

**Item No. 8.1.2**  
**Halifax and West Community Council**  
**March 25, 2014**

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

**SUBMITTED BY:** ~~for: Brad Anguish, Director, Community and Recreation Services~~

**DATE:** February 28, 2014

**SUBJECT:** **Case 19001: Appeal of Variance Refusal – 1663, 1665 & 1667 Larch Street, Halifax**

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**ORIGIN**

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

**LEGISLATIVE AUTHORITY**

*HRM Charter*; Part VIII, Planning and Development

**RECOMMENDATION**

The question before Halifax and West Community Council is whether to grant or deny the appeal before them.

**BACKGROUND**

A variance request has been submitted for the property at 1663, 1665 and 1667 Larch Street (Map 1) to permit the existing building to be used as a four unit dwelling. In order to facilitate this proposal, a variance has been requested to relax the minimum required lot frontage.

While the authorized use of the property is a three unit dwelling, the building is currently being used as a five unit dwelling. Through the variance request, the owner is seeking authorization to renovate the existing building to accommodate a total of four units. No increase in volume or footprint of the building is proposed. An application for a building permit to carry out the renovations will be submitted pending the outcome of the variance appeal.

There is an active by-law enforcement case on file for this property. To respond to the enforcement matter, the applicant submitted this variance request as an approach to bring the property into compliance with the requirements of the Land Use By-law. The variance application process and the compliance process are independent of each other and regardless of the outcome of the variance request, the compliance matter may be the subject of a prosecution referral to Legal Services.

**Site Details:**

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

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Min. Lot Frontage:</b>	60 feet	49.5 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variance (Attachment A). The applicant subsequently filed an appeal of the refusal on December 20, 2013 (Attachment B). The matter is now before the 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 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 the proposal does, in fact, violate the intent of the Land Use By-law. The Land Use By-law intends that lot size requirements and side, flank and rear yard setbacks are in place for both aesthetic purposes and practical reasons. Lot sizes and setbacks generally increase proportionally to the number of units and floor area, and provide visual separation from the street, area for future street expansion, and adequate separation distances between dwellings. The Land Use By-law carries out this intent through the application of zoning standards that contain provisions respecting land use, building setbacks, lot size, lot area, height, and building mass relative to lot area.

It is recognized that the applicant is proposing to improve the existing situation. There are two unauthorized residential units within the existing dwelling, however, the proposal to renovate the building and reduce the number of residential units to four, is only viable if the lot size meets the requirements of the Land Use By-law.

The request for a reduction in frontage to accommodate a fourth unit in this case is substantial. A four unit dwelling requires a minimum lot frontage of 60 feet. The existing 49.5 feet of frontage is suitable for a three unit dwelling as the Land Use By-Law requires a minimum lot frontage of 45 feet for three units. It is the opinion of the Development Officer that granting this variance to reduce the lot frontage to allow a fourth residential unit would result in violation of the intent of the Land Use By-law.

**2. Is the difficulty experienced general to the 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 authorized three unit dwelling is in conformance with lot size requirements; this is similar to neighboring properties. Within 30 metres of the subject property there are 14 of 19 properties with frontages that are less than that of the subject property. These properties contain mostly single or two unit dwellings, and three contain three unit dwellings. Further, of the 19 properties within the neighbourhood with the same zoning, none are developed with a four unit dwellings with the exception of a large, non-conforming apartment building, (Commodore Apartments) at 1676 Larch Street.

Properties within the neighbourhood generally meet the lot size required by the Land Use By-Law for the various uses these properties contain. The difficulty the subject property has in regards to the lack of frontage available for a fourth residential unit is common to properties in

the neighbourhood. Therefore, the difficulty experienced on the subject property appears to be general to properties in the area.

**3. Is the difficulty experienced the result of 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 variance prior to commencing any work on the property and to staff’s knowledge, no work has been done by the current property owner. Intentional disregard of the By-law requirements was not a consideration in the refusal of the variance request.<sup>1</sup>

**Appellant’s Appeal:**

While the criteria of the *HRM Charter* limit Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment B) 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>
The legalization of a fourth unit would reduce the number of existing bedrooms.	A four unit dwelling would be allowed a maximum of 10 bedrooms. There is no ability to vary this under the provisions of the <i>HRM Charter</i> . Should the appeal be denied or allowed, the building will have to be modified to meet the requirements of the By-law for three (maximum of 8 bedrooms) or four units, as applicable.
It would allow for an improvement with respect to building code compliance.	This may be the case, however, this is not a consideration relative to the requested variance. The land use must conform to the requirements of the Land Use By-Law and any matters relative to the Building Code would be considered separately under the authority of the NS Building Code Act and Regulations.
It would improve functionality of the interior layout.	This is not a consideration relative to the variance request. The use of the property must conform to the Land Use By-Law regulations, regardless of interior layout or functionality.

<sup>1</sup> Attachment A indicates that intentional disregard was a consideration relative to the Development Officer’s refusal of the variance. This is an error and the commentary above prevails.

<p>It will be consistent with the effort to increase density in the Downtown urban core.</p>	<p>Density on a property must conform to the existing requirements of the Land Use By-law. The density or number of units that may be permitted on a property are regulated in the Land Use By-Law through lot size, setbacks, lot coverage, gross floor area, building height, and parking. The authorized use of this property is a three unit dwelling, which would conform to all Land Use By-Law requirements.</p>
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**Conclusion:**

The Development Officer 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 *HRM 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 decision 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 related to this variance.

**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: Mark Inness, Development Technician, 490-6257 and  
Andrew Faulkner, Development Officer, 490-4341

Original Signed

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

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**Map 1 Notification Area**

1663, 1665, 1667 Larch Street,  
Halifax



Notification Area



Subject Property

**HALIFAX**  
REGIONAL MUNICIPALITY  
DEVELOPMENT APPROVALS



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



Map 2 Site Plan

1663, 1665, 1667 Larch Street,  
Halifax

 Subject Property



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



December 10<sup>th</sup>, 2013.

**Attachment A - Variance Refusal Letter**

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

COPY

Dear Mr. Keddy,

**RE: Application for Variance #19001 – 1663, 1665, & 1667 Larch Street (PID 00156687)**

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

**Location:** 1663, 1665, & 1667 Larch Street  
**Project Proposal:** Renovate basement level to create a 4<sup>th</sup> residential unit.  
**Variances Requested:**

	<b>Requirement</b>	<b>Proposed</b>
<b>Minimum lot frontage for a four unit dwelling</b>	60 feet	49.5 feet

Section 250(3) of the Halifax Regional Municipality 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; **(a) the variance violates the Intent of the Land Use Bylaw; (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(4) of the Halifax Regional Municipality 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  
P.O. Box 1749  
Halifax, NS B3J 3A5**

**Your appeal must be filed on or before December 20<sup>th</sup>, 2013.**

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If you have any questions or require additional information, please contact Mark Inness at 490-6257.

Sincerely,

**ORIGINAL SIGNED**

Andrew Faulkner  
Development Officer

cc. Cathy Mallett, Municipal Clerk  
Councillor Wayne Mason, District 07

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**COMMUNITY & RECREATION SERVICES – DEVELOPMENT APPROVALS**  
Eastern Office – Alderney Gate, 2<sup>nd</sup> Floor

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E-mail: [falukna@halifax.ca](mailto:falukna@halifax.ca) Web Site: [www.halifax.ca](http://www.halifax.ca)

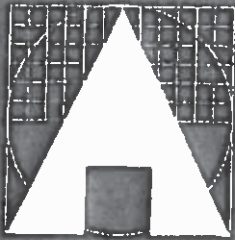
Attachment B - Letter of Appeal from the Applicant

COPY

December 20<sup>th</sup>, 2013

Andrew Faulkner, Development Officer  
c/o Municipal Clerk  
Halifax regional Municipality  
P.O Box 1749  
Halifax, NS B3J 3A5

HALIFAX REGIONAL  
MUNICIPALITY  
  
DEC 23 2013  
S.G.  
MUNICIPAL CLERK



**GEOFF KEDDY  
ARCHITECT &  
ASSOCIATES**  
  
ARCHITECTURE  
INTERIOR DESIGN

Attention: Andrew Faulkner

Reference: Application for variance #19001 – 1663, 1665, & 1667  
Larch Street (PID 00156687)

I hereby appeal the decision of the Development Officer on the following grounds:

- 1) The legalization of a fourth unit would reduce the number of existing bedrooms
- 2) It would allow for an improvement with respect to building code compliance.
- 3) It would improve the functionality of the interior layout.
- 4) It will be consistent with the effort to increase density in the downtown urban core.

Yours Truly,

**ORIGINAL SIGNED**

Geoff Keddy  
Geoff Keddy Architect & Associates

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B.A. B.Sc. B.Ed. B. Arch.

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