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Halifax Peninsula Community Council
October 5th, 2009

TO: Chairman and Members of Halifax Peninsula Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: September 23, 2009

SUBJECT: Appeal of the Development Officer's decision to deny an application for a Variance at 1659 Preston Street, Case No. 15529

ORIGIN

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

RECOMMENDATION

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

BACKGROUND

This application proposes an addition to a single unit dwelling to create a second unit. The property is regulated under the *Halifax Peninsula Land Use By-Law* and is zoned R-2 (General Residential Zone). The following sections of the *Land Use Bylaw* pertains to this application.

Section 43E(a) of the R-2 zone states:

“buildings erected, altered or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:

	<i>Lot Frontage</i>	<i>Lot Area</i>	<i>Side Yard</i>
	<u>(Ft.)</u>	<u>(Ft.)</u>	<u>(Ft.)</u>
<i>R-1 Uses</i>	40	4000	4
<u>duplex</u>	<u>50</u>	<u>5000</u>	<u>5</u>

The proposal does not meet the following requirements:

minimum left side yard setback of 5 feet; **existing is 1 ft 4 inches**

On July 27, 2009 Mr Simms applied for a Development Permit to convert from a single unit dwelling to a two unit dwelling, and to add a second floor addition. This application was refused on July 29th, 2009. As the application proposes an addition to the dwelling and there was an addition to the dwelling in 2003, this property is no longer eligible for a by-right conversion to two dwelling units. This same issue arose in 2004, when the previous owner had applied to convert to a two unit dwelling. That application was refused for the same reason, but there was no appeal.

Mr. Simms advised staff that regardless of the variance outcome he still wished to construct an addition to his home. Staff suggested, to prevent delays of his project, that he apply for a separate permit for the addition to a single family dwelling while the variance was considered. Mr Simms proceeded to apply for the construction permit for the rear addition proposed as an additional bedroom.

Subsequently, a variance application was received August 8, 2009. That application was refused August 19, 2009, and the applicant appealed that decision.

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 ?

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 (MPS) 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 it can control will be compatible with these neighbourhoods."

The properties located in the notification buffer consists largely of single unit dwellings. Staff believe allowing the reduction of the side yard setback to create a second unit, would clearly violate the intent of the land use bylaw.

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

The side yard setback found on this property does not meet the requirements for a two unit dwelling. The majority of properties in the buffer area are *single unit dwellings*. Based on our provincial mapping, (see attachment #1) many of the properties appear they would also have difficulty meeting side yard setbacks should they wish to construct additions and create a second dwelling unit. *Therefore, the difficulty experienced is general to the properties in the area.*

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

There is no intentional disregard .

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, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

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

ATTACHMENTS

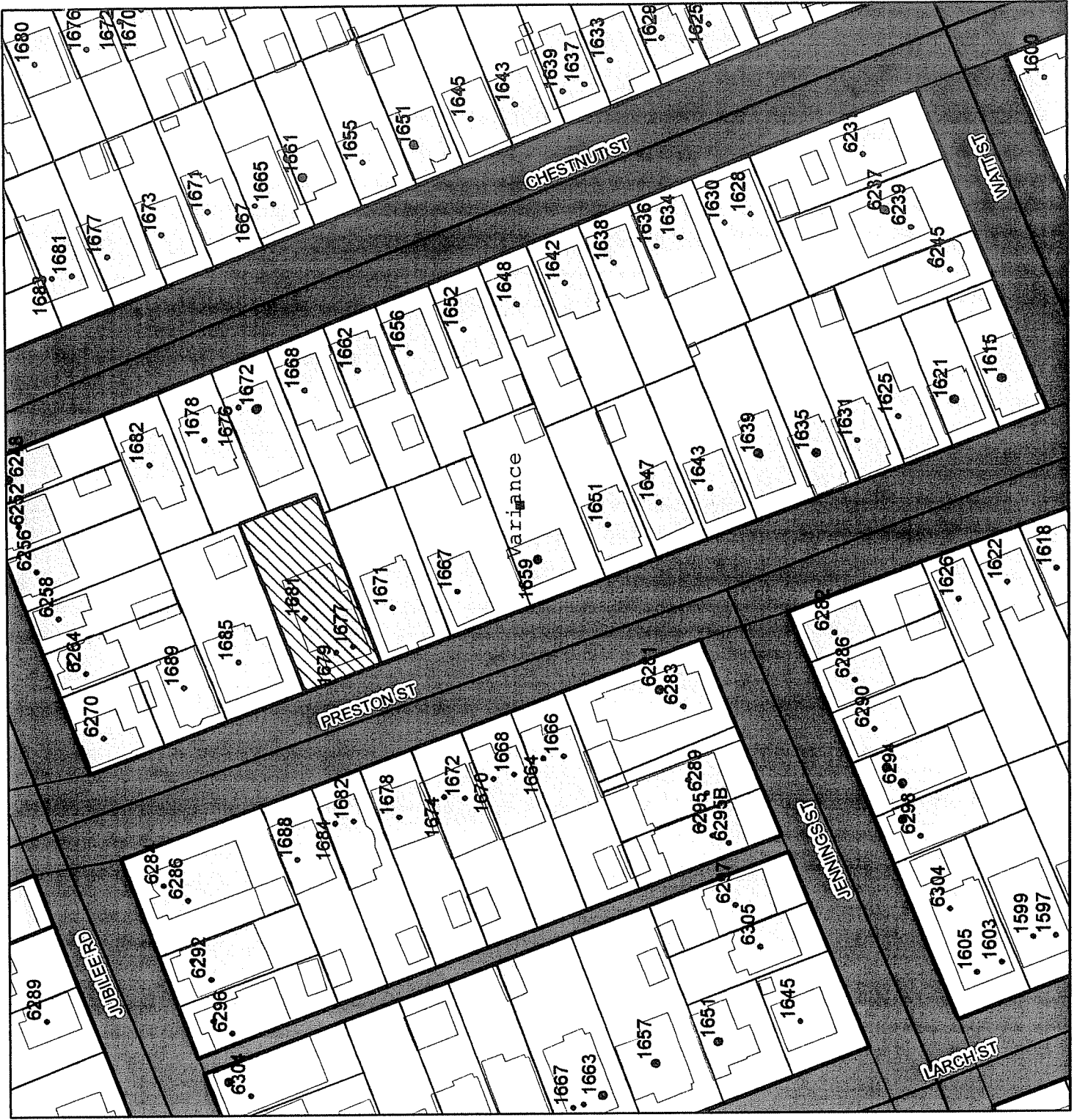
1. Location Map
2. Appeal letter
3. Site Plan

INFORMATION BLOCK

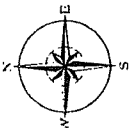
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Brenda Seymour, Development Technician 490-4046.

Attachment # 1



**Variance
for 1659
Preston St**



1:1,000

User: Brenda Seymour
Print Date: Sep 24, 2009

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(GSA) data please contact HRM Civic Addressing at 490-5347 or email civcadd@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 490-4484 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.

RECEIVED AUG 28 2009

From

Chris Simms
1659 Preston St
Hfx, N.S.
B3H 3V3

To

Municipal Clerk
c/o Andrew Faulkner, Development Officer,
Halifax Regional Municipality
Development Service – Western Region
P.O. Box 1949

Re: Variance application 15529

I wish to appeal the refusal of my variance for 1659 Preston St.

The August 19th, 2009 letter of refusal asks that I provide the reasons for my appeal.

Brenda Seymour told me that this is not necessary.

I object to the outcome about which I feel misled;

I object to the process which is seriously flawed

I object to the inputs which are truly worrisome.

I object to the quality of the communications process which too is flawed.

Sincerely



Chris Simms

DATE: September 16, 2009

SUBJECT: Application for Variance, File No. 15529 - 1659 Preston St, Halifax

SITE PLAN

To vary sideyard setback from 5 ft to 1ft 4 inches.
Proposal to convert from single unit dwelling to two unit dwelling.

