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PO 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 #15797 - 897 McLean St., Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance for the left and right side yard setbacks of the Halifax Peninsula Land Use Bylaw to accommodate an existing fireplace bump out on the left side and a proposed buffet bump out on the right side of a single unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located on the east side of McLean St. on the Halifax Peninsula. The zone is R-1 (Single Family Zone) in the South End Secondary Plan. With the exception of a 15 unit apartment building, this end of McLean St is a mix of low density residential uses which include single unit dwellings and townhouse dwellings. Properties in the immediate neighbourhood are predominantly single unit dwellings (refer to attachment 1).

The subject property is 4000 square feet which is generally in keeping with other properties in the area. The dwelling was constructed in 1999. The immediate neighbourhood on the east side of the street was developed with single unit dwellings in the late 1990's. With the exception of one dwelling, all of the homes meet the required sideyard setbacks.

The application for variance was received December 21, 2009.

The application is to accommodate an existing bump out on the left side of the dwelling that contains a fireplace, and for a proposed bump out on the right side for a buffet (refer to attachment 2). The projections are on the main floor only and are 4 feet and 6 feet wide respectively.

The existing fireplace projects approximately 1.5 feet from the dwelling leaving a setback to the left property boundary of 2.5 feet. The proposed buffet on the right side is to project 1.3 feet leaving a right setback of 2.7 feet.

The applicant was notified in a letter dated January 15, 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 25, 2010 deadline (refer to attachment 3).

DISCUSSION

The required sideyard setback in the R-1 zone is equal to 10% of the width of the lot (to a maximum of 6 feet). The lot is 40 feet wide which means the required sideyard setbacks are 4 feet.

The existing fireplace projection was constructed without the benefit of a permit.

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 two additions in close proximity to the property boundary line violate this intent.

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

Most 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?

The left side projection was constructed without the benefit of a permit. This difficulty results from intentional disregard for the requirements of the land use bylaw. The right sideyard projection has not been constructed and has not been refused on these grounds.

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

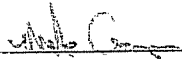
1. Council could uphold the decision of the Development Officer to refuse the variance.
2. Council could overturn the decision of the Development Officer and grant the variance.

ATTACHMENTS

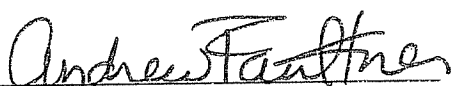
1. Neighbourhood Site plan
2. 827 McLean St Site plan
3. Appeal letter

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: January 27, 2010

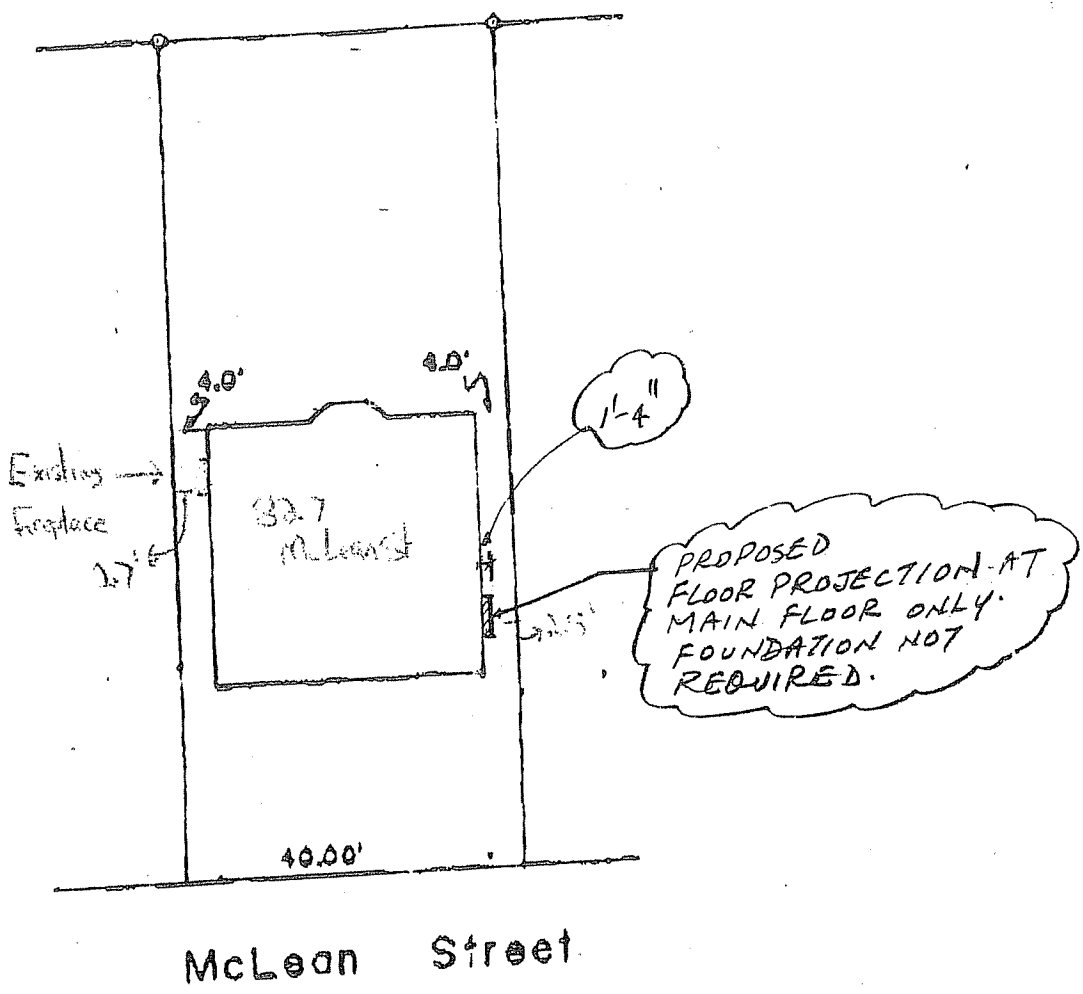
SUBJECT: Development Officer's decision to refuse an application for a variance -
827 McLean St. The applicant is proposing to vary left and right yard
setbacks for 2 small additions

NEIGHBOURHOOD SITE PLAN

DATE: January 27, 2010

SUBJECT: Development Officer's decision to refuse an application for a variance - 827 McLean St. The applicant is proposing to vary left and right yard setbacks for 2 small additions

827 MCLEAN ST SITE PLAN



DATE: January 27, 2010

SUBJECT: Development Officer's decision to refuse an application for a variance -
827 McLean St. The applicant is proposing to vary left and right yard
setbacks for 2 small additions

APPEAL LETTER

VIA FAX 490 - 4645

RECEIVED

IAN 22 2010

21 January 2010

Andrew Faulkner
Planning and Dev. Services
6960 Mumford Road
B.O. Box 1749
Halifax, N.S.
B3J 3A5

Steve Rajendram
827 McLean Street
Halifax, N.S.
B3H 2T9

Dear Mr. Faulkner:

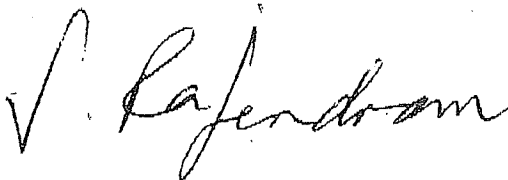
RE: Variance Application No. 15797 - 827 McLean Street

Further to your letter dated January 15, 2010, I would like to appeal your decision not granting the variance requested.

In my opinion my variance application was not reviewed diligently and correctly by the development officer.

I would like to **appeal** the decision of the Development officer for not granting the variance and I would request the head of the development department that my variance application to be reconsidered in light of the **level of variance required** under the variance requirements by the Land Use Bylaw.

Yours truly



Steve Rajendram (423 - 4509)

(Owner of the house)

Ot/mcleanbuffetappeal