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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
September 13, 2010

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: September 2, 2010

SUBJECT: Appeal of the Development Officer's decision to approve an application
for a Variance at 1747 Rosebank Ave, Halifax

STAFF REPORT

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance of the gross floor area and a left side setback reduction for a single unit dwelling at 1747 Rosebank Ave, Halifax

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned R-1, Single Family Dwelling Zone under the Land Use By-Law for Halifax Peninsula, the secondary plan is Peninsula Centre.

Existing Use:

The current use of the property is a single family dwelling. The lot area is approximately 6,180 square feet. The existing dwelling does not exceed the gross floor area maximum which is 3,399 square feet.

Proposal:

The owner of the property wishes to build an addition to the side and rear of the existing dwelling. This addition is for a staircase, family room, recreation room and to increase the size of the master bedroom. The proposal did not meet two of the Land Use By-Law criteria, a) gross floor area and b) side yard setback.

A Variance was requested to increase the gross floor area of the dwelling to 3,853.93 square feet which is 454.93 square feet above the allowable floor area. In addition, a reduction to the left side setback was requested. The required setback is 10% of the lot frontage which is 5.1 feet. The owner is requesting a reduced setback of 4.2 feet.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria 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 criteria. 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 ?

- The Land Use Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The intent of the gross floor area is to control dwellings containing an excessive number of bedrooms and large dwellings on small lots.

- The gross floor area allowed is 3,399 square feet, the variance requested is 3,853.93 square feet .
- There are no additional bedrooms proposed and the gross floor area appears to be consistent with nearby properties.
- The required left side setback is 5.1 (10% percent of the frontage) The variance requested is 4.2 which is less than 1 foot and equals a 8.2% setback.
- It is not felt that either request violates the intent of the land use by-law

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

- A portion of the addition contains a side staircase. The owner has indicated they are constructing a new staircase because the existing stairs are very steep. They have also indicated that there have been accidents where people have fallen down the stairs and for safety reasons they would like to move the stairs to the left side of the house.
- The Development Officer feels that this is a unique circumstance which is not general to the properties in the area.

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

- The property owner has applied for the necessary permits and Variance request. No construction has started and it is not felt that this results in intentional disregard for the requirements of the land use by-law.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the Variance was approved as it was determined not to be contrary to the provisions of the Halifax Charter.

As per the requirements outlined in the Halifax Charter, all property owners have been notified within 30 meters. One appeal was received (Attachment 3) . The appeal letter indicates that they have concerns for safety, privacy and peace and enjoyment of their property. Also there is a concern raised about the property line survey. A location certificate was provided by the owner in order to clarify this concern.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the

utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The procedure for public notification is mandated by the HRM Charter. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to speak to staff's recommendation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to approve the Variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the Variance request.

ATTACHMENTS

1. Site plan
2. Approval Letter
3. Appeal Letter
4. Location Certificate

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: Laura Walsh, Development Technician (490-4462)

Report Approved by: Sean Audas, Development Officer (490-4341)

Halifax Regional Municipality





July 12 , 2010

Geoffrey Goss
1747 Rosebank Ave
Halifax, NS B3H 4C5

Dear Sir:

RE: Variance Application #16265, 1747 Rosebank Ave, Halifax, N.S.

As the Development Officer for the Halifax Regional Municipality, I have approved your request for a variance from the requirement(s) of the land use bylaw as follows:

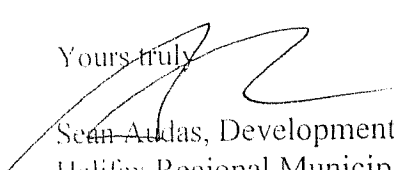
Location:	1747 Rosebank Ave, Halifax, Nova Scotia
Project proposal:	Addition to Single Unit Dwelling
Required (i.e setback):	Gross floor Area 3399 square feet & 5.1 foot left side setback
Approved (i.e. setback):	Gross Floor Area 3853.93 square feet & 4.2 foot left side setback

Pursuant to Section 251 of the Halifax Regional Municipality Charter Act, assessed property owners within 30 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before July 28, 2010.

PERMITS WILL NOT BE ISSUED UNTIL ANY APPEAL HAS BEEN DISPOSED OF OR THE APPEAL PERIOD HAS EXPIRED

If you have any questions or require clarification of any of the above, please call Laura Walsh - Development Technician at (902) 490-4462.

Yours truly,



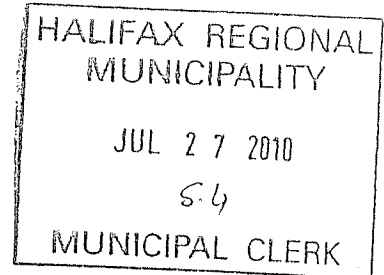
Sean Audas, Development Officer
Halifax Regional Municipality

cc: Councillor Sue Uteck , District 13
Cathy Mellet - Municipal Clerk.
Rick Brown - Building Inspector Supervisor.

H. Douglas Ritcey, Andrew G. Ritcey
1751 Rosebank Ave.
Halifax, NS, B3H 4C5

July 26, 2010

Cathy Mellet
Municipal Clerk.
Halifax Regional Municipality
PO Box 1749,
Halifax, NS, B3J 3A5



Dear Ms. Mellet:

Re: Variance Application # 16265, 1747 Rosebank Ave, Halifax, NS

As property owners for 1751 Rosebank Ave., the adjoining property to 1747 Rosebank Avenue, we hereby wish to appeal the variance from the requirement of the land use bylaw approved by the Development Officer for the applicants Geoffrey Goss and Joyce McCormack.

We feel the variance would negatively affect the safety, privacy, peace and enjoyment of our property. In addition given the age of the properties we are not confident the property lines are, or have been adequately surveyed to assure the addition is constructed in accordance with municipal land use bylaws.

If you have any questions or require further clarification please contact Andrew Ritcey at 477-1902.

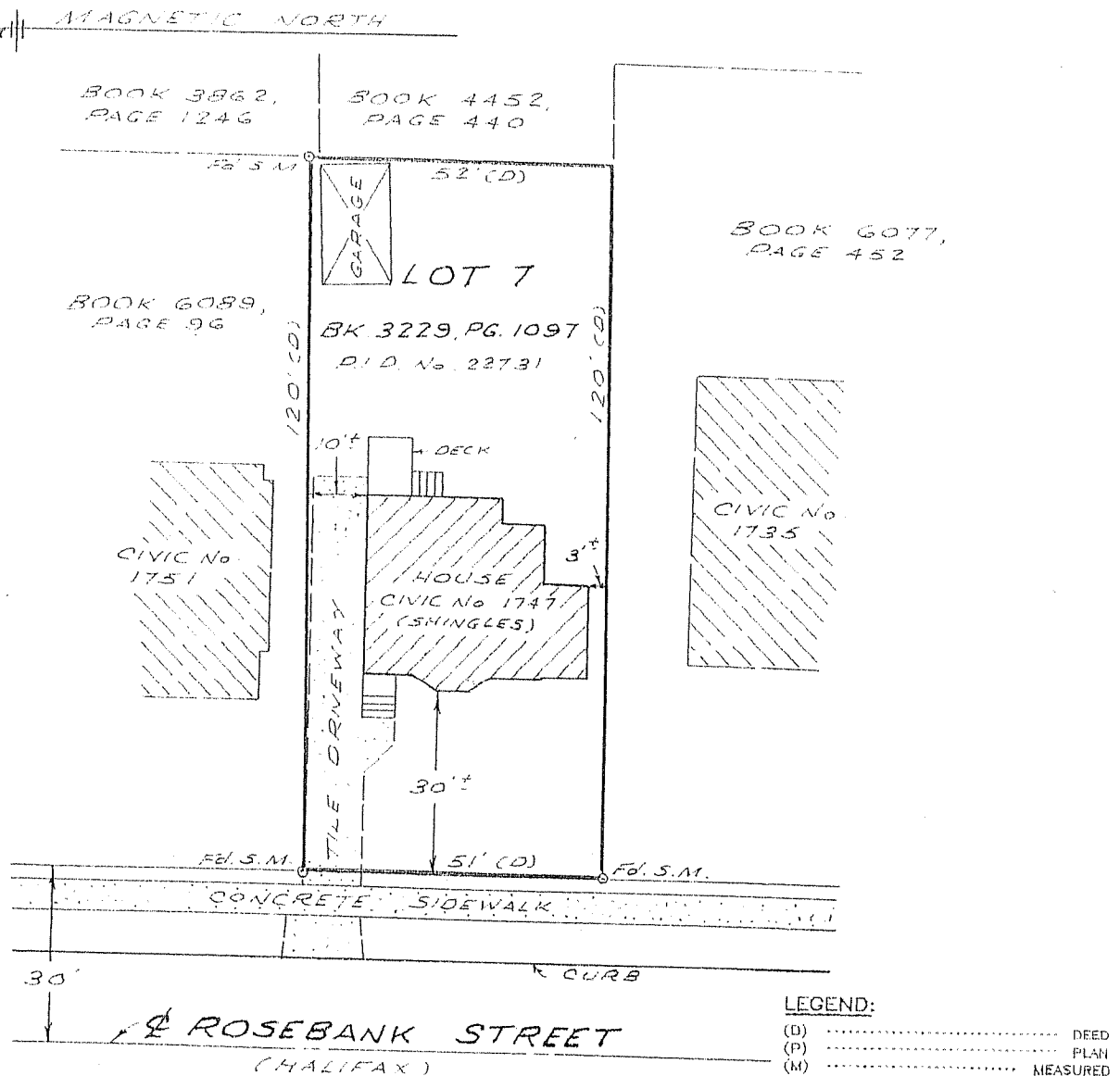
Sincerely,

A handwritten signature in black ink, appearing to read "Andrew G. Ritcey".

Andrew G. Ritcey

cc. Sean Audas, Development Officer
Councillor Sue Uteck
H. Douglas Ritcey
Charles D. Ritcey
Mary M. MacLeod

SURVEYOR'S LOCATION CERTIFICATE



FIELD SURVEYS WERE CARRIED OUT ON JUNE 5th, 2001

CERTIFIED TO: GEOFFREY GRAHAM GOSS AND JOYCE ANNE McCORMACK
C/o CROWE, DILLON, ROBINSON
BARRISTERS & SOLICITORS, HALIFAX, N.S.

RE: CIVIC No. 1747 ROSEBANK STREET, HALIFAX, NOVA SCOTIA

I HAVE SUPERVISED AN INSPECTION OF THE SUBJECT LANDS AND HAVE CAUSED SUCH MEASUREMENTS TO BE MADE AS I DEEMED NECESSARY TO CERTIFY THAT:

- (1) THE HOUSE SHOWN HEREON IS LOCATED ENTIRELY WITHIN THE BOUNDARIES OF THE SUBJECT LANDS AS SAID BOUNDARIES ARE DEFINED BY DOCUMENT FILED AT THE REGISTRY OF DEEDS, HALIFAX, IN BOOK 3229, PAGE 1097, AND PLAN FILED AS No. 133.
- (2) CULTURAL FEATURES SHOWN HEREON ARE LOCATED TO PLOTTING ACCURACY UNLESS SPECIFICALLY DIMENSIONED.
- (3) ALL EASEMENTS REFERRED TO IN THE DOCUMENT RECORDED IN BOOK , PAGE , AT HALIFAX ARE REFLECTED HEREON.

NO FURTHER CERTIFICATION OR ASSURANCE IS IMPLIED BY OR TO BE INFERRED FROM THIS DOCUMENT.