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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 24, 2013

SUBJECT: Case 18640: Appeal of Variance Refusal, 5691 Bilby Street, Halifax

ORIGIN

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

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 5691 Bilby Street to permit the existing building to be enlarged, renovated and converted to a three unit dwelling. In order to facilitate this project, three variances have been requested to relax the minimum lot area, lot frontage and left side yard setback requirements. The property is currently developed with a single unit dwelling.

Site Details:

Zoning: R-2 (General Residential) Zone, Peninsula North Area 5
Halifax Peninsula Land Use By-Law (LUB)

	Zone Requirement	Variance Requested
Min. Lot Frontage:	80 feet	33.33 feet
Minimum Lot Area:	8,000 sq. ft.	3,333 sq. ft.
Left Side Yard Setback:	6 feet	2.3 feet

On May 1, 2013, a Building Permit was issued to “Renovate Three Unit Dwelling” at 5691 Bilby Street, Halifax (Map 1). That permit was issued pursuant to section 43J of the LUB, which allows for the internal conversion of existing residential buildings to a maximum of four dwelling units regardless of setbacks, lot size and lot frontage provided that:

- 1) There is no increase in height or volume of the building; and
- 2) At least one of the units in the converted building contains two or more bedrooms.

The restriction on height and volume was noted on the face of the issued permit.

During an inspection on June 18, 2013, a Building Official found that the building had been raised three feet to accommodate the basement dwelling unit. This was contrary to the land use by-law and the construction plans submitted in support of the issued permit. An Order to Stop Work was posted on the property.

As the scope of work no longer falls under the internal conversion provisions of the R-2 Zone, it was necessary to apply the zone’s requirements for a three unit dwelling. Variance requests were then submitted to relax the minimum lot area, lot frontage and left side yard setback requirements for a three unit dwelling. The building meets all other applicable requirements of the LUB.

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variances (Attachment A). The applicant appealed the refusal and the matter is now before Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

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 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 does violate the intent of the Land Use By-Law. The intent of the internal conversion clauses in the LUB are stated in the Halifax Municipal Planning Strategy as:

- 1) To foster stable residential areas and to preserve the character of Peninsula North, the retention and rehabilitation of structurally sound housing units shall be encouraged.*
- 2) In Area 5 of this Section, the conversion of buildings existing on 14 July 1979 in the Medium Density Residential areas south of Russell Street (NIP III area), for more intensive residential uses shall be encouraged in order to promote investment in the existing residential buildings, and to strengthen the residential character of the area.*

Therefore, the original permit to convert the single unit dwelling to three units was consistent with the MPS intent. It retained and rehabilitated an existing building, thereby maintaining, preserving and strengthening the character of the neighbourhood.

However, altering the building to increase its height and volume on this lot is contrary to the MPS which states:

*2.4 Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, **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. [Emphasis added]

The neighbourhood consists primarily of two storey residential dwellings. The architectural styles are mixed in the neighbourhood, consisting of primarily two storey buildings. Raising the building at 5691 Bilby Street will create the only two and a half storey building (when viewed from the street) in the immediate area, which would be out of character with neighbouring properties. The variance was refused as it did not meet 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 R-2 Zone of the land use by-law permits a three unit dwelling on a lot that has a minimum area of 8,000 sq. ft. and a minimum lot frontage of 60 feet. There are no lots in the neighbourhood which meet this requirement and therefore, the difficulty experienced is general to properties in the area and the variance was refused.

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.

In this case a construction permit application was submitted and issued indicating conversion of an existing single unit dwelling to create a three unit dwelling. Raising a building is a major structural undertaking and there was no indication in the submitted building plans to indicate this work. Furthermore, the issued permit stated that no increase to the height or volume of the building is permitted.

The Development Officer believes that there was an intentional disregard for the requirements of the land use by-law and the variance was refused.

Conclusion:

Staff reviewed all the relevant information in this variance proposal. As a result of that review the variance request was refused as it was determined that the proposal conflicts 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 denial is appealed, a hearing is held by Council to provide the opportunity for the applicant and all assessed owners within 30 metres 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	Variance Refusal Letter
Attachment B	Letter of Appeal from the Applicant

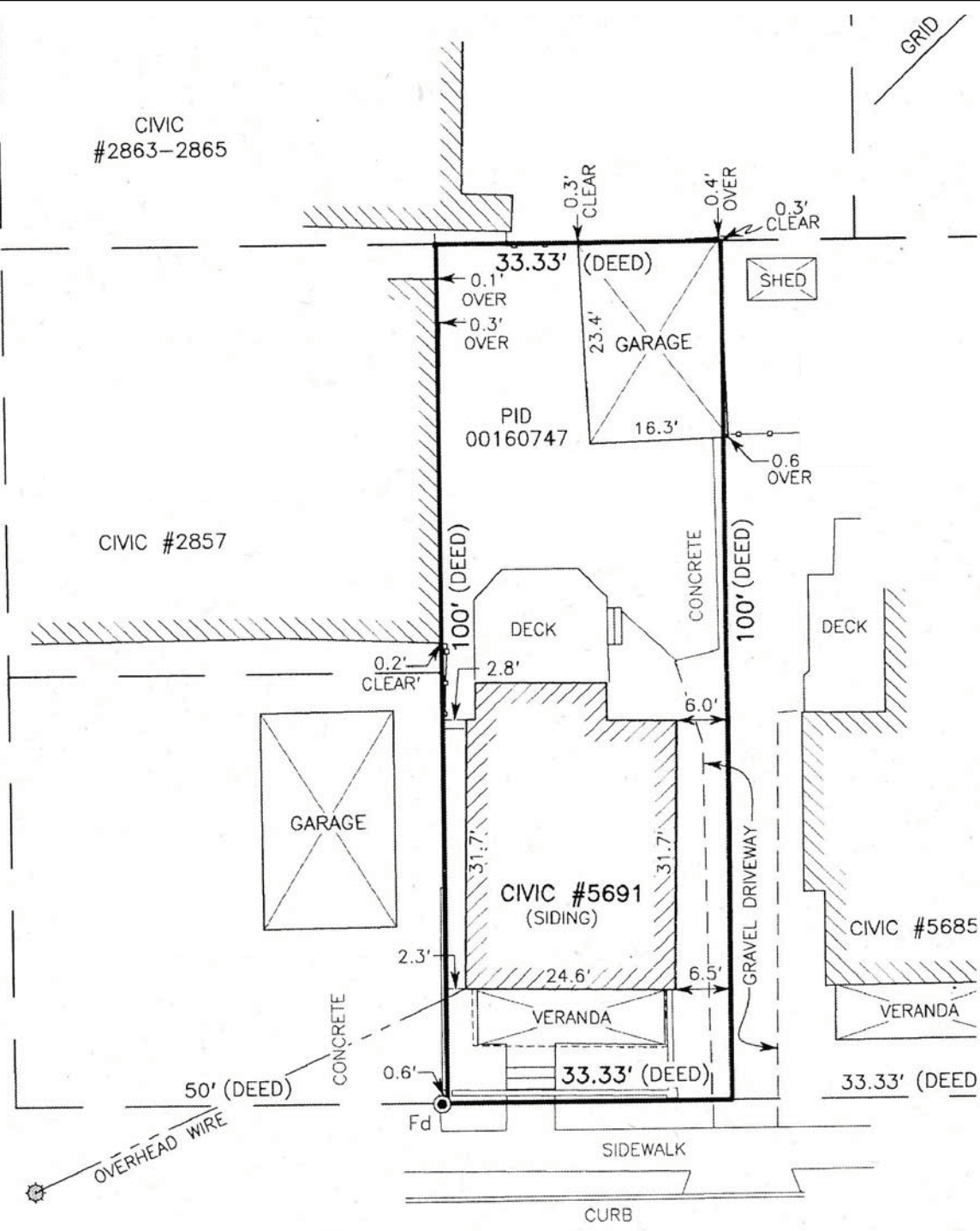
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andrew Faulkner, Development Officer, 490-4341

Original Signed

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

AGRICOLA STREET



BILBY STREET



Map 2 - Site Plan

5691 Bilby Street,
Halifax



Unknown Scale

HRM does not guarantee the accuracy of any base map information on this plan.

June 28, 2013

Allan Offman
6319 Cornwall Street
Halifax, NS
B3H 2J2

Mr. Offman

RE: Application for Variance, File 18640 – 5691 Bilby Street, Halifax, NS

This will advise that I have refused your request for variances from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

	Requirement	Refused
Lot frontage	80'	33.33'
Lot area	8,000 sq.ft.	3,333 sq.ft.
Left side yard setback	6 feet	2.3 feet

Section 250(3) of the *Halifax Regional Charter* states that:

No variance shall be granted if:

- (a) the variance violates the intent of the development agreement or 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 development agreement or land use bylaw

It is the opinion of the Development Officer that

- a) the variance violates the intent of the land use by-law.
- b) the difficulty experienced is general to properties in the area; and
- c) the difficulty experienced results from the intentional disregard for the requirements of the land use bylaw

Pursuant to Section 251(5) of the *Halifax Regional 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:

Andrew Faulkner, Development Officer c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Your appeal must be filed on or before July 8, 2013.

If you have any questions or require additional information, please contact Paul Boucher at 490-4321.

Sincerely,

Andrew Faulkner
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Jennifer Watts

**Attachment B: Letter of Appeal
from the Applicant**

July 02, 2013



Reference: 5691 Bilby Street
File Number 18640

Application for Variance and Refusal Dated June 28, 2013

Attention: Mayor Mike Savage
Councillor Jennifer Watts
Council Members
Municipal Clerk's Office

With reference to the above mentioned property we applied for a permit to convert a single family dwelling into three rental units. A permit was issued to do so and construction commenced the first of June 2013.

In doing so we raised the existing structure three feet. Shortly after we had a site visit by a HRM building official who indicated that we were in violation of our permit as it was indicated on the permit that the house could not be raised. At this point we were issued a stop work order.

I went back to our office and pulled the permit and the permit did indicate that the house was not to be raised. In reading the permit I for some reason did not read the full content for what ever the reason was. It was never our intention to disregard the intent of the permit or circumvent the process.

At this point I went out to HRM offices and discussed the matter with development and at that time proceeded with the application for a variance. We completed the necessary work to the property to leave it in a safe condition, boarded up and ceased work.

In further conversations with Stephanie Norman of development she indicated that under the single family dwelling aspect of the by-laws we could raise the property. However, we would still need to proceed with the variance if we wished to continue with the three units. Along with Ms. Norman and building applications we modified the permit to a single family dwelling so we could still work on the site.

The family members who own the property had intended this to be a three unit building with one of the owners occupying a unit. Work has not been resumed as they wish to go through the process for the original intent of a 3 unit rental property.

With the raising of the structure we meet the height restrictions and allowable gross floor space under the single family dwelling. Our foundation footprint remains the same. In order to have three rental units is where the difficulty lies.

With that we are officially in writing appealing the refusal decision by HRM Development and request that our variance be brought before HRM Council.

Thank you,
Original Signed

Allan Offman
6319 Cornwall Street
Halifax, N.S.
B3H 2J2
[REDACTED]

Property Owner's
Sandra Fitzpatrick-Offman
Michael Fitzpatrick
Lyn. Fitzpatrick