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Peninsula Community Council  
November 8, 2010

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

**SUBMITTED BY:** Andrew Faulkner  
Andrew Faulkner, Development Officer

**DATE:** October 25, 2010

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application for a  
Variance - 1234 Edward St, Halifax

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a variance from the setback requirements of the Halifax Peninsula Land Use By-law to permit the conversion of the basement of a single unit dwelling to an apartment.

**RECOMMENDATION**

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

## BACKGROUND

The proposal is to convert the basement of a single unit dwelling on a 3300 square foot lot at 1234 Edward St. The zone is R-2 (General Resident Zone) in the Peninsula Secondary Plan of the Halifax Peninsula Land Use By-Law.

The existing dwelling is approximately 2 feet from the right property line. The zone requires a setback of 5 feet for a duplex dwelling. A small 5X9 foot one storey addition is proposed in order to gain access to the basement unit. This additional square footage further increases the already nonconforming gross floor area. The proposal meets the other criteria for a duplex dwelling (See attachment 1).

The immediate neighbourhood is predominantly comprised of single unit dwellings, however there are several two and three unit dwellings and a multiple unit dwelling.

Applications for variance from the side yard requirements were received on this property on two previous occasions within the past six months. These applications were both denied by the Development Officer and a letter of appeal was not received from the applicant.

The current application was received in August 6, 2010. A refusal letter was sent to the applicant August 31, 2010 who submitted a letter of appeal September 10, 2010 (See attachment 2).

All property owners within 100 feet were notified of the refused variance and the appeal hearing.

## DISCUSSION

The *HRM 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 ?**

One of the goals in planning policies adopted for the established neighbourhoods of the Halifax Peninsula is to maintain the character and stability of these areas through Municipal Planning Strategy policies such as Policy 2.4 which states:

*"...the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change if can control will be compatible with these neighbourhoods."*

The neighbourhood is comprised of residential uses, predominantly single unit dwellings, however there are a number of two and three unit dwellings as well as a multi unit dwelling.

Violating the intent of the bylaw was not a consideration in refusing this variance.

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

Properties in the area are of a similar size to the subject property (See attachment 3). Mapping shows that the majority of the properties in the immediate neighbourhood are located in close proximity to the side property line. The setback requirement of 5 feet for a duplex dwelling could not be met for many of the neighbouring properties.

The difficulty experienced is general to properties in the area. The variance was refused based on this criteria.

**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. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

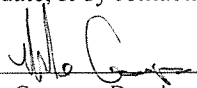
**ATTACHMENTS**

1. Site Plan
2. Letter of Appeal
3. Neighbourhood Site Plan

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A copy of this report can be obtained online at <http://www.halifax.ca/commeoun/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)

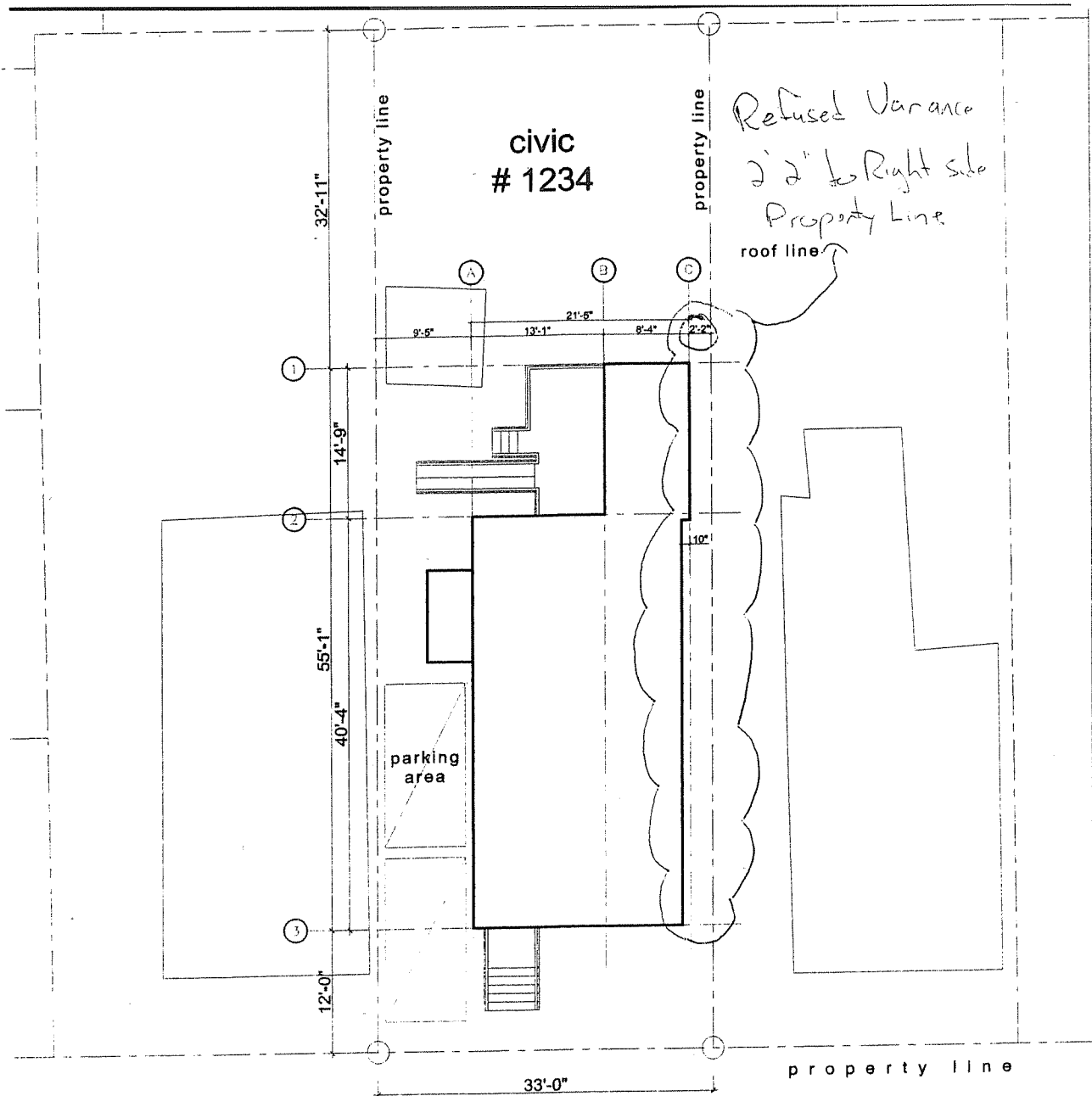
Report Approved by:

  
Andrew Faulkner - Development Officer (490-4402)

DATE: October 25, 2010

SUBJECT: Development Officer's decision to refuse a variance from the setback and gross floor area (GFA) requirements of the Halifax Peninsula Land Use By-law to permit a basement apartment in an existing single unit dwelling.

Attachment 1



Site Plan  
SCALE 1" = 10'

E d w a r d   S t r e e t

DATE: October 25, 2010

SUBJECT: Development Officer's decision to refuse a variance from the setback and gross floor area (GFA) requirements of the Halifax Peninsula Land Use By-law to permit a basement apartment in an existing single unit dwelling.

**Attachment 2**

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September 10, 2010

Andrew Faulkner  
Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
Development Service – Western Region  
P.O Box 1749  
Halifax, NS  
B3J 3A5

**Attention: Andrew Faulkner**

**Reference: Variance Application No. 16380  
Property at 1234 Edward Street  
Halifax, NS**

We hereby make an appeal of the decision of the Development Officer to the Municipal Council. We believe that the "difficulty experienced is general to properties in the area" should not be a substantive reason for not allowing the request for a change of use from a single unit dwelling to a two unit dwelling for the following reasons: 1. The buildings in this area have been in existence for up to a hundred years. The sideyard variance request from 5 feet to 2 feet is only related to the small rear portion of the building. The major portion of the building is 3 feet from the property line. The proposed basement unit has had a separate entrance to what use to be a Daycare business. 2. The approval of this additional unit would allow for another person or persons the ability to live downtown which should be encouraged on the Peninsula.

Yours truly,



Alan Ivan Trenholm  
6018 South Street  
Halifax, NS  
B3H 1S7

RECEIVED SEP 14 2010  
CF

DATE: October 25, 2010

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Attachment 3 (2 sheets)

# AerialHRM

## Edward St Site Plan



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### Halifax Regional Municipality



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email [civicadd@halifax.ca](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation.