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P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 8, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: January 27, 2010

SUBJECT: Appeal of the Development Officer's decision to deny an application for
Variance #15734 - 1034 Wellington St., Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance for the right side yard setback of the Halifax Peninsula Land Use Bylaw to permit an addition to a single unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located on the west side of Wellington street in the south end of the Halifax Peninsula. The zone is R-2A (General Residential Conversion Zone) in the South End secondary plan. Wellington St is a mix of residential uses ranging from single unit dwellings to apartment buildings. Properties in the immediate neighbourhood are predominantly single unit dwellings (see attachment 1).

The subject property is 7500 square feet which is generally in keeping with other properties that contain single unit dwellings. The dwelling is of older style and there are no records of its construction, it may have been built prior to zoning regulations. There is an attached single storey garage located on the right side of the dwelling which is approximately 1.2 feet from the right property boundary (see attachment 2).

The application for variance was received November 20, 2009.

The application proposes several additions however the focus of this variance is for the 12 foot by 43 foot addition to the right side of the single unit dwelling. It consists of a basement level, main level and second floor level (see attachment 3).

The addition is intended to be located where the existing single storey garage is situated. The existing garage is intended to be demolished and the addition will occupy the same setback from the right property boundary at 1.2 feet.

The applicant was notified in a letter dated January 7, 2010 that the variance was refused. A letter from the applicant appealing the Development Officer's decision to refuse was received prior to the January 8, 2010 deadline (refer to attachment 4).

DISCUSSION

The required sideyard setback in the R-2A zone is 4 feet for an R-1 use. The existing setback of the attached garage is 1.2 feet. There are no records of the construction of the garage and no evidence to support that it was constructed with the dwelling with the necessary approvals of the day. For this reason it cannot be considered as a non-conforming setback.

If the setback of the attached one storey garage were to be considered non-conforming it could not be replaced by 2 stories of habitable space as it is not occupied by the same use.

The neighbourhood is comprised of a number of two storey dwellings some with attached garages. With two exceptions dwellings in the neighbourhood meet the setback requirements.

The *Halifax Regional Municipality 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 if:

- (a) the variance violates the intent of the land use bylaw;*
- (b) the difficulty experienced is general to the properties in the area;*
- (c) the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

Does the proposed variance violate the intent of the land use bylaw ?

The intent of sideyard setbacks is to provide consistent neighbourhood aesthetic, while maintaining an adequate separation between neighbouring dwellings. The addition of a two stories of habitable space 1.2 feet from the property line violates this intent.

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

Many of the dwellings in the immediate neighbourhood meet the sideyard setback requirements. The difficulty experienced is general to properties in the area.

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

As no construction has occurred at this site intentional disregard was not a consideration in refusing this variance.

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

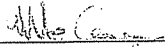
1. Council could uphold the decision of the Development Officer to refuse the variance.
2. Council could overturn the decision of the Development Officer and grant the variance.

ATTACHMENTS

1. Neighbourhood Site plan
2. 1034 Wellington Site plan (existing)
3. Proposed front/side/rear elevations
4. Appeal letter

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 :


[Mike Cowper - Development Technician 490-7455]

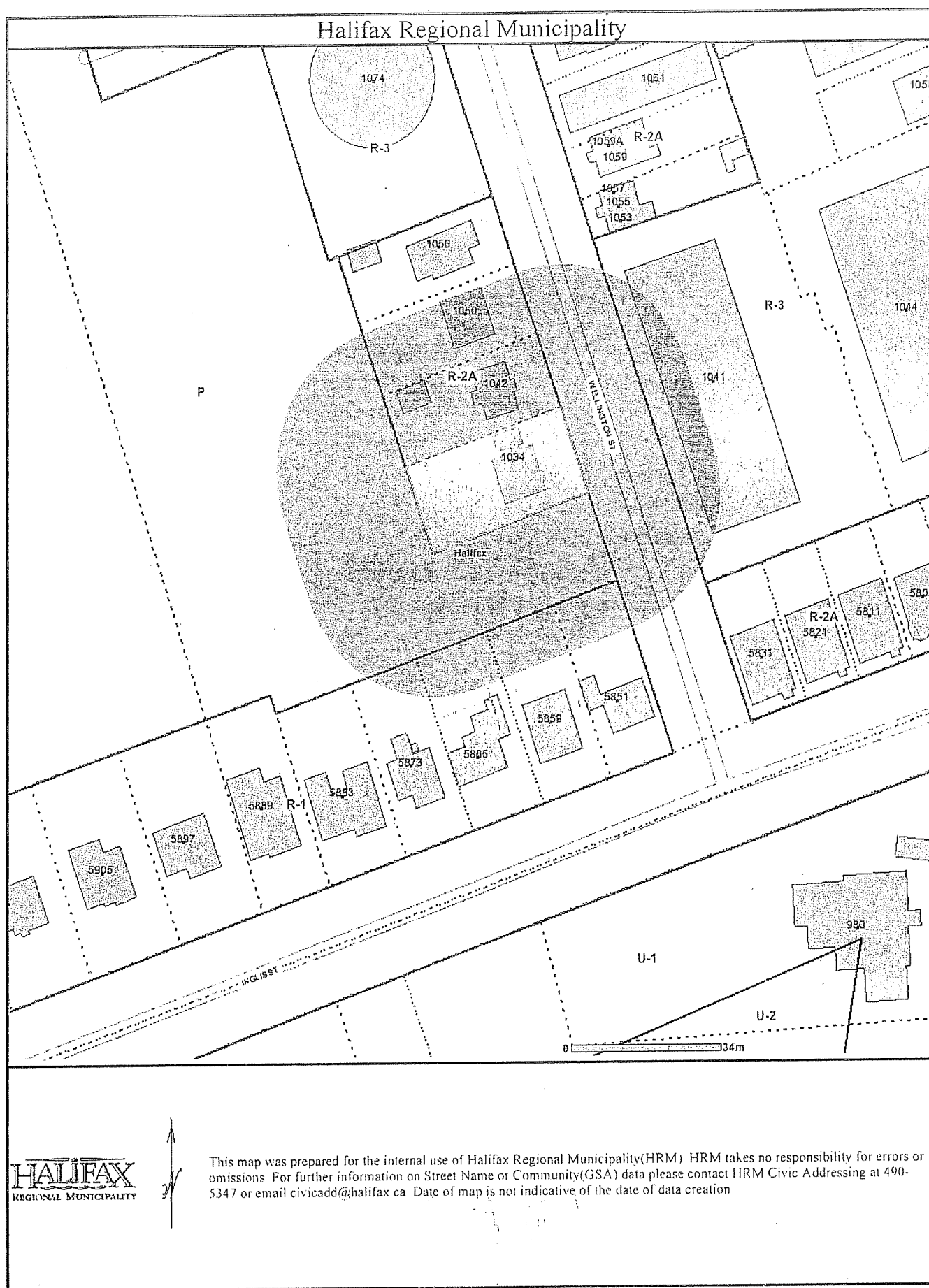
Report Approved by:


[Andrew Faulkner - Development Officer 490-4402]

DATE: February 8, 2010

SUBJECT: Development Officer's decision to refuse an application for a variance -
1034 Wellington St. The applicant is proposing to vary right yard setback
for an addition to a single unit dwelling.

ATTACHMENT 1 - Neighbourhood Site Plan



DATE: February 8, 2010

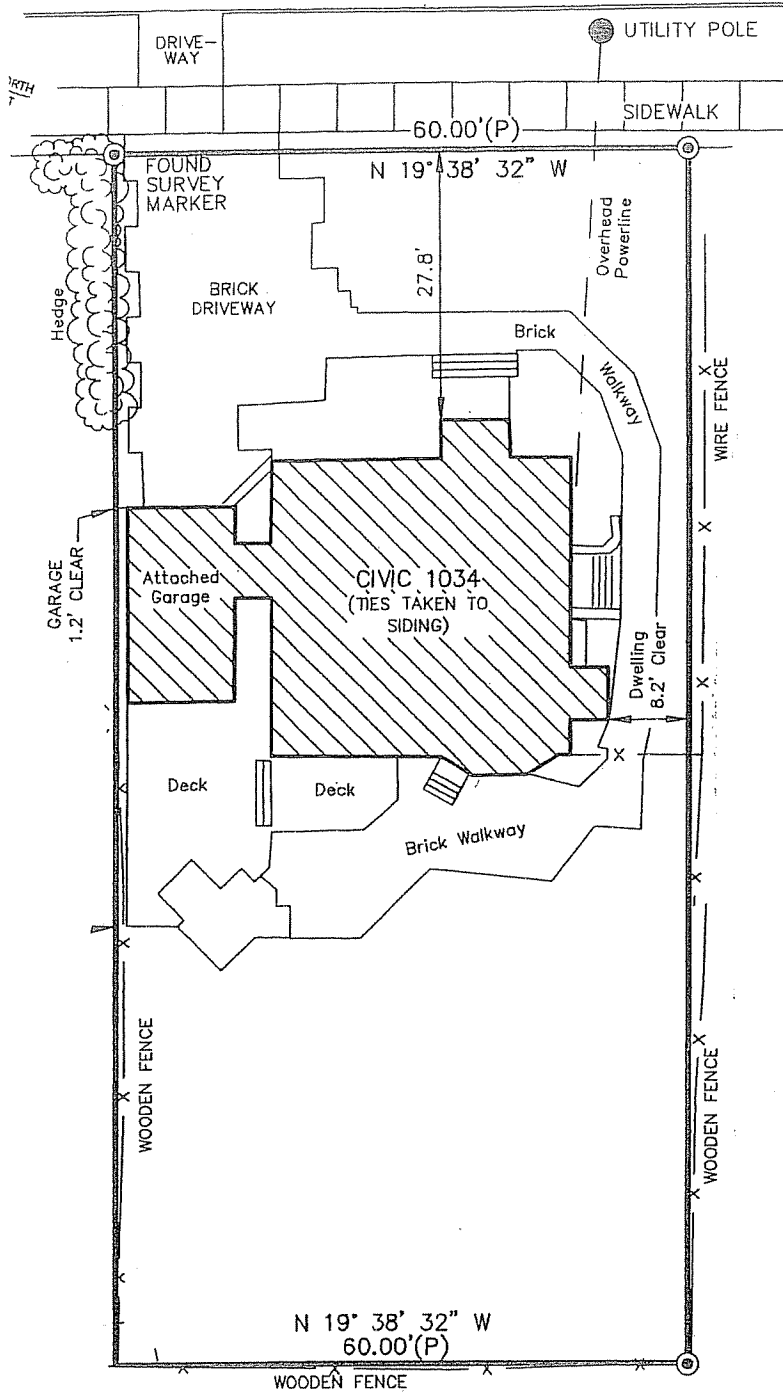
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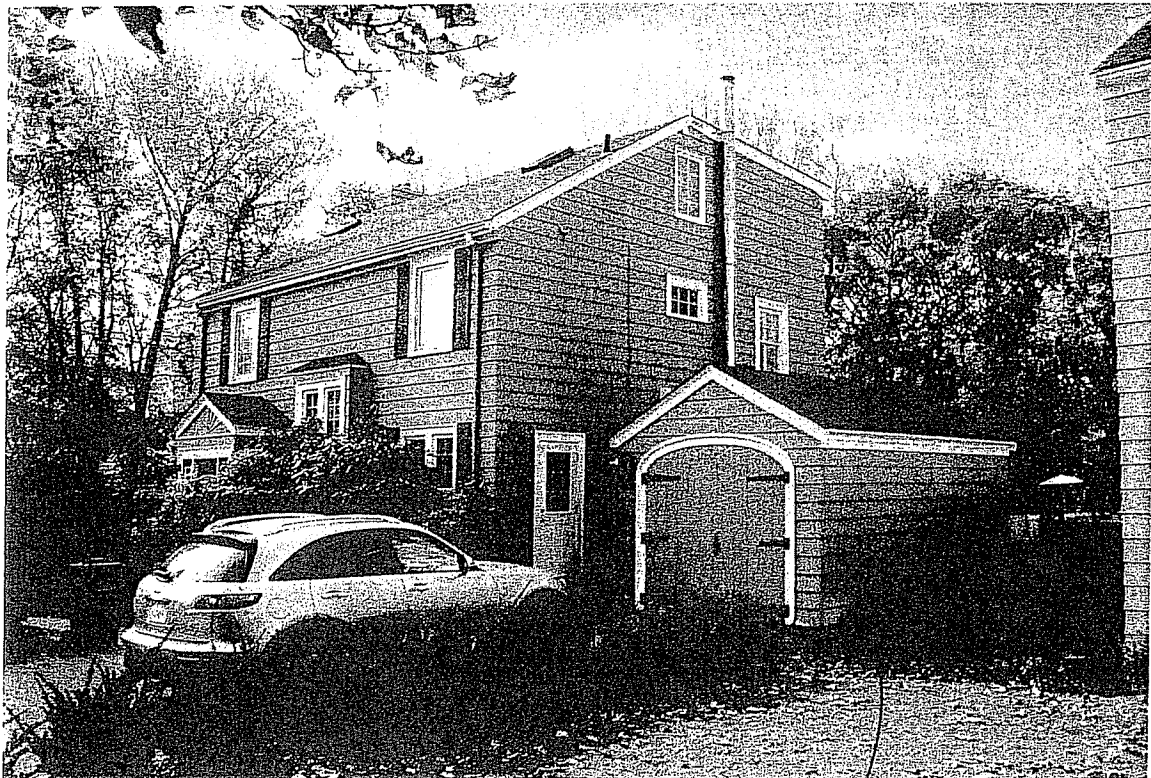
**ATTACHMENT 2 - 1034 Wellington St Site Plan and Pictures (2
pages)**

WELLINGTON STREET

(60' WIDE)

CURB





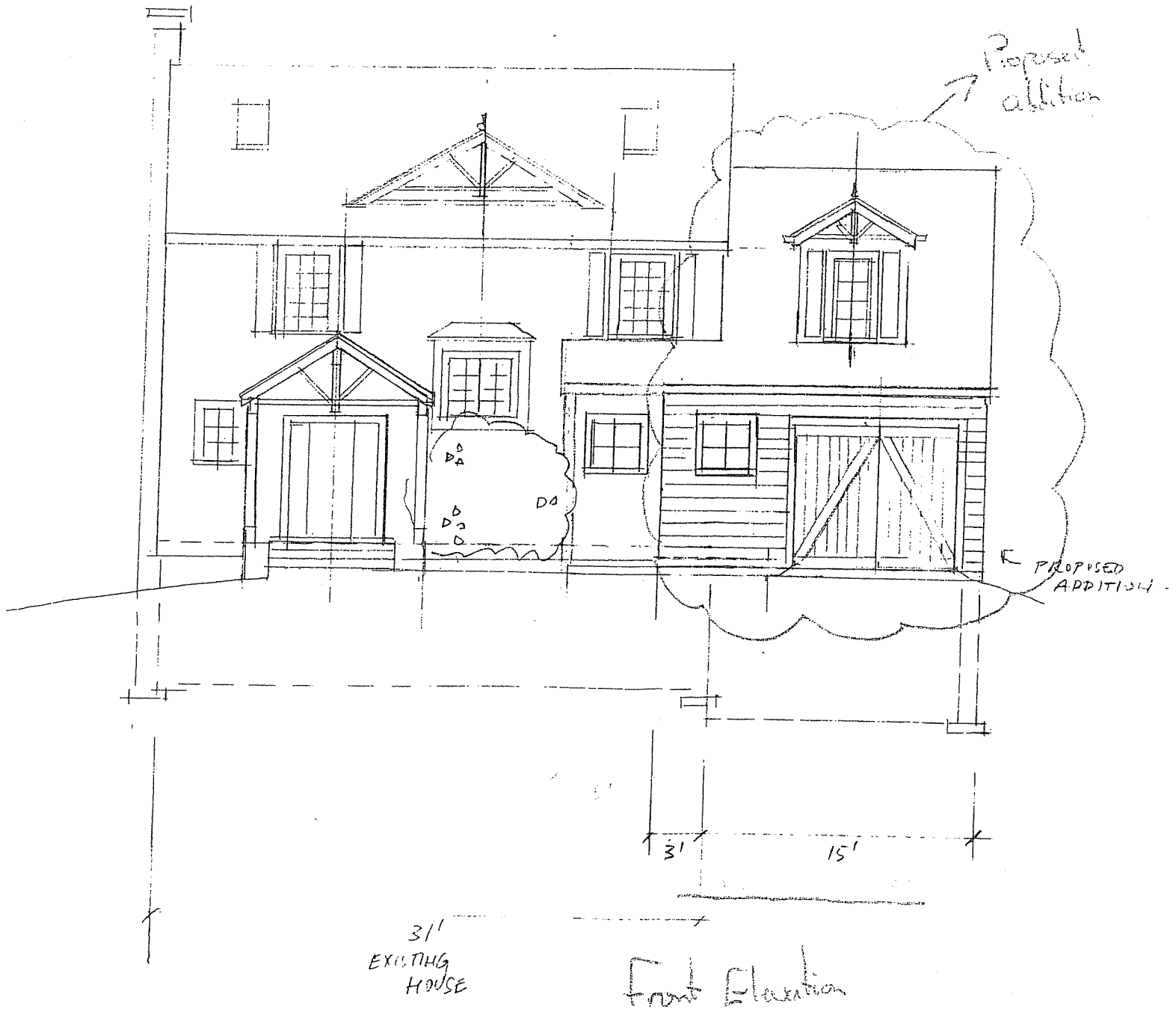
1034 WELLINGTON ST - HFX
FRONT & SIDE VIEWS

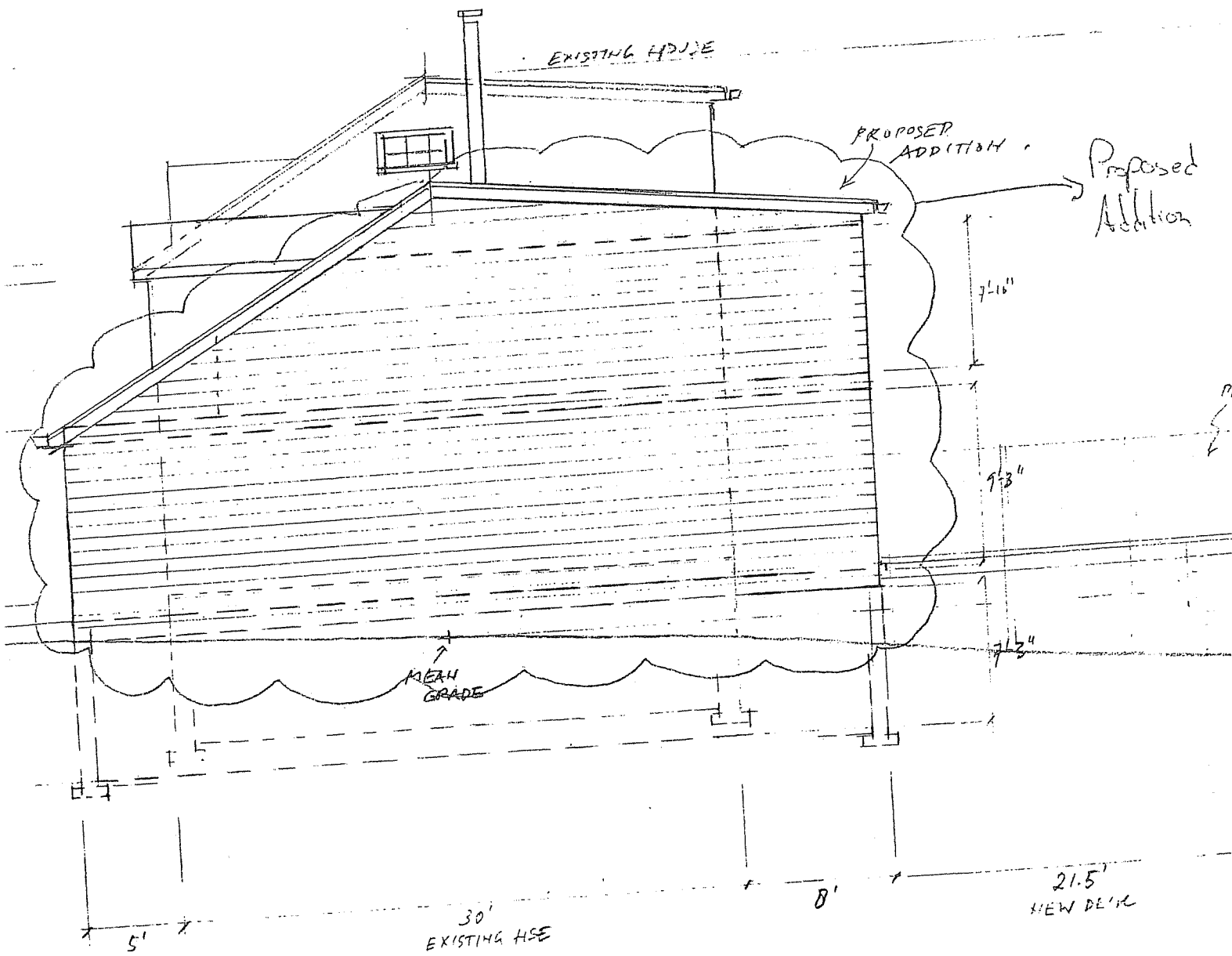
GARAGE TO BE
DEMOLISHED

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ATTACHMENT 3 - Proposed front/side/rear elevations (3 pages)





Right Side Elevation

Proposed
Addition
↓



Rear Elevation.

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ATTACHMENT 4 - Appeal Letter

January 8, 2010.

To:
Mr. Andrew Faulkner
Development Officer
Halifax Regional Municipality
Development Services – Western Region

RE: Variance Application #15734 – 1034 Wellington Street, Halifax

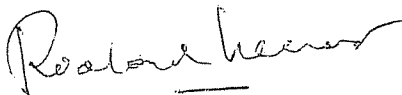
APPEAL

Please be advised that the owners of the property 1034 Wellington Street, Halifax, have instructed me to appeal the decision of the D.O. to refuse a variance from the requirements of the Land-use Bylaw for Halifax peninsula.

This appeal is filed pursuant to section 251 (4) of the H.R.M. Charter.

We are requesting a date for a hearing by Community Council at the first available opportunity

Sincerely,

A handwritten signature in dark ink, appearing to read 'Roeland Leenes', with a horizontal line underneath the name.

Roeland Leenes M.Arch.
for
Mr. Dennis Klassen and Mrs. Lisl Mayer

cc. Cathy Mellett, Acting Municipal Clerk
Councillor Sue Utech
Mr Klassen and Mrs Mayer, owners.