



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

Item No. 8.2.2
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 19666: Appeal of Variance Approval - 918 South Bland Street, Halifax

ORIGIN

Appeal of the Development Officer's decision to approve a request for 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 918 South Bland Street, Halifax to permit an addition to a single unit dwelling to create a two unit dwelling (Map 1 and Attachment A). In order to facilitate this project, a variance has been requested to relax the required right side yard setback for the existing portion of the dwelling. The remainder of the dwelling and the proposed addition meet all other requirements of the Halifax Peninsula Land Use By-law (LUB).

Site Details:

Zoning: R-2 (General Residential) Zone, Halifax Peninsula Land Use By-Law (South End, Area 4)

	Zone Requirement	Variance Requested
Minimum right side yard:	5 feet	1.5 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). A property owner within the 30 metres notification area has appealed the approval (Attachment C) 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 *HRM 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 not violate the intent of the LUB.

The variance requested is only for a reduction in the right side yard setback. The proposed addition would meet the minimum 5 feet side yard setback required for a two unit dwelling. The existing dwelling is already located at 1.5 feet from the right side yard which is an existing nonconforming setback.

Building setbacks provide separation from adjacent structures, streets, and property lines for access, safety, and aesthetics. The applicant has already received a permit, through a separate application, for an addition to the dwelling which is similar in size and setback to what is shown on Map 2. This established setback, which is nonconforming, allows for an addition provided the number of units does not increase.

The difference between the two applications is that the applicant is now proposing an increase in dwelling units and the addition now has to meet the right side yard setback of 5 feet because of the additional unit. The proposed addition meets the left side and rear yard setback requirements. The front yard setback is not changing. Where the applicant is proposing to meet the minimum side yard requirements with the addition and the existing building has a nonconforming established setback, staff consider this request to be minor and meets the intent of the LUB.

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.

There are 19 properties (including 918 South Bland) within the notification area and these properties have a mix of zoning (R-1, R-2, and C-3A) and land uses (singles, two units, non-conforming uses, and an apartment building). Where there is such a range of zoning and zone requirements, as well as existing uses, it was determined that the difficulty experienced is not 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 the approval of 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>A fence was removed from the property and a barn was constructed without a building permit.</i>	The appellant has identified this as a previous concern with a previous property owner. The current application does not involve the barn.
<i>The property has been used for storage of items from other rental properties.</i>	The appellant has identified this as a previous concern with a past property owner. This issue is not applicable to the criteria used for consideration of the proposed variance.
<i>The property contains litter at times and the grass is uncut for weeks.</i>	This concern relates to unsightly premise legislation and this issue is not applicable to the criteria used for consideration of the proposed variance.
<i>Other properties in the neighborhood which are also owned by the owners of 918 South Bland are not maintained very well.</i>	This variance application is for 918 South Bland Street, the maintenance of nearby properties is not a variance criterion.
<i>There have been late night parties by the</i>	Noise complaints are not identified as a variance criterion.

<i>tenants which results in noise complaints and police visits. The appellant has spoken to the property manager and there has not been an improvement in this regard. It is felt that an increase in the number of units will cause this problem to escalate.</i>	Noise issues generated from private property are addressed HRM Land Use Compliance and Halifax Regional Police, and not through zoning requirements.
<i>If the project is approved there will be construction traffic and access over my property without permission. The appellant does not want someone using their land simply because it is not fenced.</i>	Property disputes between abutting owners is not a variance criteria consideration.
<i>A concern has been raised about identifying the appellant to the property owner and they have been attempting to contact which is felt to be unprofessional and unsettling.</i>	A variance appeal is a public process for property owners within the notification area. All freedom of information protocols have been followed for this application.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not 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 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 approval is 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 deny the appeal and uphold the decision of the Development Officer and approve the variance.
2. Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

Attachment A: Building Elevations
Attachment B: Variance Approval
Attachment C: Letter of Appeal

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: Janice MacEwen, Development Technician, 902.490.3244
Sean Audas, Development Officer, 902.490.4402

Original Signed


Report Approved by: _____
Kurt Pyle, Acting Manager Development Approvals, 902.490.6011

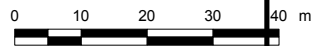



Map 1 - Notification Area

918 South Bland Street
Halifax

HALIFAX

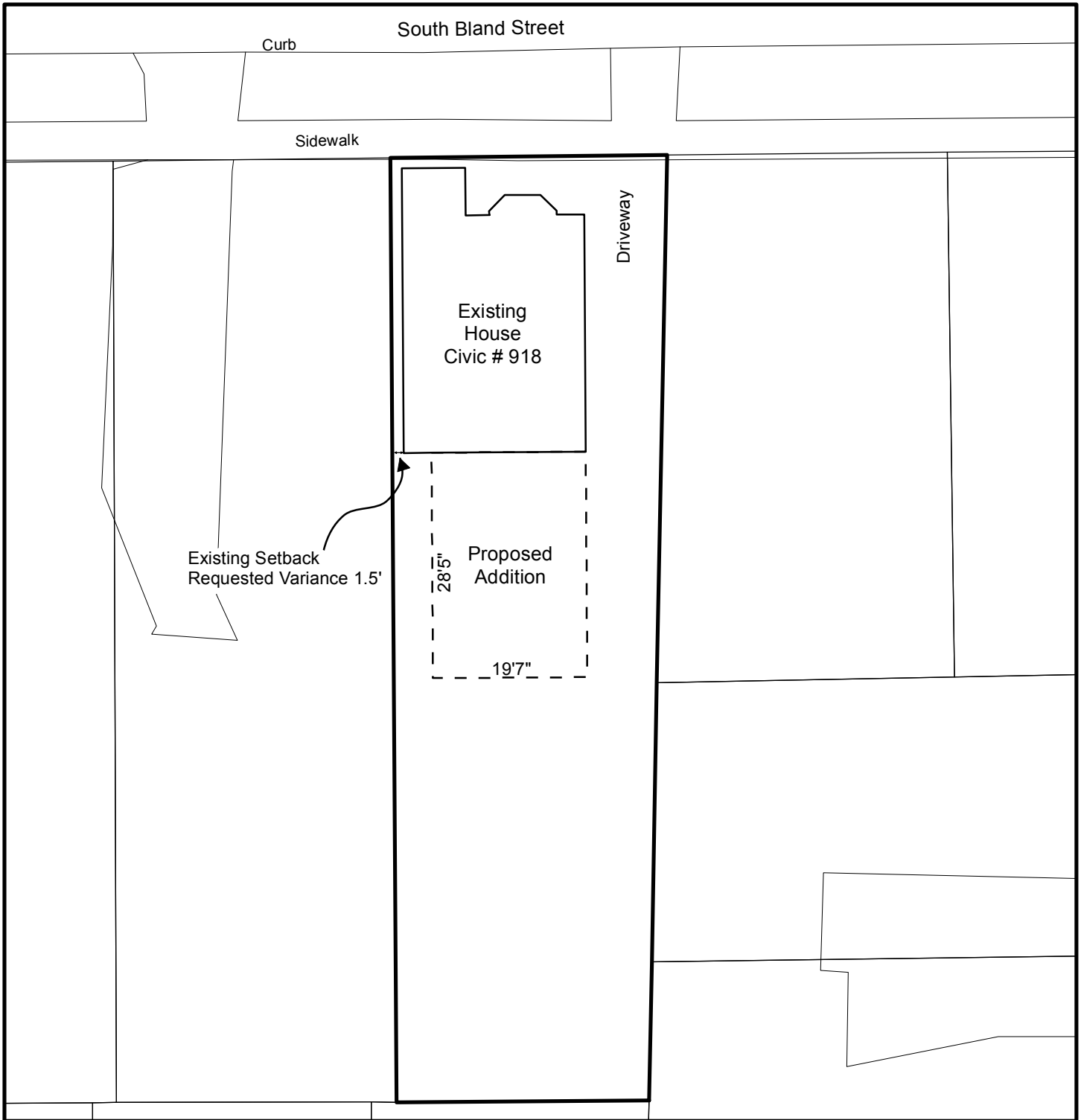
 Subject Property



 Area of notification

Halifax
Plan Area

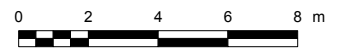
The accuracy of any representation on
this plan is not guaranteed.



Map 2 - Site Plan

918 South Bland Street
Halifax

HALIFAX



Halifax
Plan Area

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



918 South Bland Street
Halifax, NS

Cedric Keady Architects Ltd.
250 Argyle Street, 1st Fl.
Halifax, NS B3H 1L4
902 428 9488
902 468 6855

5357 Inglis Street
Halifax, NS B3H 1L4
902 428 9488
902 468 6855

a	sheet drawings	Aug 27th, 2014
Revisions / Issues:		

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1. The Building's Compliance with any applicable laws and regulations.
2. The Building's Compliance with any applicable codes and standards.
3. The Building's Compliance with any applicable zoning and planning requirements.
4. The Building's Compliance with any applicable environmental requirements.
5. The Building's Compliance with any applicable safety requirements.
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99. The Building's Compliance with any applicable cultural and heritage requirements.
100. The Building's Compliance with any applicable historical and archaeological requirements.

Elevation

Sheet No. 48

330



918 South Bland Street
Halifax, NS

OSCAR MCKAY ARCHITECTURE
AND ASSOCIATES INC.

5157 Inglis Street
Halifax, NS B3H 1A8
902 408 2488
902 408 6056

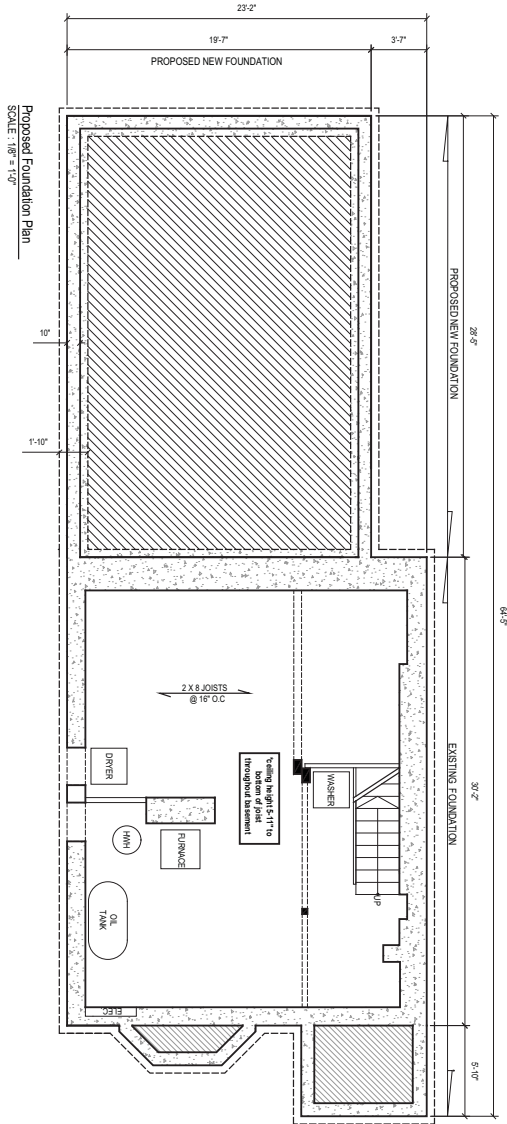
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Elevation

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918 South Bland Street
Halifax, NS

Geoff Keddy ARCHITECT
and Associates Ltd.

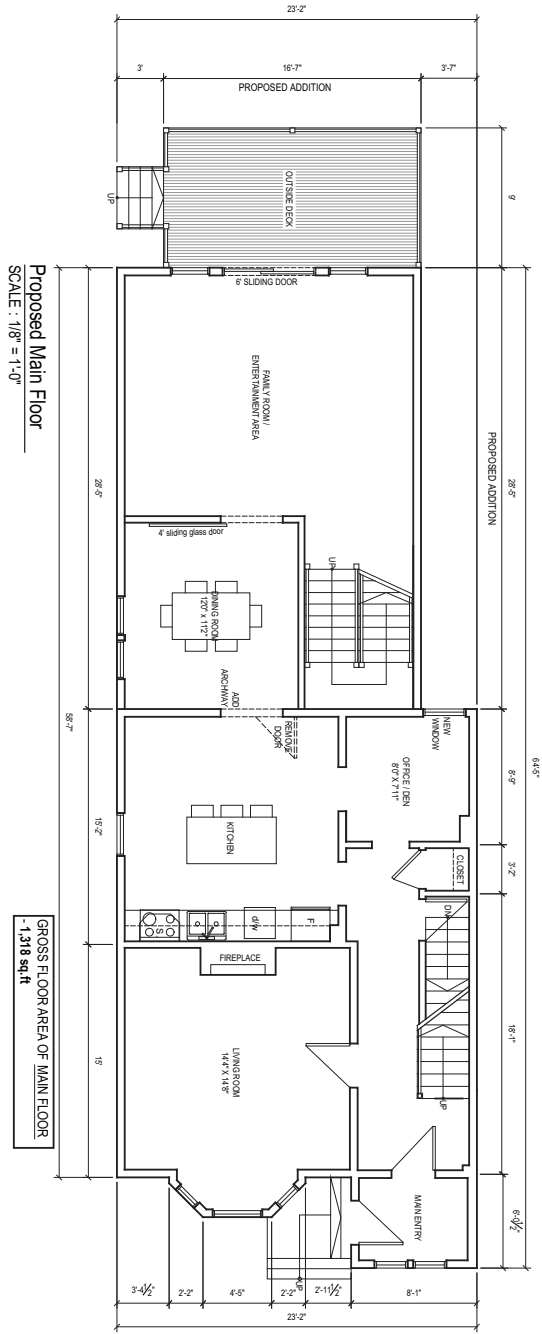
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Floor Plan	202
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Proposed Main Floor
SCALE : 1/8" = 1'-0"

GROSS FLOOR AREA OF MAIN FLOOR
- 1,318 sq.ft.

918 South Bland Street
Halifax, NS

Gord Keddy ARCHITECT
5157 Inglis Street
Halifax, Nova Scotia
B3H 1J4
902 428 9400
902 461 9190

5157 Inglis Street
Halifax, Nova Scotia
B3H 1J4
902 428 9400
902 461 9190

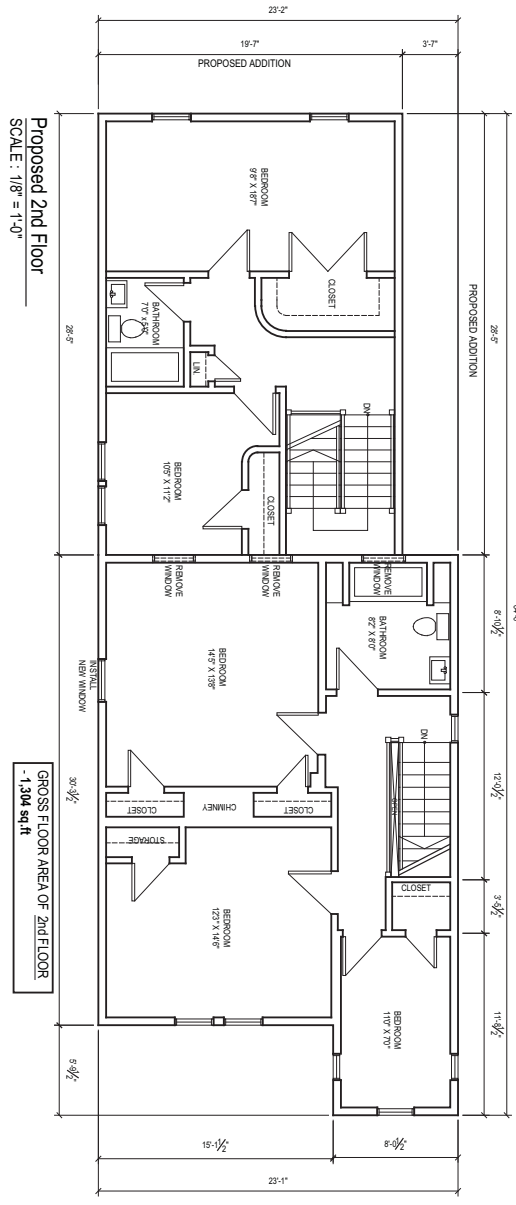
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Floor Plan

a 200



918 South Bland Street
 Halifax, NS

Geoff McNeil
 Architect
 and Associates Ltd.
 5337 Inglis Street
 Halifax, Nova Scotia
 B3J 2J8
 902 408 6000
 902 408 6055

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Floor Plan	a 201
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December 19, 2014

Geoff Keddy & Associates
5357 Inglis Street
Halifax NS B3H 1J4

Dear Sir:

RE: Variance Application #19666, 918 South Bland Street, Halifax, PID #00065110

This will advise you as the Development Officer for the Halifax Regional Municipality, I approved your request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw as follows:

Location: 918 South Bland Street, Halifax, PID #00065110
Project Proposal: Addition to create a Two Unit Dwelling

	Requirements	Proposal
Minimum Right Side Yard	5 feet	1.5 feet (existing setback)

Pursuant to Section 251 of the Halifax Regional Municipal Charter, 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 **January 5, 2015**.

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Janice MacEwen at **490-3993**.

Sincerely,
Original Signed
Sean Audas
Development Officer

cc. **Cathy Mellett, Municipal Clerk**
Councillor Wayne Mason - District 7

December 19, 2014

Dear Sir or Madam:

RE: Variance Application #19666, 918 South Bland Street, Halifax, PID #00065110

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipal Charter, Section 251.

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved a request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw as follows:

Location: 918 South Bland Street, Halifax, PID #00065110
Project Proposal: Addition to create a Two Unit Dwelling

	Requirements	Proposal
Minimum Right Side Yard	5 feet	1.5 feet (existing setback)

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 30 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before January 5, 2015, and address your appeal to:

Sean Audas, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Planning and Development - Western Region,
P.O. Box 1749, Halifax, N.S. B3J 3A5
Clerks@halifax.ca

Please note, this does not preclude further construction on this property provided the proposed construction does not require a minor variance. If you have any questions or require clarification of any of the above, please call Janice MacEwen at 490-3993.

Yours truly,

Original Signed

Sean Audas, Development Officer
Halifax Regional Municipality

cc. **Cathy Mellett, Municipal Clerk**
Councillor Wayne Mason – District 7

HALIFAX

Halifax Regional Municipality
 PO Box 1749, Halifax, Nova Scotia
 Canada B3J 3A5

halifax.ca

914 South Bland Street
Halifax NS B3H 2S5

29 December 2014

Sean Audas, Development officer
HRM
P.O. Box 1749
Halifax, NS, B3J 3A5

Dear Mr. Audas :

This afternoon I received your
letter dated 10 days ago

Re: variance app. #19666, 918 South Bland Street
PID 00065110

I do wish to appeal this variance.

When there is more time at my
disposal, I will provide further
information.

Yours truly,

Original Signed

MARLENE BIECHELE

Handwritten signature

Copy to
Sean Andas

South Bland Street
2 Halifax NS B3H 2S5

09 February 2015

Dear Councillor Mason,

December 29, 2014 I e-mailed you my appeal of a Variance Application by 918 South Bland Street.

I purchased my home more than thirty (30) years ago when 918 was owner-occupied & its grounds neat. However some years later, a company (Demard or Deamard, I believe) bought 918.

This first company ⁽¹⁾ demolished the attractive fence that had stood between our backyards & part of the driveway. They ⁽²⁾ erected a huge eyesore of a barn for which they had not obtained a building permit. The owner's employees worked in the building & played unusually ⁽³⁾ loud music amplified with professional equipment intended for auditoriums. When I arrived at home after work, the framed photos rattled on the walls due to vibrations caused by the constant noise. After a nightmare year

of letters to a City officer (I believe Miss Sanchez) the owner was persuaded to relocate.

The second business to own 918 was headed by Arnold Forsythe, who used the property to store items from his numerous rental properties. Mr Forsythe was a gentleman who kept 918 neat & tidy.

After Mr. Forsythe's death approximately three (3) years ago, 918 was sold to its present owners Urban Spaces. This third business owns four (4) large rental properties on South Bland Street in addition to 918.

Since this company acquired the aforementioned buildings, it has appeared that the owners and/or groundpersons are unreasonably lax concerning the appearance of the sites. It is the norm for litter to be strewn along at least one building, if not along two or three. I sometimes walked to ~~the~~ their end of the street to place litter in my own garbage bags since it was so unsightly. In warm weather their grass is typically

left uncut for weeks. Their rooming house at the corner of South Bond & English has a stone wall near to + along the sidewalk. They have never removed the overgrown plants that trip up pedestrians. After I saw a gentleman struggling to remove his car from roots that had tangled around it, I took my own shears, rate + bag + spent an hour making that area safe for people walking by.

When their tenants ^{at 918} had parties, it was not unusual to see four (4) police cars parked there at 2:30 A.M. What is the financial cost to H.R.M. to have four (4) police cruisers with at least one police officer per car dealing with noise bylaw issues?

I had spoken to the tenants about noise problems & I asked them to lower the volume - they refused it. Also I spoke with Urban Spaces' building maintenance person about the noise. There was no improvement. After all it was not the business owner who lost sleep!

If 918 becomes a multi-unit rental property, of course the noise

problems will escalate.

Councillor
(Mrs.) Mason, if 918 doubles
the size of the house how
will the construction trucks
and then later the tenants
access their yard without
driving over & over & over my
property? They don't have my permission!

As a single, low-income
individual ~~with~~ in spite of
working ^{both} full-time & part-time
jobs, taking in roomers &
autoing - I did not have
the financial means to ^{hire} ^{people}
replace the fence that the
demands destroyed. I have been
paying taxes on that strip of
land & cutting the grass &
raking the leaves - I do not want
someone else using it just
because it's there unfenced & open.

I was quite taken aback
when told ^{that} the owners of 918
had been given my name/phone
number and that "I was the
sole property owner to appeal."

It took six (6) business days for
HAR's notice to reach me. Yet I
had four (4) days in which to reply.
How fair is this?

Early one evening a stranger knocked at my front door saying he had recently opened an office down the street. He attempted to enter my home, saying he had some ideas he thought I'd be interested in. I fastened the door-chain & told him he could drop a card into the mailbox. He replied he had no cards. This encounter was unsettling because he had almost managed to elbow his way into my home.

As well, a man saying his name is Kelly has phoned me several times saying he is the architect for 918's owners. He attempts to persuade me to allow him to drop in & show me the 'plans' for 918. He explains 918's owners have been urging him to talk to me.

I realize now that this phone caller is the same tall man who attempted to walk into my home.

This is beyond unprofessional; it is unsettling. It is alienating!

Thank you for your attention to this issue ^{Councilor} ~~Mayor~~.

Sincerely,

Original Signed