



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax and West Community Council
June 10, 2013

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY: _____
Brad Anguish, Director, Community and Recreation Services

DATE: May 24, 2013

SUBJECT: **Case No. 18170: Appeal of Variance Refusal – 6168 North Street,
Halifax**

ORIGIN

Appeal of the Development Officer's decision to refuse a request for variance.

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

A variance request has been submitted for the property at 6168 North Street to permit the existing building to be expanded and converted to a two unit dwelling. In order to facilitate this project, three variances have been requested to relax the minimum lot area, lot frontage and side yard requirements. The property is currently developed with a single unit dwelling and a permit has been issued for renovations relating to the existing single unit dwelling and a small addition to the front elevation.

Site Details:

Zoning: R-2 (General Residential Zone), Halifax Peninsula Land Use By-law
Peninsula North Secondary Plan Area, Sub Area 3

	Zone Requirement	Variance Requested
Minimum Lot Area	5,000 sq. ft.	3,300 sq. ft.
Minimum Lot Frontage	50 feet	33.27 feet
Minimum Left Side Yard	5 feet	2.79 feet

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment C). The applicant subsequently filed an appeal of the refusal on December 3, 2012 (Attachment A). The matter is now before Halifax and West Community Council for decision.

DISCUSSION

Development Officer’s Assessment of Variance Requests:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

- “250(3) *“A variance may not be granted if:*
(a) the variance violates the intent of the development agreement or land use by-law;
(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 development agreement or land use by-law.”

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

It is the Development Officer's opinion that this proposal violates the intent of the Land Use By-law. The applicant is proposing to renovate and expand the existing dwelling and create a second dwelling unit. The lot does not meet the area and frontage requirements of the Land Use By-law for a two unit dwelling. The R-2 zone requires a lot size of 5,000 sq. ft. and 50 feet of street frontage. This lot is 3,300 sq. ft. with 33.27 feet of street frontage. The R-2 Zone requires a larger lot for increased density. A larger lot provides area for green space, access and parking. Also, the wider lot width of fifty (50) feet provides sufficient area for driveway access and parking. There is an inherent visual benefit to the streetscape with wider, larger lots with increased landscaping along the front yard as opposed to a row of vehicles and asphalt paving.

The R-2 Zone side yard requirements also increase to 5 feet for two unit dwelling instead of the 4 feet which is required for single unit dwellings. The existing structure is located 2.79 feet from the left side property line. This is an existing non-conforming yard for a single unit dwelling. The applicant now wishes to increase density within the dwelling but the increased side yard requirement of 5 feet cannot be met.

There are specific provisions within the R-2 Zone for properties located in Peninsula North which provide for the internal conversion to a two unit dwelling based on certain criteria. Where the applicant is proposing to construct an addition to the dwelling, the internal conversion criteria do not apply. It is the Development Officer's opinion that this request violates the intent of the Land Use By-law as the By-law provides the ability to create an additional dwelling unit through internal conversion and without the need for a variance.

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

Although not specified in the original variance refusal letter, properties within the notification area are developed with a variety of land uses including single, two and three unit dwellings, as well as mixed commercial and residential. A comparison of properties with such a variety of uses is difficult, however, the lots that contain single and two unit dwellings are similar to that of the subject property. On that basis, the difficulty experienced relative to the requested variance (lot configuration) is general to properties in the area.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case in this request. The applicant has applied for a Development Permit in good faith and requested the variance prior to commencing any work on the property. The only work being conducted is for renovations to the existing single unit dwelling for which

the necessary permits have been issued. Intentional disregard of the By-law requirements was not a consideration in the refusal of the variance requests.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the applicant has raised certain points in their letter of appeal (Attachment A) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
The applicant indicates that the building volume is being increased by only 8% with the proposed addition. The purpose is to provide for a new bathroom and a proper vestibule for weather protection. There is also a small addition at the rear with decking above.	In the R-2 Zone, Peninsula North is provided with a specific clause (43I) which allows for a two unit internal conversion. This is specific to Peninsula North and provides for a reduction in the zoning standards. The criteria are specific; no increase in height or volume to the building, one dwelling unit must contain two or more bedrooms, and a parking space must be provided for each unit. This provision allows flexibility to the property owner in order to increase density within the existing building, however, it is clear that an increase in building height or volume is prohibited.
The appeal letter also outlines larger density projects nearby and it is felt that this project would be in keeping with the surrounding density.	The applicant correctly identifies that there are larger scale development projects within the immediate neighbourhood. Some of these development projects have gone through a comprehensive development agreement process, with an analysis on traffic, water and sewer capacity and density mixes. This project is not subject to that type of flexible discretionary approval process but is subject to the more prescriptive requirements of the Land Use By-law as outlined in this report.

Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were refused as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a Variance refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant and all assessed owners within 30 meters of the variance to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance.
2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

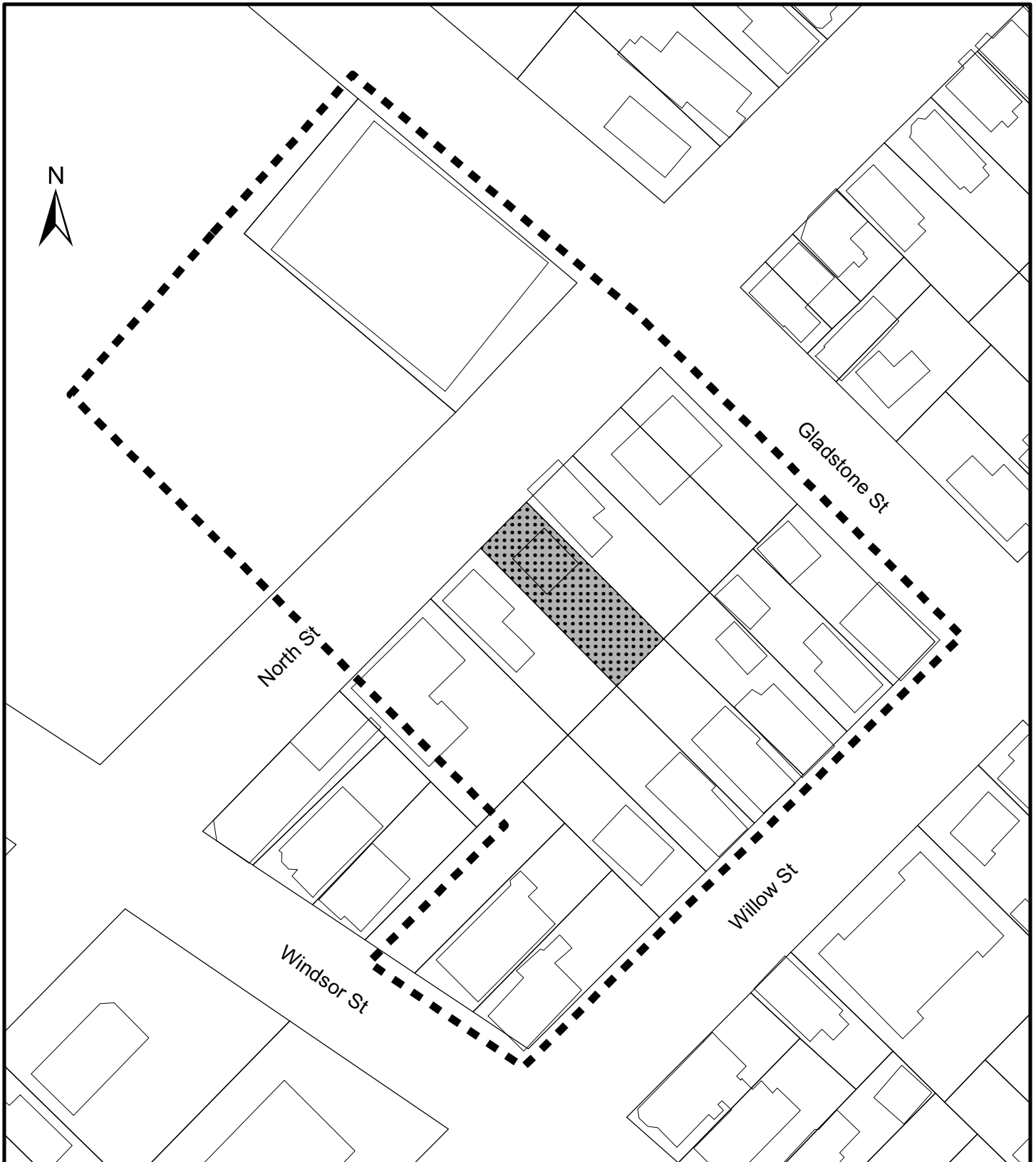
Map 1 – Notification Area
Map 2 – Site Plan
Attachment A – Letter of Appeal from the Applicant
Attachment B – Building Elevations Plans
Attachment C – Variance Refusal Letter

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 : Erin MacIntyre, Development Technician, 490-4338
Sean Audas, Development Officer, 490-4402

Original Signed

Report Approved by:  Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Notification Area

6168 North Street
Halifax



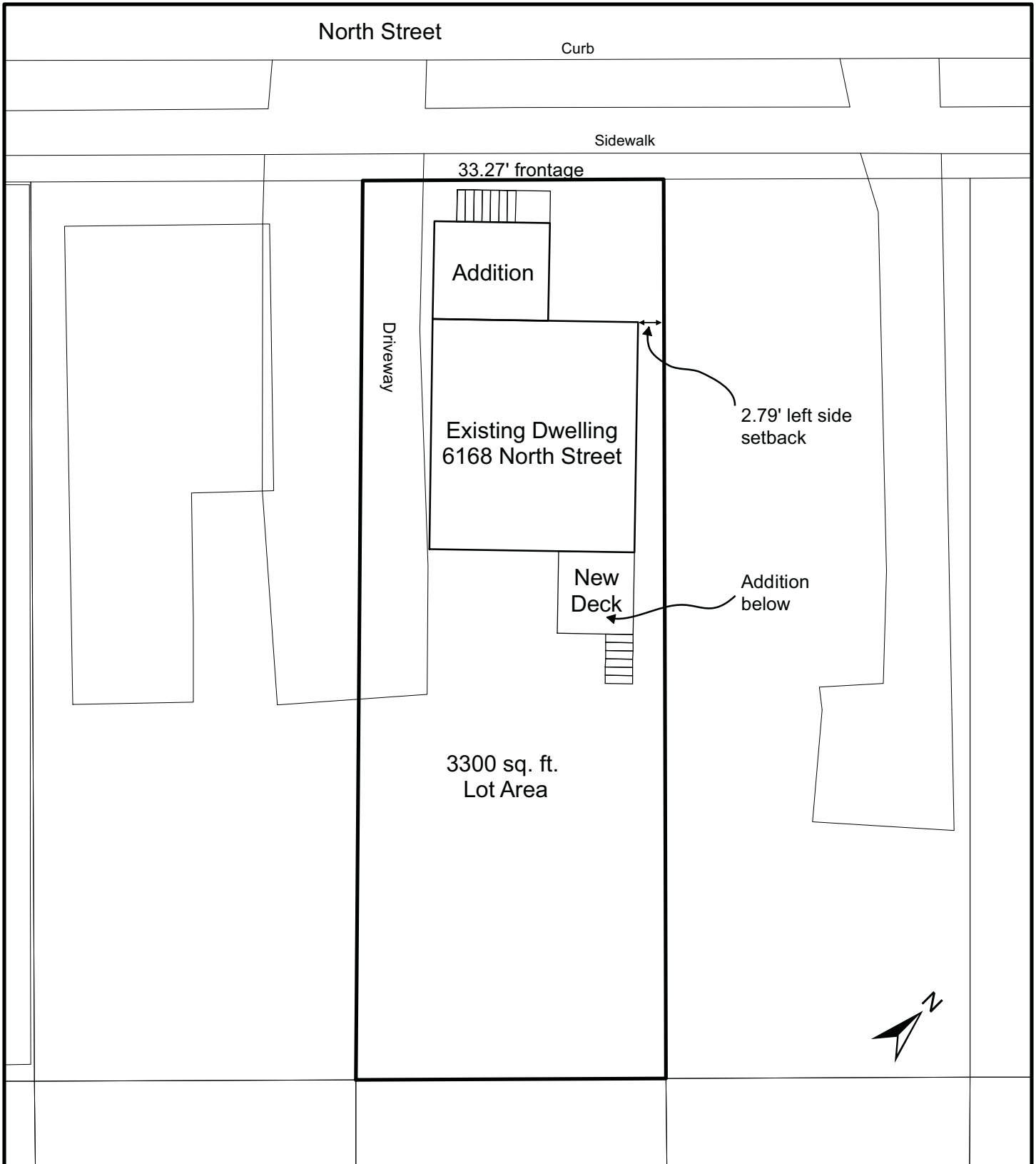
Subject Property



Notification Area



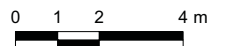
HRM does not guarantee the accuracy of any representation on this plan.



Map 2 - Site Plan

6168 North Street
Halifax

	Requirement	Proposed
Minimum Lot Area	5,000 sq ft	3,300 sq ft
Minimum Lot Frontage	50 feet	33.27 feet
Minimum Left Side Yard	5 feet	2.79 feet



HRM does not guarantee the accuracy of any representation on this plan.



PLANET POSITIVE Investments Inc.

RECEIVED DEC 03 2012

December 3, 2011

Cathy Mellett, Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5

RE: Application for Variance - 6168 North Street, Halifax - PID 00145755

Dear Cathy Mellett,

Please accept this letter of appeal in response to the refusal of our request for variance of the Halifax Peninsula Land Use Bylaws for 6168 North Street in Halifax. The application submitted was for a variance of the required lot area, lot frontage and side yard for the conversion of an existing single family house to a two unit house. The objective of this renovation is to provide a more energy conscious, safe and affordable living environment to renters.

The letter we received from Sean Audas, cites that we do not meet the lot requirements according to the bylaws, hence the application for variance. The Peninsula North Area the By-law states that the requirements for an R-2 zoned property are a minimum lot area of 3,000 square feet, a minimum lot frontage of 30 feet and a minimum side yard of 4 feet. We meet the requirements for Peninsula North, except for an existing side yard setback on the north east property boundary and one too many habitable rooms. Although the general R-2 Land Use Bylaw requires no increase in volume, we are increasing the building volume by only 8%. The new addition to the front of the house adds a new bathroom and a proper vestibule for weather protection of each unit. With this addition, the facade will be brought forward, giving each unit a street frontage and adding to the streetscape. The small addition to the back of the house is a utility room underneath a deck, to house the heating equipment and add space for bike storage. The minimal increase in volume is one of the reasons for our appeal. Attached is a reference to what we believe are relevant policies for this project, from the Halifax Municipal Planning Strategy.

The property is located in Area 3 of the Peninsula North Planning Area, and is designated in the Halifax Municipal Planning Strategy as a medium-density residential area. There are 14 properties within a 30 meter radius of each of our property corners, with the average property area being 3,536 square feet. From observation, the existing residential buildings in the neighbourhood range from single family homes, to multiple unit converted houses. Located across the street from the property is a large grocery store, Sobeys', and the Gladstone Professional Centre, which is 46,616 square feet over four floors. A five minute walk from the property brings you to The Westwood on Gladstone Street, a 149 rental unit building, which opened in 2008. With close proximity to amenities and public transit, and through observation of the increasing neighbourhood density, we believe this property can handle an increase in density in keeping with the density of surrounding properties.

Under Section 2 (page 6) the Halifax Municipal Planning Strategy states "The provision and maintenance of diverse and high quality housing in adequate amounts, in safe residential environments, at prices which residents can afford." With this project we are attempting to renew an existing structure, by improving the insulation and replacing the windows, attempting to reuse and recycle existing cladding and finishes, and introducing a more efficient heating systems to the building. With these changes, the house will become a more comfortable and affordable place to live in, as a prime example of 'density done well'.

Sincerely,

Original Signed

Thomas Emodi
Planet Positive Investments Inc.
+1.902.489.5080



PLANET POSITIVE Investments Inc.

Notwithstanding the applicable regulations within the Halifax Peninsula Land Use Bylaw, the following policies from the Halifax Municipal Planning Strategy were used to guide development on the site for 6168 North Street, Halifax, NS.

**SECTION I
BASIC APPROACH AND OVERALL OBJECTIVE**

The overall objective of the Halifax Municipal Development Plan and for ongoing planning is:

The enhancement of the physical, social, and economic well-being of the citizenry of Halifax through the preservation, creation, and maintenance of an interesting and livable City, developed at a scale and density which preserve and enhance the quality of life.

**SECTION II
CITY-WIDE OBJECTIVES AND POLICIES**

...

2. RESIDENTIAL ENVIRONMENTS

2.1

2.1.1

...

2.2

2.3

**SECTION XI
PENINSULA NORTH SECONDARY PLANNING STRATEGY**

1. RESIDENTIAL ENVIRONMENTS

1.1

1.1.1

1.3

1.3.1

...

6. ENVIRONMENT

6.1

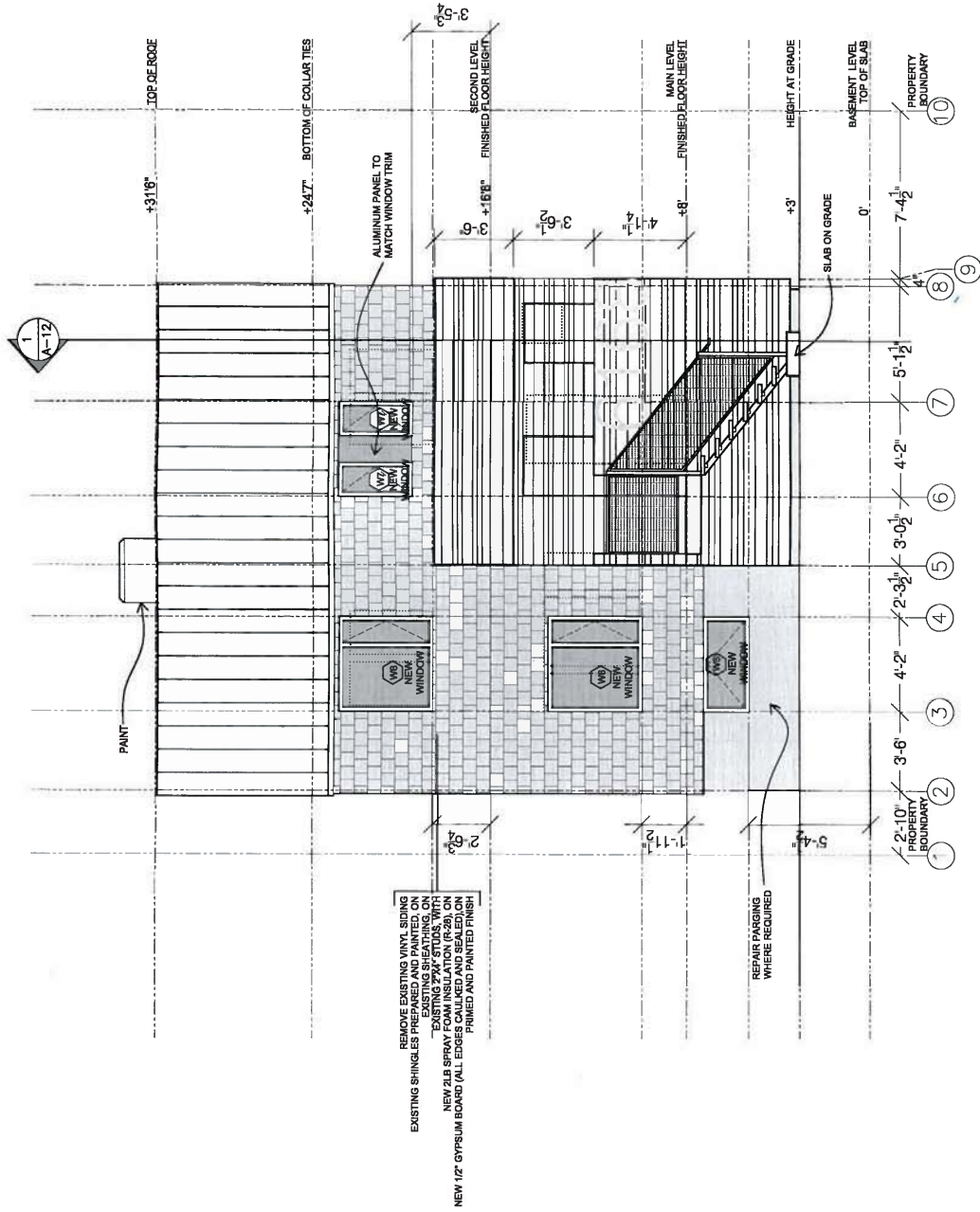
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10. GENERALIZED FUTURE LAND USE MAP

10.1

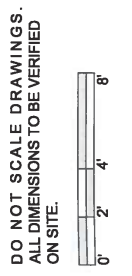
10.2

Attachment B - Building Elevation Plans



DO NOT SCALE DRAWINGS. ALL DIMENSIONS TO BE VERIFIED ON SITE.

REVISION:	DATE:



DPW	10/17/2012
DATE:	3/16" = 1'-0"
SCALE:	

CLIENT NAME:	PLANET POSITIVE
CLIENT CONTACT:	8188 NORTH STREET
PROJECT ADDRESS:	

DRAWING:	PROPOSED NORTH ELEVATION
PROJECT NO:	2012.TEAL.003
PROJECT NAME:	NORTH STREET

DRAWING NO: **A-8**



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

November 21, 2012

Planet Positive Investments Inc.
c/o Tom Emodi
5880 Spring Garden Road
Halifax, NS
B3H 1Y1

Dear Mr. Emodi,

This letter is to advise that, as the Development Officer for the Halifax Regional Municipality, I have refused your request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw as follows:

Location: 6861 North Street, Halifax, NS, PID 00145755
Property Owner: PLANET POSITIVE INVESTMENTS INC.
Project Proposal: Creation of a second dwelling unit
Variance Requested:

	Requirement	Proposed
Lot Area	5,000 square feet	3,300 square feet
Lot Frontage	50 feet	33 feet
Side yard	5 feet	2.79 feet

Section 253 (3) of the Halifax Regional Municipal Charter states that:

No variance shall be granted where:

- (a) the variance violates the intent of the Land Use Bylaw;**
- (b) the difficulty experienced is general to properties in the area; or**
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.**

It is the opinion of the Development Officer that this variance application does not merit approval because the requested variance the proposed variance violates the intent of the Land Use Bylaw.

Pursuant to Section 251 (4) of the Halifax Regional Municipal Charter you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

COMMUNITY AND RECREATION SERVICES- DEVELOPMENT APPROVALS

Tel: (902) 490-4402 Fax: (902) 490-4645
E-mail: audass@halifax.ca Web Site: www.halifax.ca

**Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services- Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5**

Your appeal must be filed on or before December 3, 2012.

If you have any questions or require additional information, please contact Erin MacIntyre, Development Technician, at (902) 490- 4338.

Sincerely,

Original Signed

**Sean Audas, Development Officer
Halifax Regional Municipality**

cc. **Cathy Mellett, Municipal Clerk
Councillor Jennifer Watts- District 8**