



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

Item No. 8.1.1

Halifax and West Community Council
April 22, 2014

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

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

DATE: March 11, 2014

SUBJECT: **Case No. 18929: Appeal of Variance Refusal – 1087 Wellington 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 to whether to allow or deny the appeal before them.

BACKGROUND

A variance request has been submitted for the property at 1087 Wellington Street, Halifax, (Map 1) to enable the existing building to be renovated and expanded with a three storey rear addition for the purpose of converting the existing two unit dwelling to a four unit dwelling. In order to facilitate this project, a variance has been requested to relax the maximum permitted lot coverage.

Site Details:

Zoning: R-2A (General Residential Conversion Zone) under the Halifax Peninsula Land Use By-law (South End, Area 6, Schedules A & B, 35 foot Height Precinct)

	Zone Requirement	Variance Requested
Maximum Lot Coverage	40%	53%

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment C). The applicant subsequently filed an appeal of the refusal (Attachment A). 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, Community 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 where the:*
(a) variance violates the intent of the land use by-law;
(b) difficulty experienced is general to the properties in the area;
(c) difficulty experienced results from an intentional disregard for the
requirements of the 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 convert a two unit dwelling to a four unit building through

renovation and expansion of the existing building. The proposal would produce a lot coverage of 53%. The R-2A Zone allows a maximum of lot coverage of 40%. Lot coverage requirements provide for open space, parking, maneuvering of vehicles and uniformed lot design. The 40% lot coverage maximum provides sufficient area for the development of a four unit dwelling on the site. An increase in lot coverage to the degree requested (more than 32%) is seen as a violation of 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.

There are 13 properties in the notification area. Six of these properties are zoned R-3 and were not considered as this zone permits apartment buildings and a different set of zoning criteria. The properties within the notification area of a similar zone only one of these properties exceed the lot coverage requirements, which is estimated at 44%. However, this building pre-dates the land use by-law requirements. As most of these properties meet the lot coverage requirements, it was determined that 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 Land Use 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 the variance request.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Community 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
<i>The new owners who are developers would like to owner occupy one of the existing buildings (#1091) as their personal residence. They have 2 children and wish to make this their home. This in itself would in my opinion be</i>	This is not a consideration relative to the variance request and the criteria provided by the <i>Charter</i> .

Appellant's Appeal Comments	Staff Response
<i>instrumental in guaranteeing residential tenants of a hardworking, dependable and responsible nature.</i>	
<i>They would also like to renovate the exterior of their building to replicate the adjacent building to its original Heritage Façade and character.</i>	This is not a registered Heritage property. Architectural design is not a consideration relative to the variance request and the criteria provided by the <i>Charter</i> .
<i>Other options: Tear down both buildings and build a new contemporary modern structure similar to one recently approved at 1146 Wellington Street.</i>	The required permits were issued for a four unit dwelling at 1146 Wellington Street. This lot is zoned R-2A and the 40% maximum lot coverage was not exceeded.
<i>Other properties in the area have three stories and do not meet the lot coverage of 40% nor do they have the code requirement of Barrier Free Access in some instances.</i>	The use and lot coverage information for the properties in the notification area are outlined above. There are no properties in the notification area that are developed at 51% lot coverage. The only property within the notification area in excess of the minimum requirement is 1071 Wellington Street at 44%. However, this building pre-dates the land use by-law requirements. A three storey building is permitted as long as the proposed building does not exceed 35 feet in height. There is no correlation between building height and lot coverage. Barrier Free Access is not a consideration relative to the variance request and the criteria provided by the <i>Charter</i> .
<i>With properties in the neighbourhood moving towards higher density and the diminution of single family homes, an increase in additional living accommodations is a positive trend to encourage higher downtown residential density.</i>	The proposed building will be four units. This is a permitted use in the R-2A Zone. Residential density is not the subject of the variance application.
<i>We are in conformity with R-2A, Section 43AD, sub-section 7; which states that the maximum lot coverage of an Addition shall not exceed the area covered by the existing building. Since the lot size is 4150sq.ft. and 4125 sq.ft. for #1087 and #1091 Wellington Street respectively we are proposing to increase the maximum lot coverage to 50% for both properties.</i>	Section 43AD (vii) of the Land Use By-law relates to a building resulting in 5-14 dwelling units. The section does not apply in this case as the proposed building is 4 units. The proposed building is calculated at 53% lot coverage.
<i>We are proposing an Automated parking system which if approved would replace parking stalls with a larger liveable urban footprint.</i>	Parking is not a consideration relative to the variance request and the criteria provided by the <i>Charter</i> . For Council's information, the Land Use By-law requires one separately accessible parking space at least 8 feet wide and 16 feet long for each dwelling unit. The By-law further provides that where 6 bicycle spaces are provided, a reduction of 1 regular required motor vehicle parking space may be permitted up to a maximum of 2 spaces.

Conclusion:

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

ATTACHMENTS

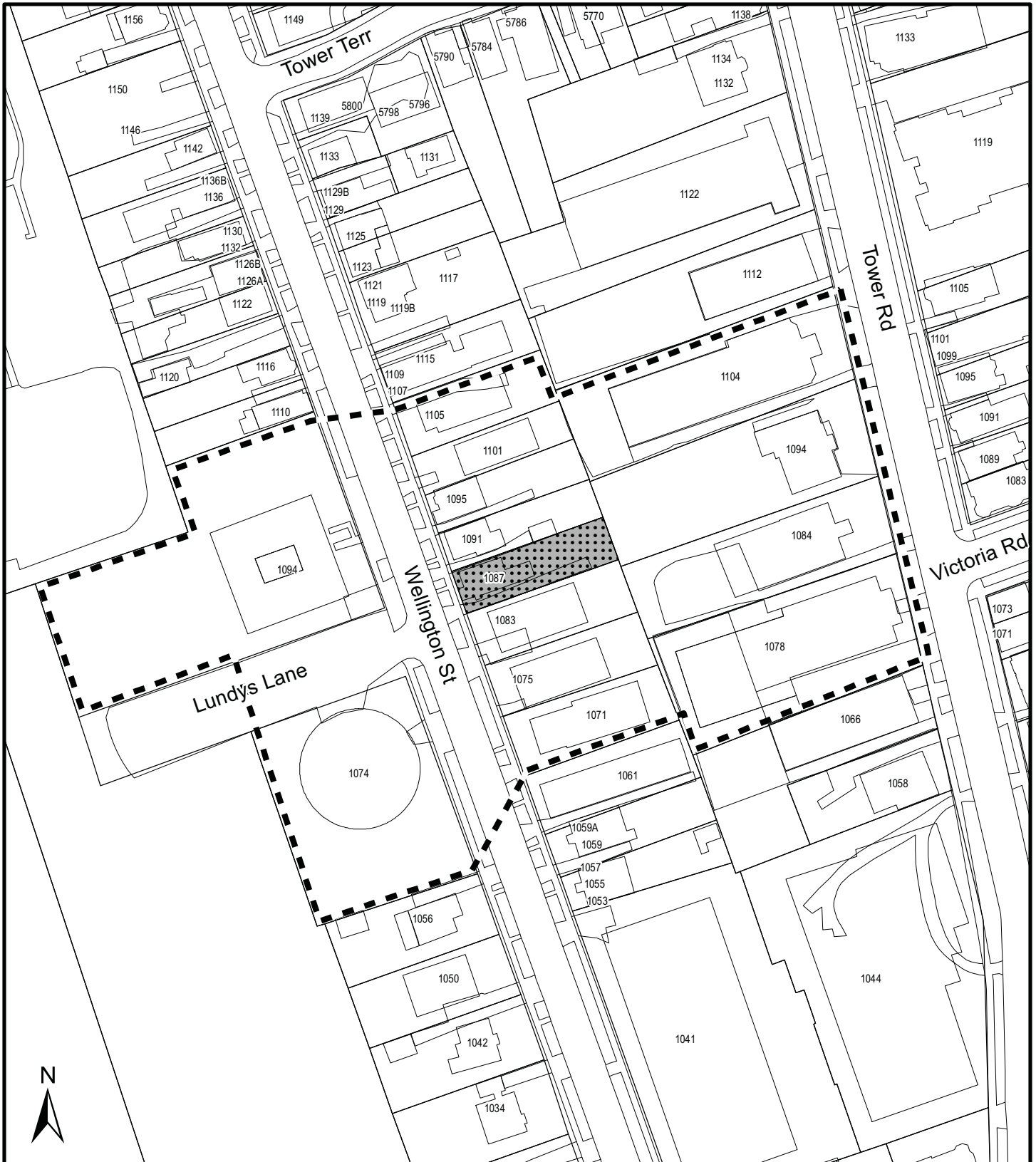
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Appeal Letter
Attachment B	Elevation plans
Attachment C	Refusal Letter

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, 490-3993
Sean Audas, Development Officer, 490-4402

Original Signed 

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



Map 1 - Notification Area

1087 Wellington Street
Halifax



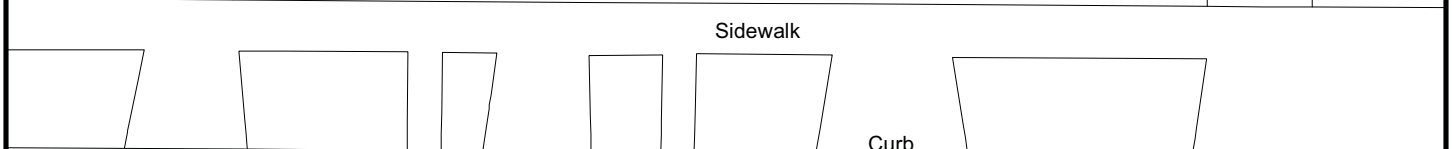
Subject Property



Notification Area



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



Wellington Street

Map 2 - Site Plan

1087 Wellington Street
Halifax



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

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

RE: Case No. 18929 – Variance at 1087 Wellington Street and Case No. 18930 – Variance at 1091 Wellington Street, Halifax NS.

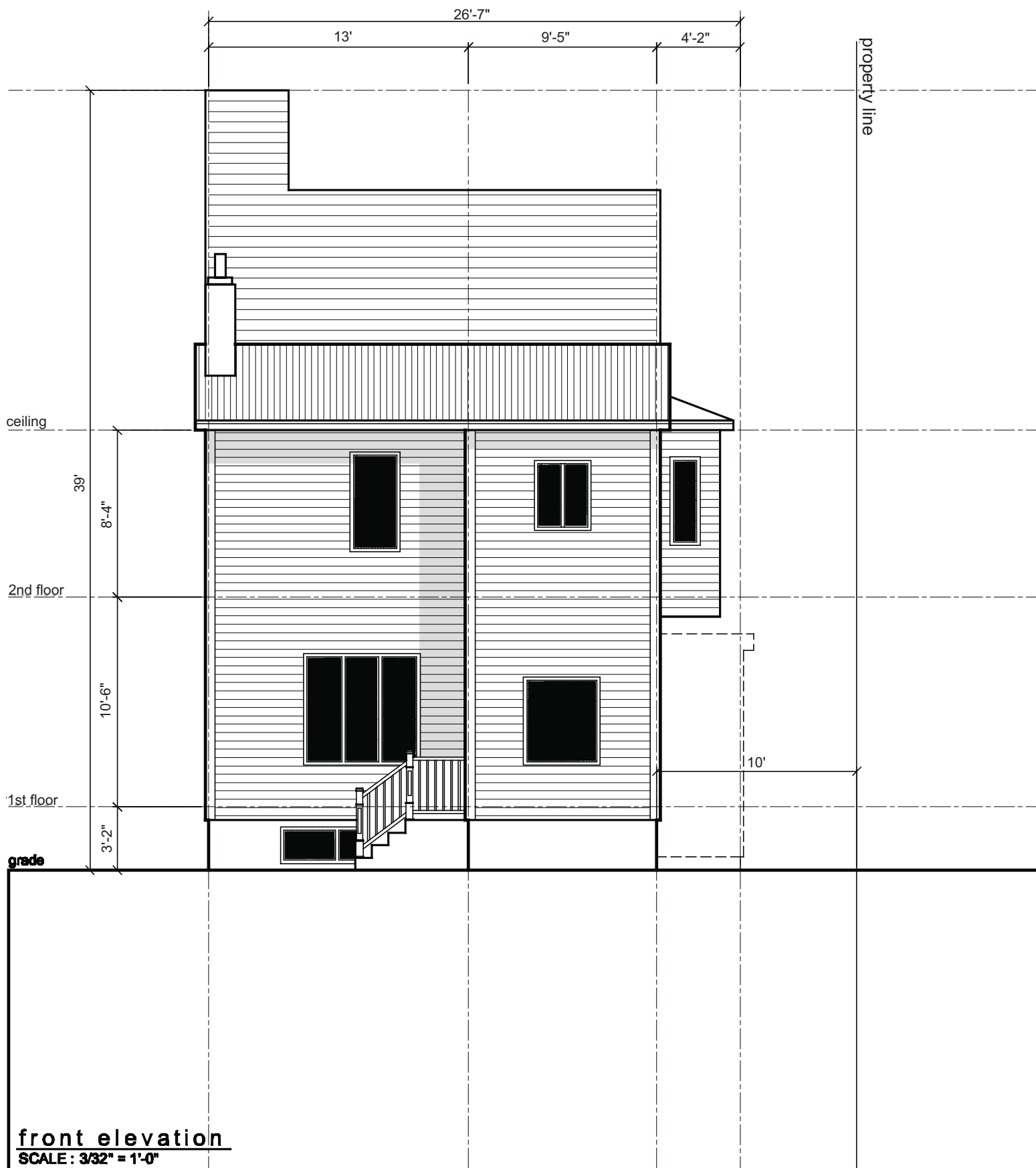
Grounds of Appeal:

1. The new owners who are the developers would like to owner occupy one of the existing buildings (#1091 Wellington) as their personal residence. They have 2 children and wish to make this their home. This in itself would in my opinion be instrumental in guaranteeing residential tenants of a hard working, dependable and responsible nature.
2. They would also like to renovate the exterior of their building to replicate the adjacent building to its original Heritage Facade and character.
3. Other options: Tear down both buildings and build a new contemporary modern structure similar to one recently approved at 1146 Wellington street.
4. Other properties in the area have three stories and do not meet the lot coverage of 40% nor do they have the code requirement of Barrier Free Access in some instances.
5. With properties in the neighbourhood moving towards higher density and the diminution of single family homes, an increase in additional living accommodations is a positive trend to encourage higher downtown residential density.
6. We are in conformity with R-2A, Section 43 AD, sub-section 7; which states that the maximum lot coverage of an Addition shall not exceed the area covered by the existing building. Since the lot size is 4150 ft² and 4125 ft² for #1087 and #1091 Wellington Street respectively we are proposing to increase the maximum lot coverage to 50% for both properties.
7. We are also proposing an Automated parking system which if approved would replace parking stalls with a larger liveable urban footprint.

Original Signed

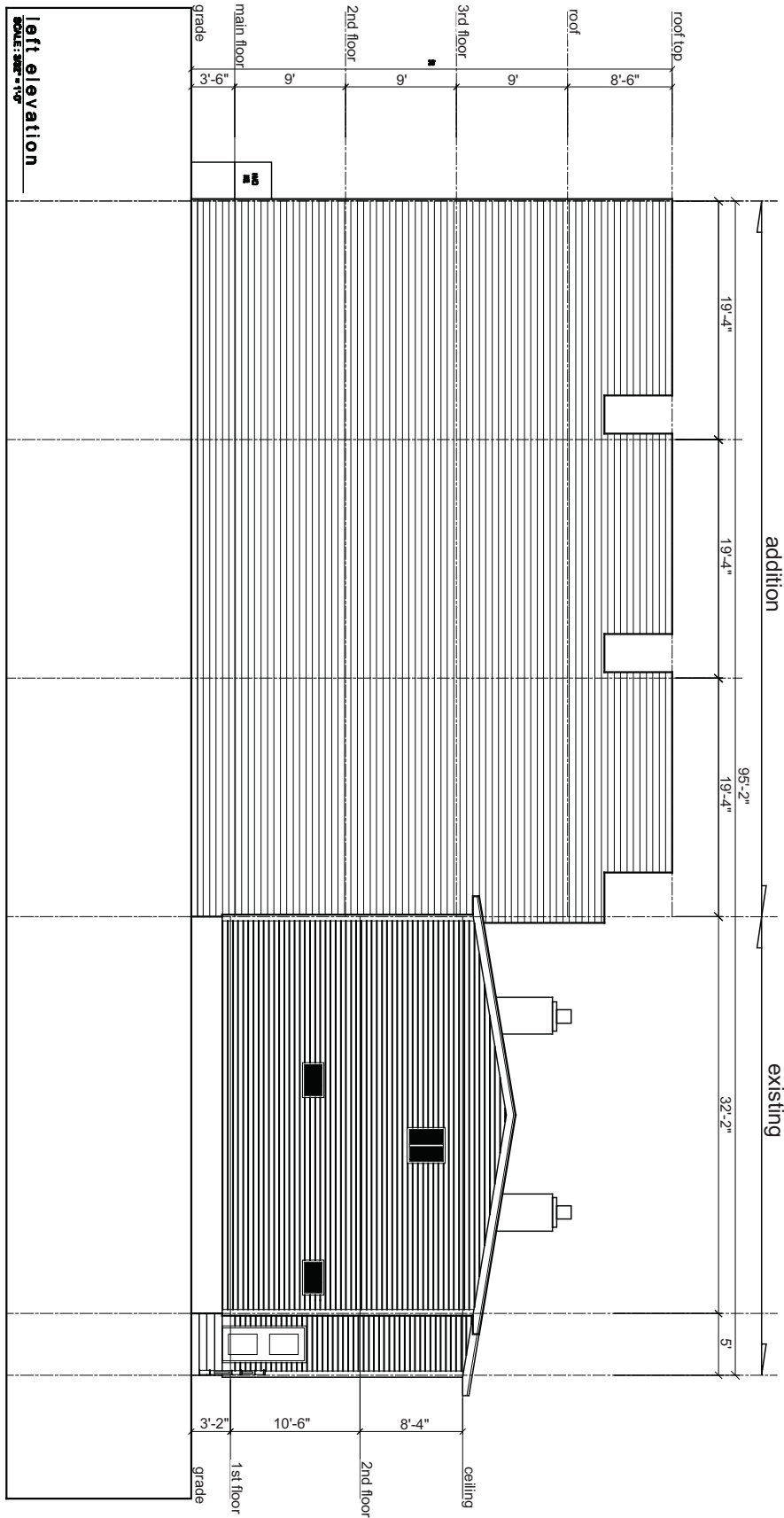
Geoff Keddy
Geoff Keddy Architect and Associates Ltd
5357 Inglis Street
Halifax, NS
B3H 1J4

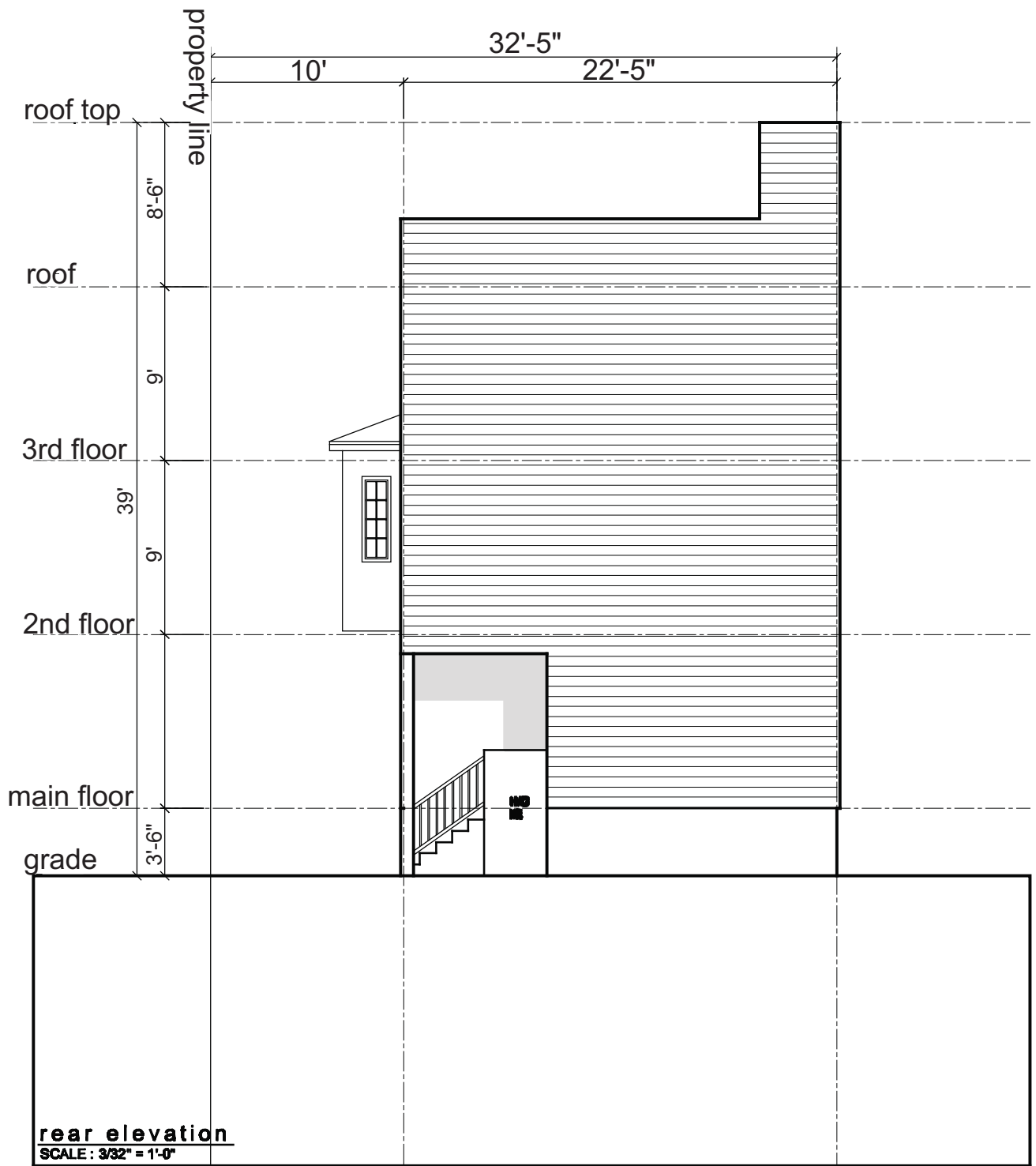
Case 18929 Attachment B - Front Elevation

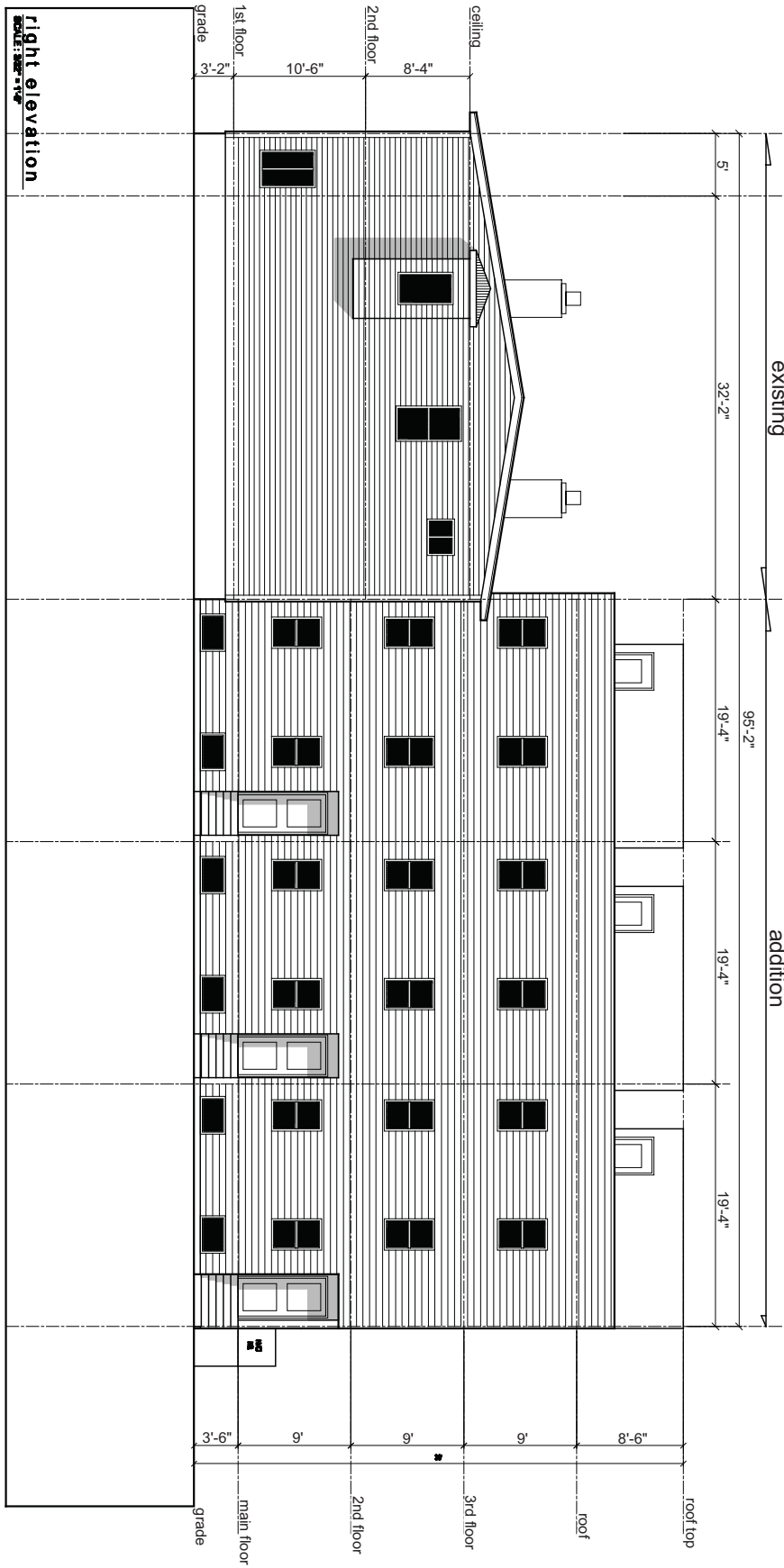


front elevation

SCALE : 3/32" = 1'-0"







November 7, 2013

Geoff Keddy
Geoff Keddy and Associates
5357 Inglis Street
Halifax, NS
B3H 1J4

Dear Mr. Keddy:

Re: Case No. 18929 – Variance at 1087 Wellington Street and Case No. 18930 – Variance at 1091 Wellington Street, Halifax, NS

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: 1087 Wellington Street
Project Proposal: Construction of an addition to create 4 units
Variance Requested:

	Requirement	Proposed
Lot Coverage	40%	53%

Location: 1091 Wellington Street
Project Proposal: Construction of an addition to create 4 units
Variance Requested:

	Requirement	Proposed
Lot Coverage	40%	51%

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.

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NOVEMBER 7, 2013

MR. GEOFF KEDDY

It is the opinion of the Development Officer that this variance application does not merit approval because the requested variance:

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

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 November 18, 2013.

If you have any questions or require additional information, please contact Shilo Gempton, Development Technician, at (902) 490-6796 Janice MacEwen, Development Technician at (902) 490-3993.

Sincerely,

Original Signed

Sean Audas, Development Officer
Halifax Regional Municipality

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

COMMUNITY & RECREATION SERVICES – DEVELOPMENT APPROVALS

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