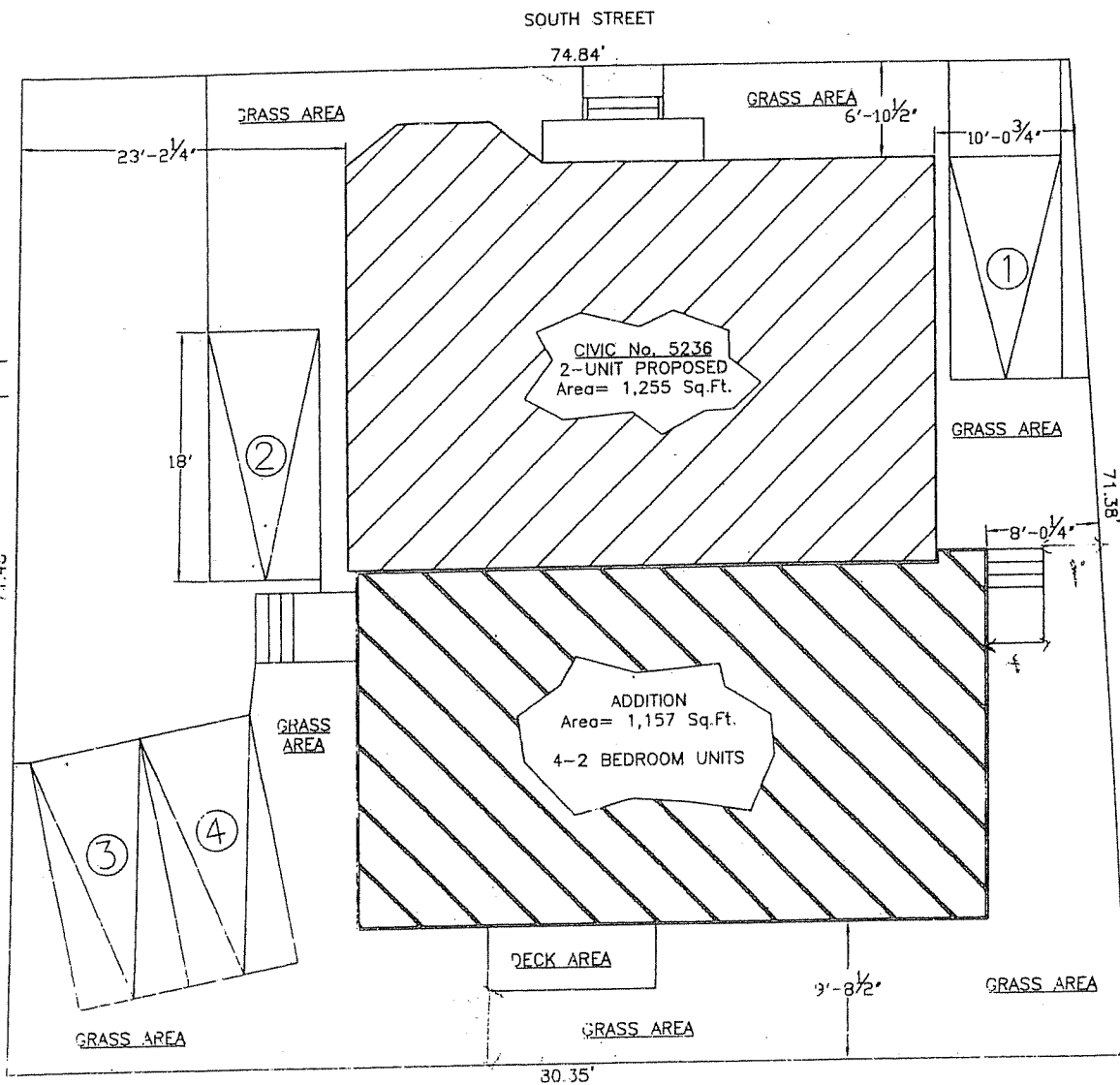
SITE PLAN

Project Proposal: to convert a rooming house to a six unit residential building

Approved Variance: Vary rear yard setback from 20 ft to 5ft 2 inches

Vary lot coverage from 40% to 43 %

Vary side yard setback from 6 ft to 4 ft



DATE: November 30, 2009

SUBJECT: RE: Application for Variance, File No. 15707 - 5236 South St, Halifax

ELEVATION

Project Proposal: to convert a rooming house to a six unit residential building

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