

**Halifax and West Community Council**  
**August 7, 2013**

**TO:** Chair and Members of Halifax and West Community Council

**SUBMITTED BY:** Original Signed  
\_\_\_\_\_  
Brad Anguish, Director, Community and Recreation Services

**DATE:** July 22, 2013

**SUBJECT:** **Case No. 18445: Appeal of Variance Refusal – 2046 Oxford 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**

Variance requests have been submitted for the property at 2046 Oxford Street to permit the existing building to be renovated and expanded with a third storey addition for the purpose of converting the existing two unit dwelling to a four unit dwelling. In order to facilitate this project, four variances have been requested to relax the minimum lot area, lot frontage, side yard requirements and maximum gross floor area. The property is currently developed as a two unit dwelling.

**Site Details:**

**Zoning:** R-2 (General Residential Zone), Halifax Peninsula Land Use By-law

	<b>Zone Requirement</b>	<b>Variance Requested</b>
Minimum Lot Area	8,000 sq. ft.	5,635 sq. ft.
Minimum Lot Frontage	80 feet	54.5 feet
Minimum Left Side Yard	6 feet	4 feet
Minimum Right Side Yard	6 feet	3 feet
Maximum Gross Floor Area Ratio	3,300 sq. ft.	4, 805 sq. ft.

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment D). The applicant subsequently filed an appeal of the refusal on April 24, 2013 (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 By-law intends that lot sizes, building setbacks and gross floor area ratios should increase based on the number of residential units to be established on a property.

The applicant is proposing to convert the existing two unit dwelling to a four unit dwelling by renovating and expanding it with a third storey addition. The lot does not meet the area and frontage requirements of the Land Use By-law for a four unit apartment building. The R-2 Zone requires a lot size of 8,000 sq. ft. with 80 feet of street frontage. This lot is 5,635 sq. ft. in area with 54.5 feet of street frontage. The R-2 Zone requires a larger lot for increased density. A larger lot provides opportunity for natural green space, access and parking. Also, an increased lot width of 80 feet provides sufficient area for driveway access and parking. There is inherent benefit to the streetscape with wider, larger lots with increased landscaping along the front yard, as opposed to an area occupied by a row of vehicles and asphalt parking.

The R-2 Zone side yard requirements also increase to 6 feet for three and four unit apartment buildings from the 5 feet which is required for a two unit dwelling. The existing structure is located 4 feet from the left side property line. This is an existing non-conforming yard for a two unit dwelling. The existing structure is located 7.5 feet from the right side property line. The applicant proposes a stair case to be located within 3 feet of this required yard. The applicant wishes to increase density with the proposed addition and does not meet the increase side yard requirement of 6 feet.

The maximum residential gross floor area for properties in the R-2 Zone is directly proportionate to the lot area. This lot is 5,635 sq ft which results in a maximum gross floor area ratio of 3,300 sq ft. The proposed addition will result in a total gross floor area ratio of 4,805 sq ft. The gross floor area ratio requirements listed under the Halifax Peninsula Land Use Bylaw are intended to ensure the floor area of a residential building is limited by the area of the lot on which it is to be located.

As the proposal represents a reduction of the required lot frontage, area, setbacks, and gross floor area ratio, it is seen to violate the intent of the land use by-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The *HRM Charter* provides for notification to all assessed property owners within 30 metres of an approved or appealed variance request. Of the 19 properties within the notification area, 11 are single unit dwellings, 6 are two unit dwellings, one is a three unit apartment building, and one is a four unit apartment building. The existing lot sizes are similar to that of the subject property. Only 2 of the nineteen properties within the notification area contain more than two dwelling units. Based on the foregoing, the difficulty experienced 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 variance prior to commencing any work on the property. 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:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
1) The properties in the area, including civic numbers 2070 and 2072 are commercial with multiple units; civic numbers 2060, 2099 & 2088 have at least 5 units, maybe more". "The development officer did not take into consideration what is existing in the immediate area of the property.	Of the listed addresses, only civic number 2060 Oxford St. is within the notification boundary. The authorized use of civic number 2060 is a four unit apt. bldg. The authorized use for civic number 2070 is a non-conforming commercial bldg. and the authorized use for civic numbers 2072, 2088 and 2099 are two unit dwellings. A summary of the authorized uses within the notification boundary is noted under item 2 in Discussion above.
3) The charter states "if the variance violates the intent of the land use bylaw", the land use bylaw does allow for 4 units in this zone.	The applicant correctly points out that the R-2 Zone permits up to 4 unit dwellings, however, the requirements regarding lot area, lot frontage and setbacks increase with the number of units. This provides for a larger lot and increased setbacks for increased density.
7) The development officer did not take into consideration what is existing in the immediate area of the property.	Refer to item 2 in the Discussion section of this report.

Comments 2, 4, 5, 6, 8, 9 and 10.	These particular comments are not relevant to the criteria of the <i>HRM Charter</i> to be considered when granting a variance request.
-----------------------------------	---

**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 (Map 1).

**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	Existing Building Elevations
Attachment C	Proposed Building Elevations
Attachment D	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: Janice MacEwen, Development Technician, 490-4338  
Sean Audas, Development Officer, 490-4402

**Original Signed**

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

---



**Map 1 - Notification Area**

2046 Oxford Street  
Halifax



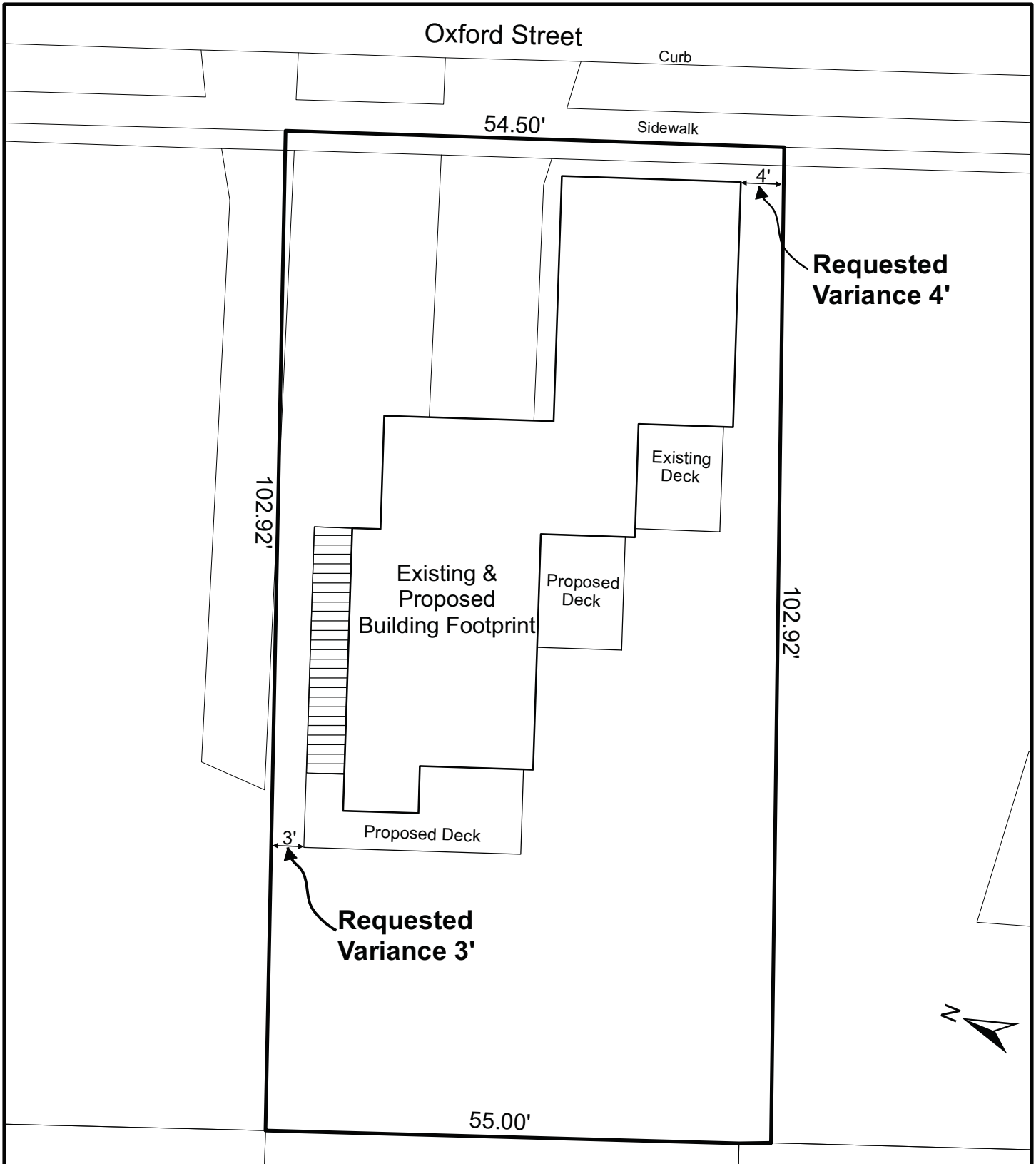
Subject Property



Notification Area

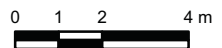


HRM does not guarantee the accuracy of any representation on this plan.



**Map 2 - Site Plan**

2046 Oxford Street  
Halifax



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





RECEIVED APR 26 2013

April 24<sup>th</sup>, 2013

Municipal Clerk  
C/O Sean Audas, Development Officer  
Halifax Regional Municipality  
Development Services – Western Region  
P. O. Box 1749  
Halifax, NS B3J 3A5

Re: Variance Application #18445, 2046 Oxford Street, Halifax, NS PID 00023846

Please let this serve as notice that I wish to appeal your denial to grant a variance on the following grounds:

- 1) The properties in the area including civic numbers 2070 and 2072 are commercial with multiple units; civic numbers 2060, 2099 & 2088 have at least 5 units, maybe more.
- 2) The look as proposed will fit in with all the homes in the general area, you will not be able to tell this is more than a 2 unit building.
- 3) The charter states "if the variance violates the intent of the land use by-law", the land use by-law does allow for 4 units in this zone.
- 4) The degree of variances are relatively small compared to other variances that have been granted in the area.
- 5) The merchants of Quinpool Road need quality residential to survive and keep Quinpool Road as a vibrant commercial district. This property is less than 200 meters from Quinpool Road.
- 6) The area is in need of change to survive. An example is civic # 2102, case #16958, proposed commercial space with residential units above which is 6 doors up.
- 7) The development officer did not take into consideration what is existing in the immediate area of the property.
- 8) I have adequate parking for what I am proposing.
- 9) Several other points I'll bring to your attention at the appeal.
- 10) It would be a waste of tax payers money to make me go through a Development Agreement just to obtain the 4 units on this property.

Sincerely,

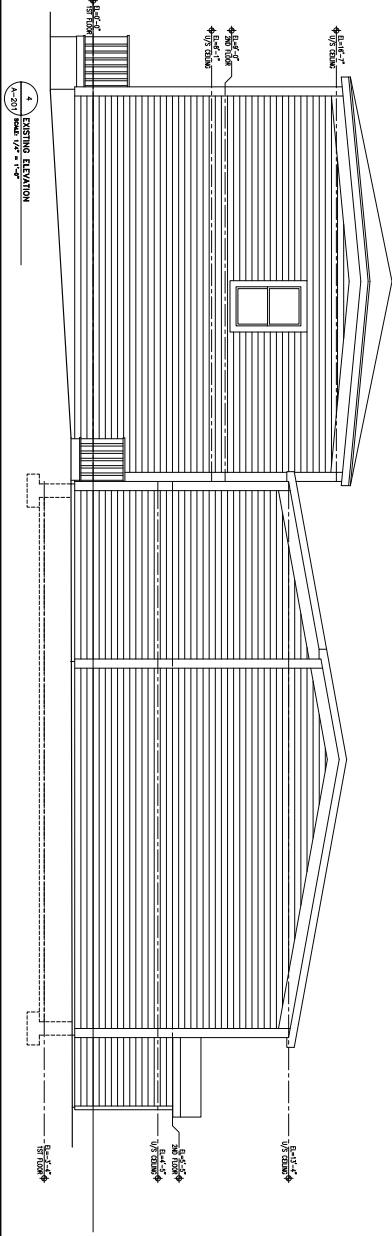
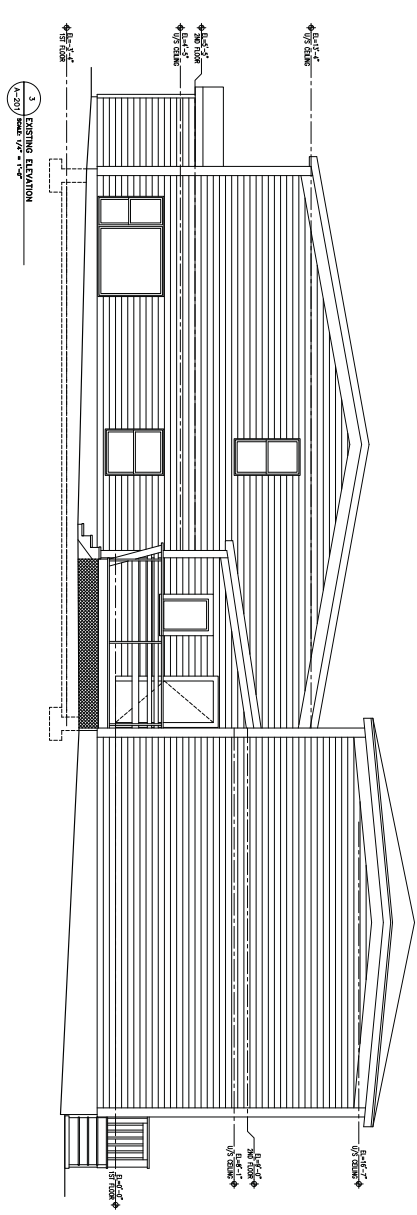
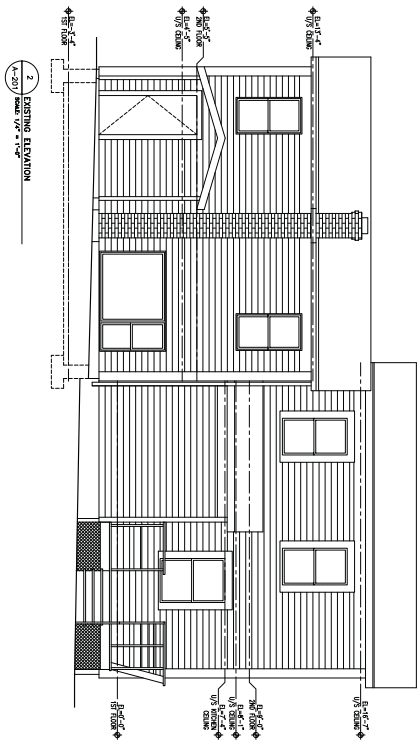
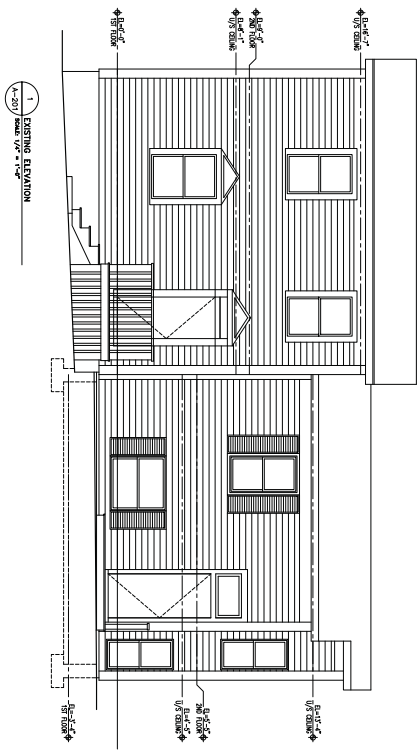
Original Signed

Clark Wilkins

PO Box 21047, Dartmouth NS  
B2W 6B2

Ph: (902) 444-3380  
Fax: (902) 434-0588

# Attachment B - Existing Building Elevations



NOTE: DO NOT SCALE DRAWINGS

key plan:

client:

contractor:

architect:



no.	revision	date
1	ISSUED FOR PERMIT	2013.02.22

project:  
**METRO PREMIER PROPERTIES**  
**4 UNIT APARTMENT**  
 2046 OXFORD STREET, HALIFAX, NOVA SCOTIA

date:  
26-FEB-2013

scale:  
1/4"=1'-0"

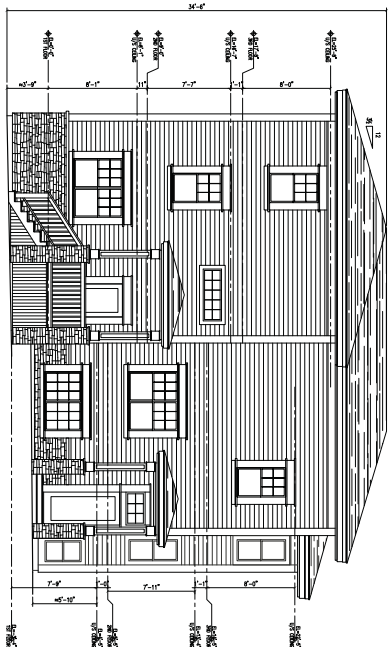
drawn by:  
TJ

designed by:

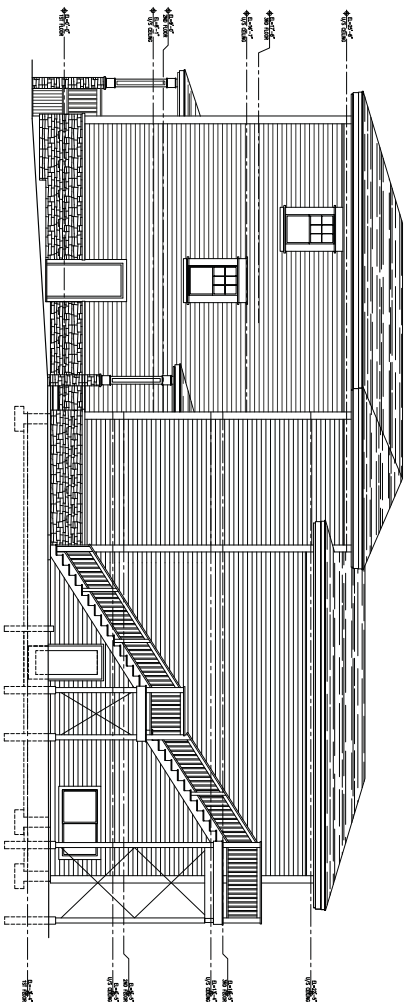
drawing title:  
**EXISTING BUILDING ELEVATIONS**

project no.:  
P1331-M

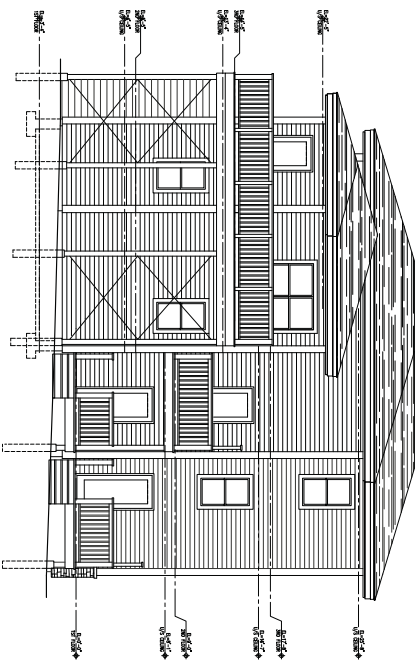
drawing no.:  
A-201



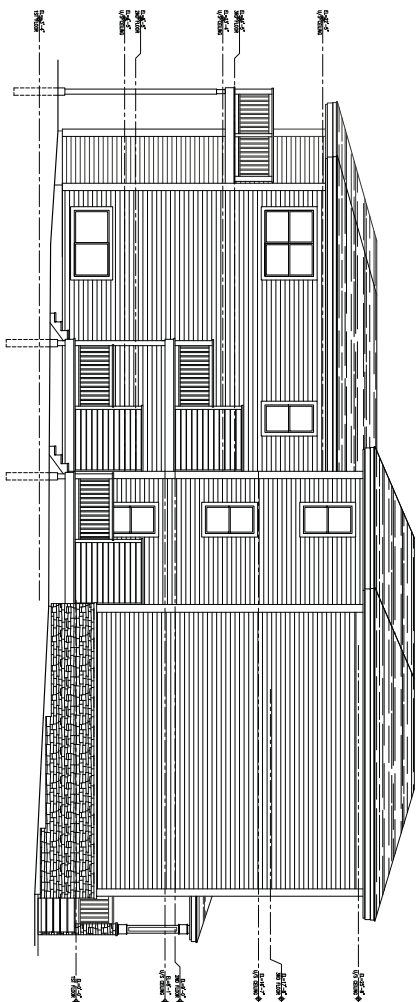
1 RENOVATED ELEVATION  
A-202 SCALE 3/16" = 1'-0"



2 RENOVATED ELEVATION  
A-202 SCALE 3/16" = 1'-0"



3 RENOVATED ELEVATION  
A-202 SCALE 3/16" = 1'-0"



4 RENOVATED ELEVATION  
A-202 SCALE 3/16" = 1'-0"

NOTE: DO NOT SCALE DRAWINGS

key plan:

client:

contractor:

architect:



no.	revision	date
1	ISSUED FOR PERMIT	2013.03.22

project:  
**METRO PREMIER PROPERTIES**  
 4 UNIT APARTMENT  
 2046 OXFORD STREET - HALIFAX, NOVA SCOTIA

date: 22-MAR-2013 stamp:  
 scale: 3/16" = 1'-0"  
 drawn by: TJJ / MPC  
 designed by: JMC  
 checked by: FLM

drawing title:  
**RENOVATED ELEVATIONS**

project no.: P1331-M drawing no.: A-202



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

April 16, 2013

Metro Premier Properties Inc.  
PO Box 21047  
Dartmouth NS B2W 6B2

Dear Applicant:

**Re: Case No. 18445- Variance at 2046 Oxford Street, Halifax, NS, PID 00023846**

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

**Location:** 2046 Oxford Street, Halifax, NS, PID 00023846  
**Property Owner:** Metro Premier Properties Inc.  
**Project Proposal:** Convert a Two Unit Dwelling to a Four Unit Apartment Building (Addition and Renovation)

**Variance Requested:**

	Requirement	Proposed
Lot Area	8,000 square feet	5,635 square feet
Lot Frontage	80 feet	54.5 feet
Left Side Yard	6 feet	4 feet
Right Side Yard	6 feet	3 feet
Gross Floor Area	3,300 square feet	4,805 square 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:

- (b) the proposed variance violates the intent of the Land Use Bylaw, and
- (c) the difficulty experienced is general to properties in the area.

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:

**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 April 26, 2011.**

If you have any questions or require additional information, please contact Janice MacEwen, Development Technician, at (902) 490- 3993.

Sincerely,

Original Signed

Sean Audas, Development Officer  
Halifax Regional Municipality

cc. Cathy Mellett, Municipal Clerk  
Councillor Linda Mosher, District 9

---

COMMUNITY AND RECREATION SERVICES- DEVELOPMENT APPROVALS

Tel: (902) 490-3993 Fax: (902) 490 4645  
E-mail: macewej@halifax.ca Web Site: www.halifax.ca