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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
November 8, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner, Development Officer

DATE: October 25, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 5516 Stairs Pl., Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the setback and lot coverage requirements of the Halifax Peninsula Land Use By-law to permit the construction of a carport and a shed.

RECOMMENDATION

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

BACKGROUND

The proposal is to construct a 12X16 foot carport within the side yard as well as a 3X11 foot shed, also in the side yard of a townhouse dwelling.

The property is zoned is R-2 (General Residential Zone) in the Halifax Peninsula Land Use By-Law and is located in the Hydrostone neighbourhood - although it is not a registered heritage property.

The existing dwelling covers approximately 32% of the lot. With the addition of the carport and the shed, the lot coverage increases to 41% - the permitted maximum is 35% (See attachment 1).

In addition, the required setback for both the carport and the shed is 4 feet from the side property line. The proposal is approximately 2 feet from the boundary (See attachment 1).

The immediate neighbourhood is comprised of townhouse dwellings. There are several properties where a garage or shed is located in the side yard, however those additions either predate zoning requirements, or no records of their construction were found.

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 townhouse dwellings which generally comply with the setback and lot coverage requirements. Continuing to adhere to lot coverage and setback requirements results in a neighbourhood with dwellings of a similar size, location and style which is encouraged through this policy.

To permit the variance would be inconsistent with the intent of the land use bylaw. The variance was refused based on this criteria.

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 2). Mapping shows that the majority of the properties in the immediate neighbourhood are located at similar setbacks as the subject property. Neighbouring properties would have a similar difficulty in locating a carport/garage and shed in the side yard.

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.

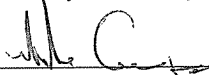
ALTERNATIVES

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. Neighbourhood Site Plan

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.

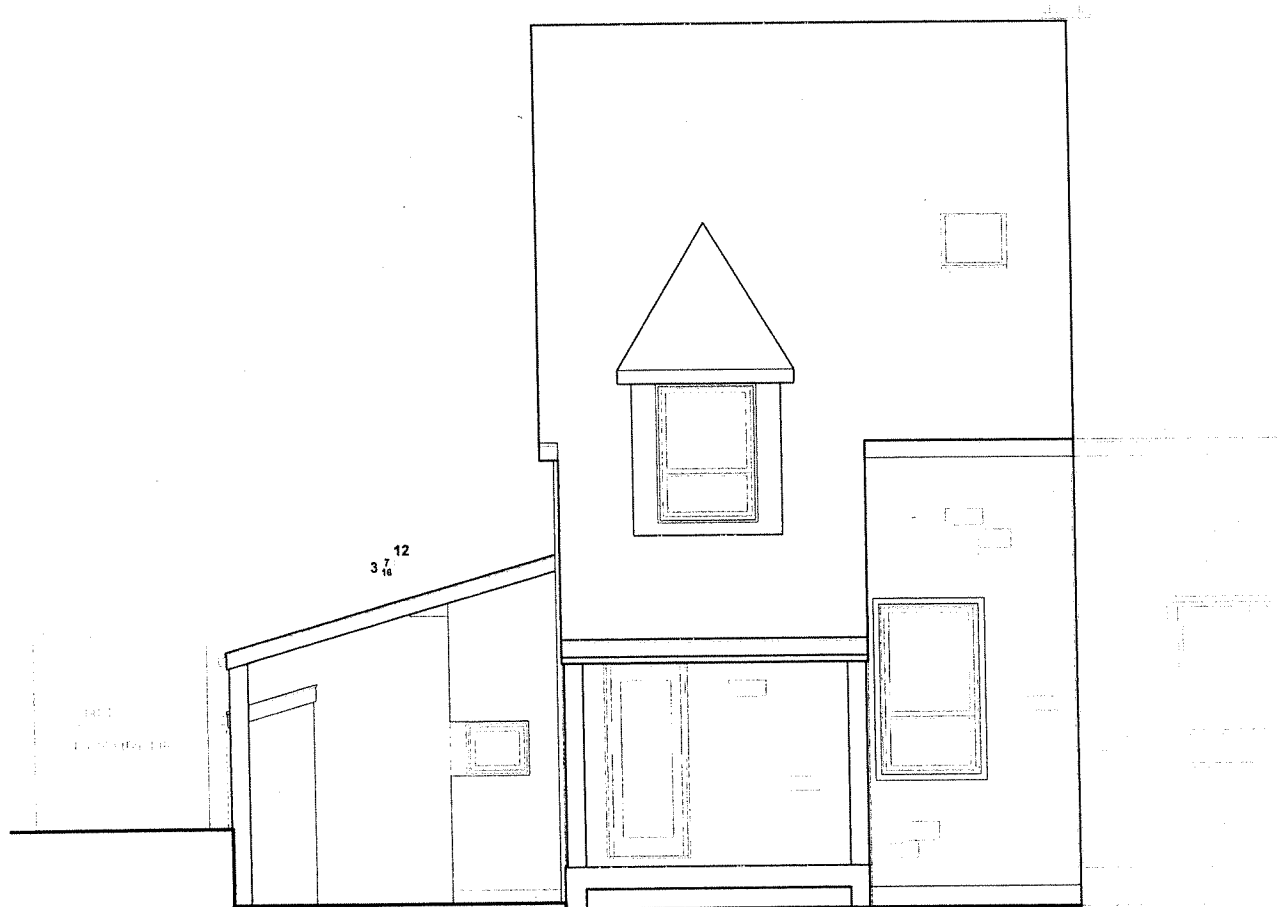
Report Prepared by : 
Mike Cowper - Development Technician (490-7455)

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

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Attachment 1 (2 sheets)



NORTH ELEVATION

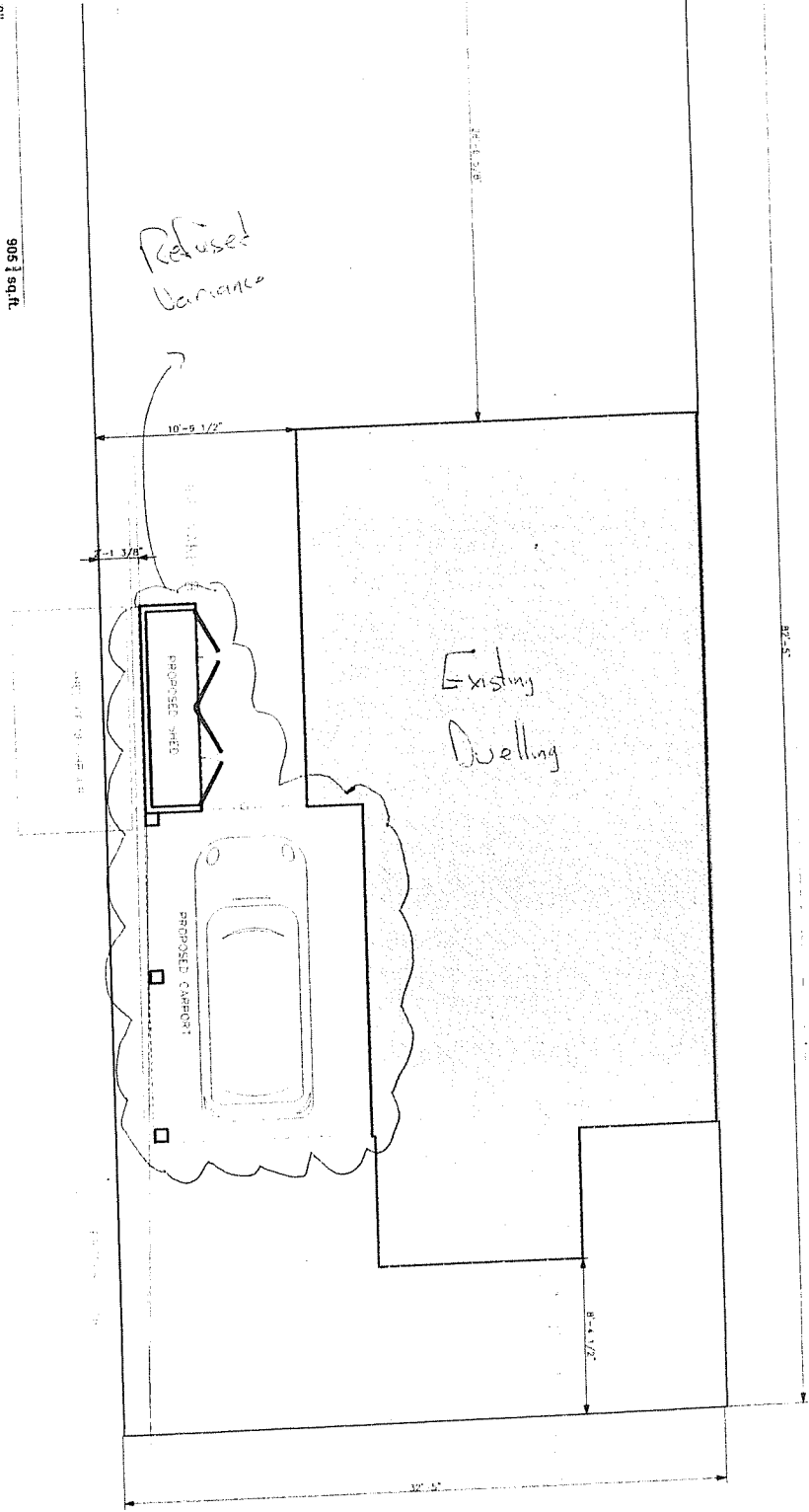
scale: $\frac{3}{16}'' = 1'0''$

DATE: 2010.10.25



905 sq. ft.

Refused
Variance

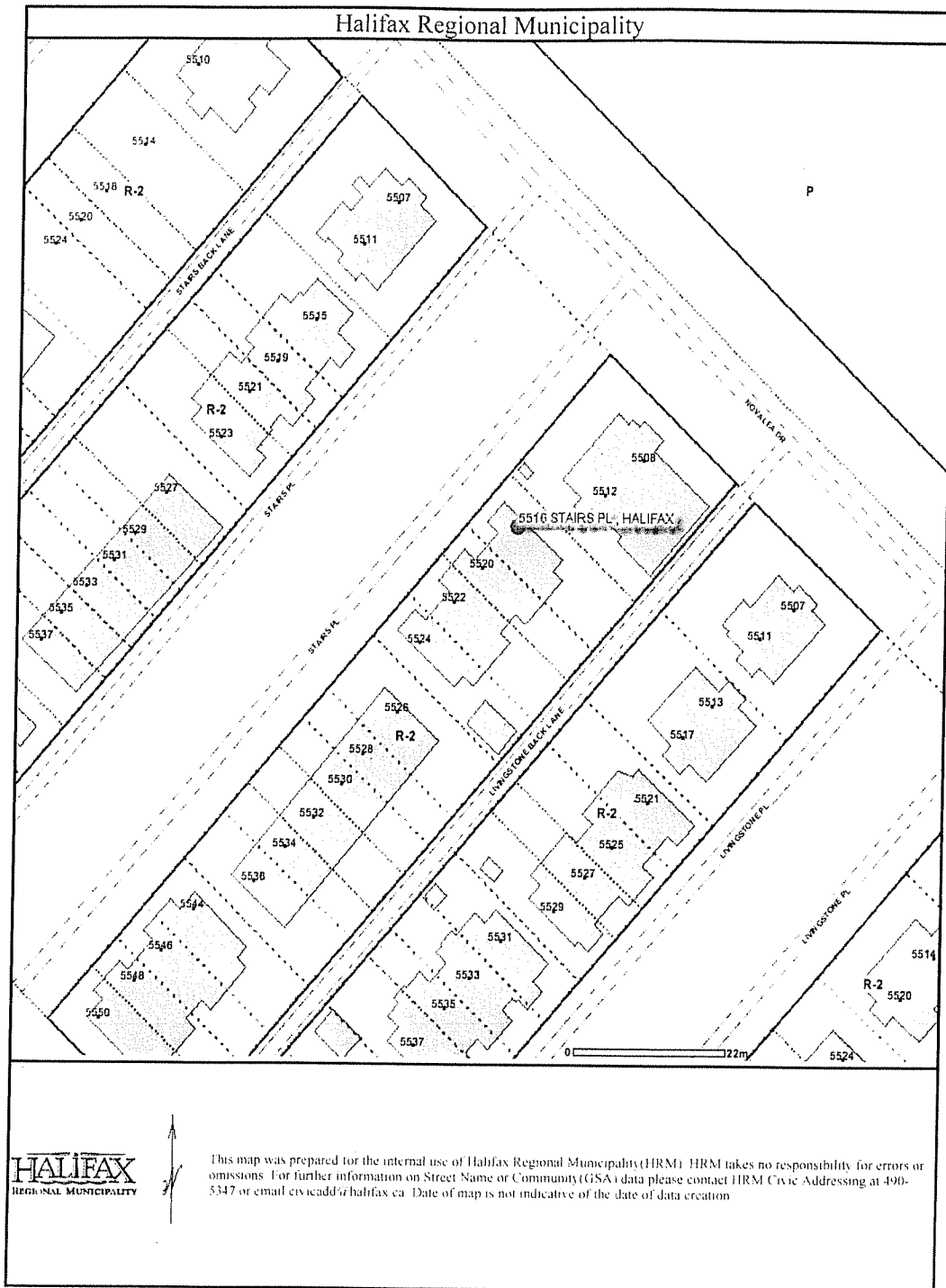


← Stairs Floor →

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Attachment 2



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 civcadd@halifax.ca. Date of map is not indicative of the date of data creation.