



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

Item No. 8.2.1
Halifax and West Community Council
May 13, 2015

TO: Chair and Members of Halifax and West Community Council
Original Signed

SUBMITTED BY: _____
Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: March 31, 2015

SUBJECT: Case 19633: Appeal of Variance Refusal - 2808 Connolly Street, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (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 2808 Connolly Street, Halifax to demolish the existing single unit dwelling and redevelop the property as a two unit dwelling (Maps 1 and 2). The building is designed in the style of a semi-detached home, with both units facing Almon Street. In order to facilitate this project, a variance has been requested to relax the required lot coverage, front and rear yard setbacks, and lot area requirements of the Halifax Peninsula Land Use By-law (LUB).

During the review of this report it has been identified that the incorrect case number (19560) was referenced in the refusal letter to the applicant. The correct number case number is 19633 and all subsequent correspondence has been corrected.

Site Details:

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

	Zone Requirement	Variance Requested
Maximum lot coverage	35%	37%
Minimum front yard:	15 feet	6 feet
Minimum rear yard	20 feet	6 feet
Lot Area (for GFA)	9,000 square feet	5,830 square feet

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

Proposal Details:

The proposed building is over the allowable lot coverage and the existing building faces Almon Street. However, the current front yard, as defined by the LUB, is located between the front wall of the building and property line coincidental with Connolly Street (Map 2). The proposed two unit dwelling is designed with the front wall facing Almon Street. As such, the front yard and rear yards, being more substantial in requirement, are located within the shorter dimension of the lot, and require relaxation to be met.

The LUB contains regulations limiting the gross floor area of low-density residential buildings relative to the lot area on which the building is located. In order to accommodate the proposed gross floor area of the two unit dwelling, a greater lot area would be required than currently exists for the property. The minimum lot area requirement is requested to be varied to accommodate the proposed gross floor area of the building.

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 violates the intent of the LUB.

The proposed variance to the lot coverage is from 35% to 37% which is a relatively negligible increase in lot coverage. The front and rear setback variances are required due to the orientation of the building entrances facing Almon Street. A different design, with the front yard oriented to Connolly Street, would meet the yard requirements as proposed, and the separation from the building to the property lines, as proposed, would also meet the intent of the LUB.

Gross floor area limitations are intended to relate the mass and volume of a building to the lot area on which it is located. The subject lot is 5,830 square feet in area, allowing for a gross floor area of 3,500 square feet. The gross floor area of the proposed duplex is 4,200 square feet, which would require a variance in the lot area from the existing 5,830 to 9,000 square feet. This represents a significant increase in the lot area requirement, and would result in a mass and volume of the built structure that is incongruent with the bylaw's intent. Therefore, this proposal violates the intent of the LUB as the variance requested for increases in lot area is significant.

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 majority of the lots within the notification area are 4,000 square feet or less, limiting the gross floor area to no more than 2,800 square feet. The subject property is the second largest property in the notification area. Every lot in the notification area would require a similar or greater variance to lot area to accommodate the gross floor area proposed. As such, the difficulty experienced is general to 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. Intentional disregard of By-law requirements was not a consideration in this variance request.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellant has raised certain points in the letter of appeal (Attachment C) 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
<i>The intent of the GFAR requirement is to prevent "quasi-rooming houses"; the intention is to rent each unit to a family.</i>	The appellant's statement is true, and the intention of the applicant is not in question. However, staff is questioning the variance request relative to the size of the proposed building to its lot area.
<i>The intent of the GFAR requirement is to prevent dwellings from being built to the full extent of that allowed by lot coverage, height and yard limitation. With the exception of lot coverage, the proposed building does not reach the maximum building envelope.</i>	The gross floor area limitations are related to the size of the lot. The addition does not meet the gross floor area requirements of the proposal nor does it meet lot coverage and yard requirements.
<i>Each unit contains 6 bedrooms in total, which is only half of the permitted maximum</i>	The proposal contains the maximum number of permitted bedrooms (6) for the building as a whole (as defined by the LUB).
<i>The proposed building is intended to be rented as two units, not on a room by room basis.</i>	The LUB cannot regulate tenancy. This issue is not applicable to criteria used for consideration of the proposed variance.
<i>8 foot setback from the northern property line reduces shadow impact</i>	The setback from the northwestern property boundary (the rear yard) is 6 feet, as measured from the nearest portion of the structure (the 'canopy') to the property line. The LUB does not address shadow impacts.
<i>The GFA proposed for this building is not uncommon to those in the neighbourhood</i>	The building will have a greater gross floor area than any other building within the notification area. The largest approximate gross floor area in the notification area is 3,600 square feet (assuming full basements). The proposed gross floor area is over 1,600 square feet greater than the average, and 600 square feet larger than the largest home in the neighbourhood.

Conclusion:

Staff have 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 does conflict with the statutory criteria for refusal provided by the *HRM Charter*. The matter is now before Halifax and West Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from 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 approval is refused and appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellant(s) to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

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

ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

Attachment A: Proposed Building Renderings
Attachment B: Proposed Building Elevations
Attachment C: Variance Refusal Notice
Attachment D: Letter of Appeal from Applicant

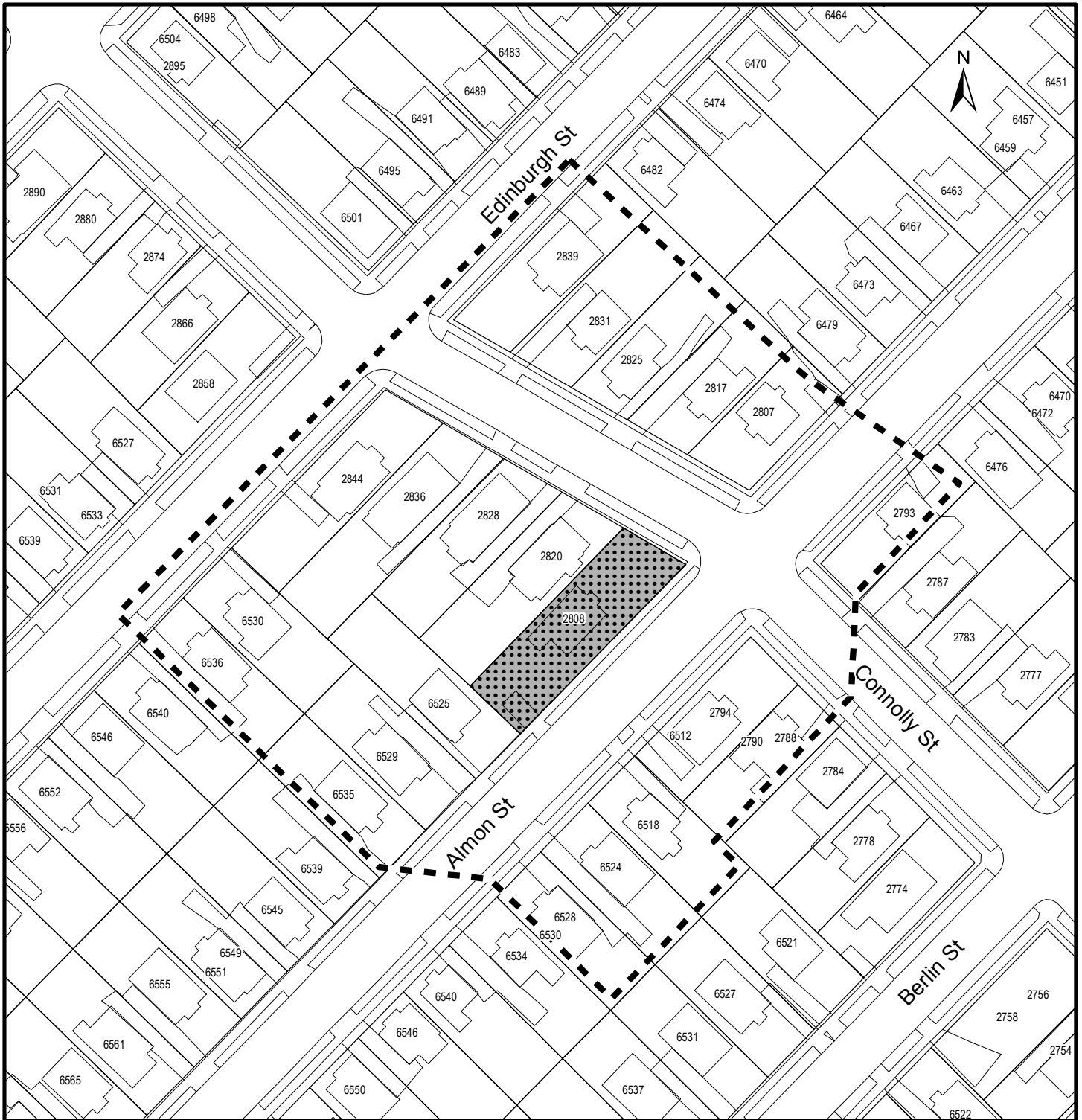
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Erin MacIntyre, Development Technician 902.490.4494
Sean Audas, Development Officer, 902.490.4402

Original Signed

Report Approved by:


Kurt Pyle, Acting Manager of Development Approvals 902.490.6011



Map 1 - Notification Area

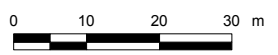
2808 Connolly Street
Halifax

 Subject Property

 Area of notification

Halifax
Plan Area

HALIFAX



The accuracy of any representation on this plan is not guaranteed.

Application # 142935

Civic Addr: 2808 CONNOLLY ST HALIFAX

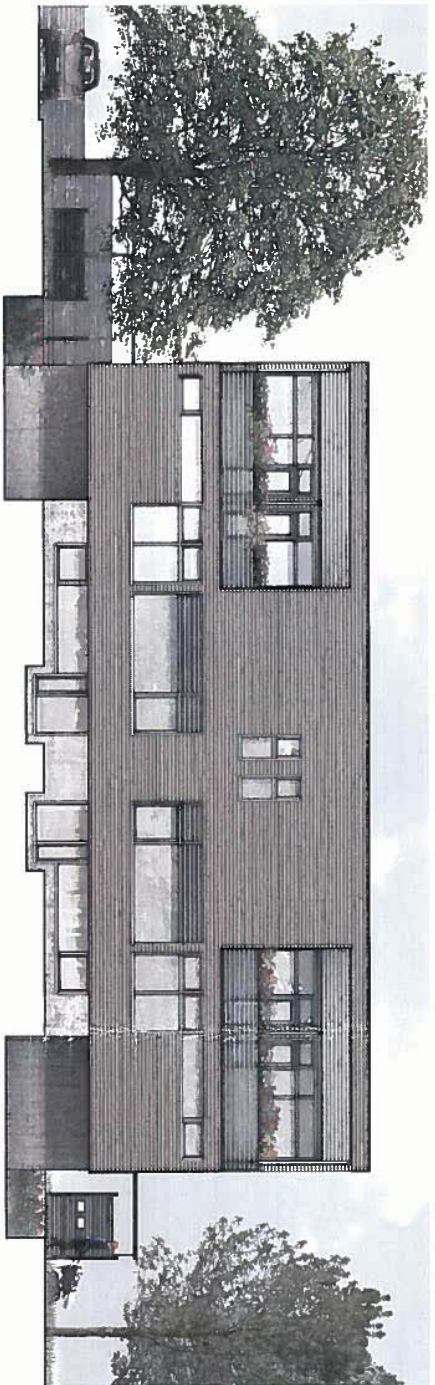
Lot #:

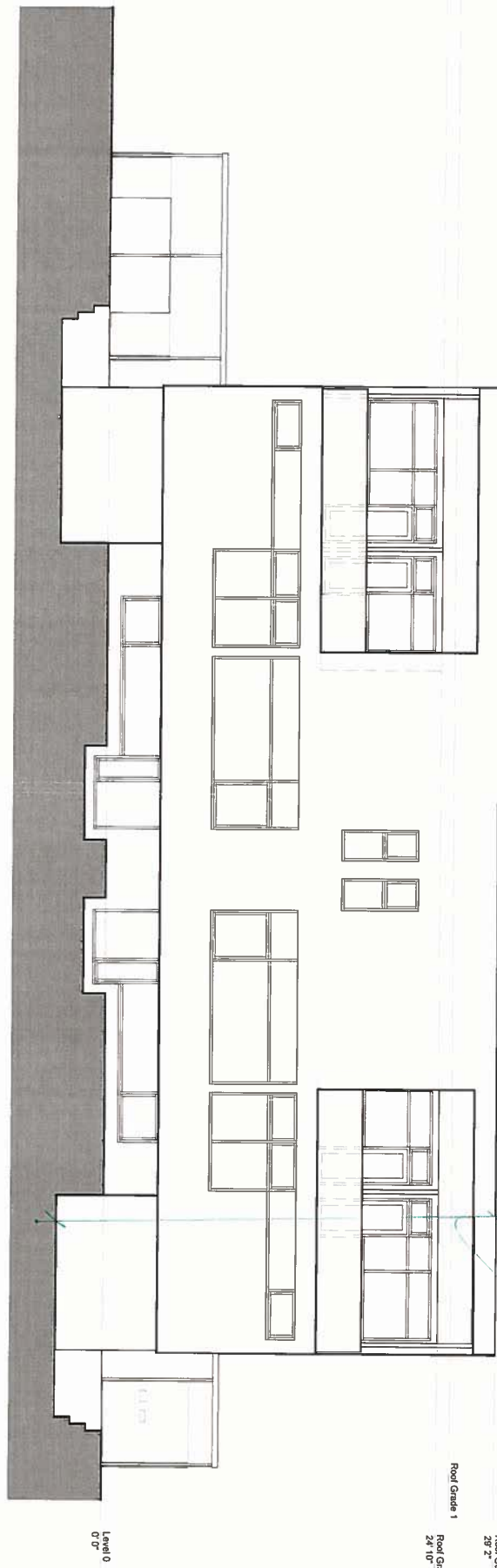
Applicant: PLANET POSITIVE INVESTMENTS INC.

Ph ()

App Type: CONSTRUCT TWO UNIT DWELLING

Recd on: Fri, Nov 21, 2014





5800 Spring Garden Road, Suite 109
 Halifax, Nova Scotia B3H 2R4
 T: 902.404.8383 F: 902.404.8388

DO NOT SCALE DRAWINGS. ALL DIMENSIONS TO BE VERIFIED ON SITE. IN THE
 ABSENCE OF DIMENSIONS, OR IF DISCREPANCIES FIRST CONSULT ARCHITECT.
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DWG	CLIENT	TE/C	DRAWN	MD
PROJ ID	ADDRESS	2880 CONNOLLY ST	DATE	NOVEMBER 05 2014
PROJ NAME	DESIGNED BY	MD/TE/C/BR/JC	SCALE	1/8" = 1'

REVISION

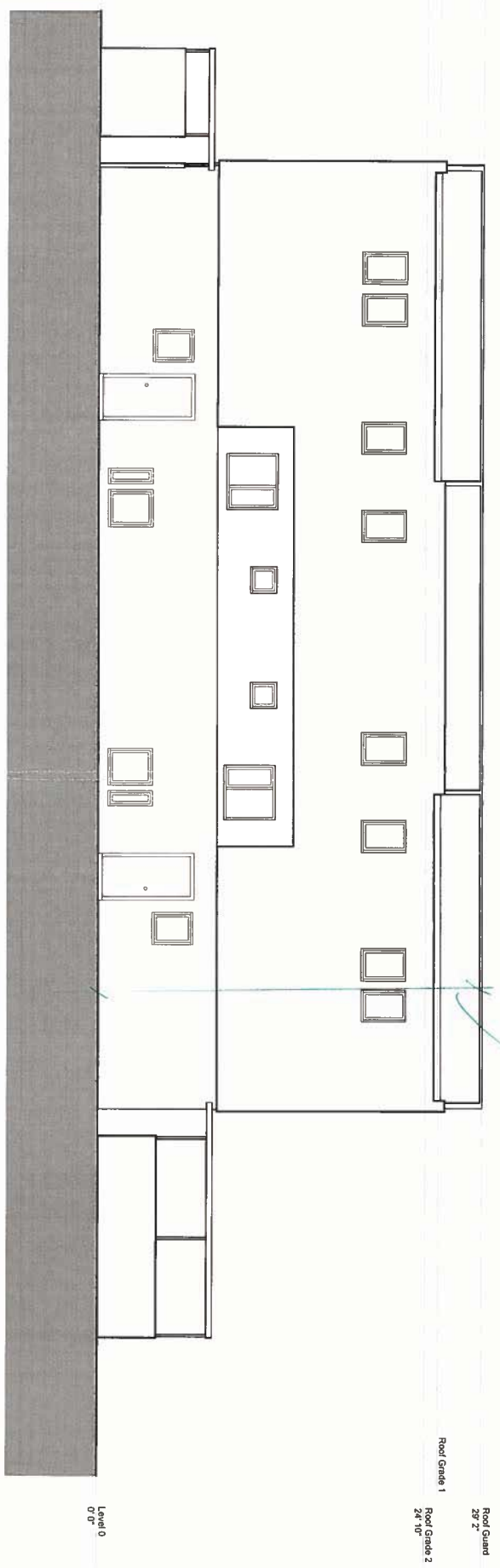
SE Elevation
(Almon St)

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 ALL MINIMAL DIMENSIONS SHALL COMPLY WITH THE NATIONAL BUILDING
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DWG	CLIENT	TEGC	DRAWN	MD
PROJ ID	ADDRESS	2880 CONNOLLY ST	DATE	NOVEMBER 06 2014
PROJ NAME	DESIGNED BY	MD/TEGC/BRUC	SCALE	1/8" = 1'

REVISION	

NW Elevation



Roof Guard
28' 2"

Roof Grade 2
24' 10"

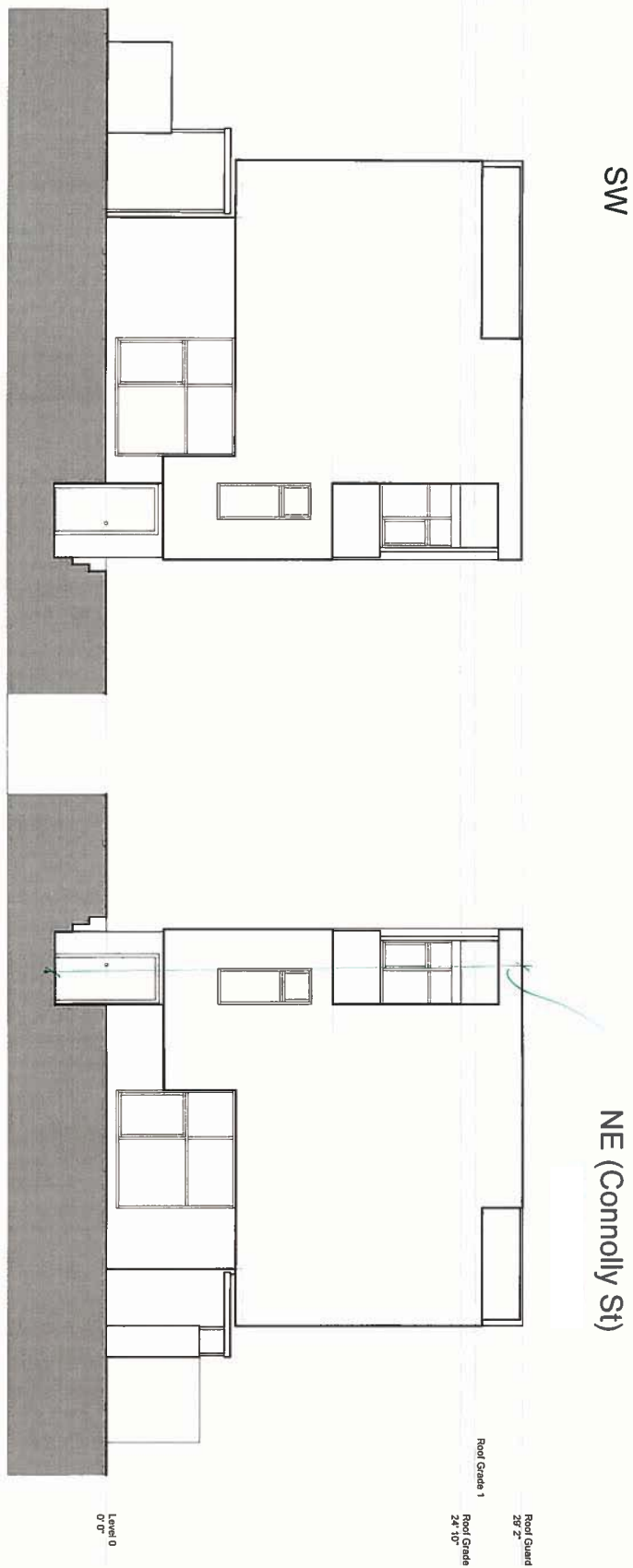
Level 0
0' 0"

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 ABSENCE OF DIMENSIONS, OR IF DISCREPANCIES EXIST, CONSULT ARCHITECT
 ALL MINIMAL DIMENSIONS SHALL COMPLY WITH THE NATIONAL BUILDING
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DWG	TEJC	CLIENT	TEJC	DRAWN	MD
PROJ ID	2013 TEAL 006	ADDRESS	2880 CONNOLLY ST	DATE	NOVEMBER 06 2014
PROJ NAME	CONNOLLY ST	DESIGNED BY	MD/TE/C/BR/UC	SCALE	1/8" = 1'

REVISION

NE / SW
Elevations



December 5, 2014

Planet Positive investments Inc.
c/o Tom Emodi
5880 Spring Garden Road, Suite 109
Halifax, NS
B3H 1Y1

Dear Mr. Emodi,

HRM File No. 19560- VARIANCE TO FRONT AND REAR YARD, LOT COVERAGE AND LOT AREA REQUIREMENTS OF THE HALIFAX PENINSULA LAND USE BYLAW AT 2808 CONNOLLY STREET, HALIFAX, NS, PID 00117218

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

Location: 2808 Connolly Street
Project Proposal: Construction of a two unit dwelling

	Requirement	Refused
Lot Coverage	35%	37%
Front Setback	15 feet	6 feet
Rear Setback	20 feet	6 feet
Lot Area	9,000 square feet	5,830 square feet

Section 250(3) of the *Halifax Regional Municipal 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.

Specific to the requested increase in the lot area to 9,000 square feet to accommodate a building with a Gross Floor Area that is greater than allowed on the current lot's size, it is the opinion of the Development Officer that the proposed variance does not meet subsections (a) and (b) of Section 250(3).

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



**Sean Audas, 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 December 15, 2014.

If you have any questions or require additional information, please contact Erin MacIntyre at 490-4494.

Sincerely,

Sean Audas
Development Officer
Planning & Development- Development Approvals
Halifax Regional Municipality

Tel 902.490.4402
Email audass@halifax.ca

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



19 December 2014

Municipal Clerk | C/O Sean Audas, Development Officer
Halifax Regional Municipality | Planning and Development
P.O. Box 1749 | Halifax, NS B3J 3A5

Re: Variance Application no. 19560, 2808 Connolly Street, Halifax, NS, PID 00117218

In addition to our initial email (sent 11 December 2014) expressing our intention to appeal the refusal of variance No.19560, please accept the following comments regarding our appeal. Based on the letter we received (dated 05 December 2014) explaining the reasons for refusal of the variance, we wish to respond to the issues you've raised regarding the proposed dwelling.

Gross Floor Area Ratio (GFAR)

A review of HALIFAX documents shows that the intention of the GFAR requirement (adopted in 2005) is to prevent "quasi-rooming houses" and also to prevent dwellings that are built to the full extent and volume of the building envelope (i.e. maximum height, minimum yards). Also, limits to the number of bedrooms were introduced to prevent rooming houses. The dwelling that we are proposing is designed to accommodate two families. The two units are identical. Each has three bedrooms and the majority of the floor area in each is dedicated to common areas including kitchen, living room, dining room and family room. The floor plans show that the intention of the design is to accommodate a family that is renting the whole of the dwelling unit. Each unit includes only half the number of bedrooms permitted: three in each unit, whereas six are permitted. The proposed dwellings are not designed to be rented out on a room-by-room basis.

Excluding the covered walkways (see comments below) the proposed building is smaller than the maximum envelope would allow. The building has a height of 29' 2" above ground level. Measured above average grade the height may be closer to 30' but is still well under the 35' maximum. Keeping the height low and setting the building 8' back from the property to the north allowed for reduced shadow impact on the adjacent dwelling and yards. Designed to front on Connolly Street, the proposed dwelling has 6' side yards whereas the requirement is 5' and there is substantial open space in the front and rear yards. Visual assessment of other houses in the neighbourhood shows that the GFA of the proposed dwelling is not uncommon in the area.

Site Coverage and Yard Requirements

Though the letter we received suggests that the primary concern is regarding the GFAR rather than the site coverage and yards, we would like to offer brief comments on these topics.

The 37% coverage includes the covered walkway leading from Connolly in the front of the property to the parking spaces in the rear of the property. Without this covered path the site coverage is 34%. Because this portion of the site coverage is outdoor space, we argue that the covered path does not contribute to the negative impacts that are typically associated with increased site coverage (larger buildings and reduced open space).

The front and rear yard requirements for the property are 15' and 20', respectively. The side yard requirements mentioned in the refusal letter are based on a front yard on Almon Street. The dimensions of the lot are such that this interpretation of the front of the property would prohibit development of any kind on the lot. At 41.75' in depth, the portion that could be built upon is 6.75' by 121'. The design of the address, entry canopy, mailboxes and paths to the front doors clearly locates the front on Connolly Street. There are no doors facing Almon Street. On this site a variance is required to allow for side-by-side two-unit dwelling with street related front doors. The proposed yard setbacks are based on frontage on Connolly Street. If yards are measured based on frontage being on Connolly, there are no encroachments into the required yards.

From an urban planning and architecture point of view, this is a most desirable form of development, entirely consistent with HALIFAX's policies for the re-densification of the Peninsula. We trust that the foregoing rationale adequately supports the variances for which we have applied, and look forward to the next steps in the appeal process.

Sincerely,

Original Signed

Thomas Emodi FRAIC, NSAA, LEED™AP
Principal