



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

Item No. 8.2.1

Halifax and West Community Council
May 6, 2014

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

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

DATE: April 14, 2014

SUBJECT: **Case 19016: Appeal of Variance Refusal – 6271 Duncan 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 6271 Duncan Street, Halifax (Map 1) to enable the existing building to be converted to a two unit dwelling. In order to facilitate this project, three variances have been requested to relax the required minimum lot area, minimum lot frontage and minimum left side yard. The property is currently developed as a single unit dwelling.

Site Details:

Zoning: R-2 (General Residential Zone) under the Halifax Peninsula
Land Use By-law (Peninsula North Secondary Plan Area)

	Zone Requirement	Variance Requested
Minimum Lot Area	5,000 square feet	3,038 sq. ft.
Minimum Lot Frontage	50 feet	31 feet
Minimum Left Side Yard	5 feet	1 foot

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

DISCUSSION

Development Officer's Assessment of Variance Requests:

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 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; or
(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 proposed variances violate the intent of the Land Use By-law. The By-law intends that lot sizes and building setbacks should increase based on number of residential units to be established on a property. The lot and existing building do not meet the requirements of the Land Use By-law for a two unit dwelling.

The R-2 Zone already contains a provision that allows existing buildings to be converted to two unit dwellings notwithstanding the requirements for lot area, frontage, setbacks, building height and lot coverage. This provision, however, only applies where the external dimensions of the building have not changed since October 25, 1985. The intent of this is to enable the addition of a second unit without it resulting in an alteration to the external appearance of the building. An addition made to the dwelling in 2011 which increased the building volume does not allow for this provision to be applied.

The requested variances are significant and are inconsistent with the standards of the R-2 Zone. As such, it is the Development Officer's opinion that the proposed variances violate 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 difficulty experienced is general to properties in the area as most of the lots are of the same size with similar street frontages. There are 22 properties in the notification area. Most (18) of these dwellings are single unit dwellings and 6 contain 2-4 units. Research concluded that the dwellings with more than one unit were achieved in one of three manners: 1) through an internal conversion, 2) they existed prior to the By-law, or 3) they received approval through a development agreement process.

Also, only 3 of the properties within the notification area are greater than 3,100 square feet in area and only 4 have more than 31 feet of street frontage. Many of the lots within the notification area are of similar frontage and area as the subject property. It is the Development Officer's opinion that where the lots in the area are of similar size and frontage 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.

Construction on the second unit has started and an Order to Stop Work has been placed on the property. There seemed to be some confusion on the part of the property owner relative to the extent of renovation activity that could take place within the current requirements. In discussions with the property owner, the Development Officer was satisfied that intentional disregard of the By-law requirements had not occurred and this was not a consideration in the refusal of the variance requests.

Appellant’s Appeal:

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the applicant 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:

Appellant’s Appeal Comments	Staff Response
<i>All three properties that border ours are multi- unit buildings, with 2-5 units in each.</i>	Research confirmed that these buildings were achieved in one of 3 ways – 1) Development Agreement, 2) they existed prior to the land use bylaw, or 3) internal conversion or variance.
<i>We have parking at the rear of the property for multiple vehicles, as well as a garage that can be used to store bicycles and so would not be adding to curb side parking should there be 2 units.</i>	This is not a consideration relative to the variance requests and the criteria provided by the <i>Charter</i> . Two off-street parking spaces are required for two units, and they have been provided for in the applicant’s proposal.
<i>There are 5 bedrooms in the home, one of which will be converted into a kitchen, so we would actually decrease the population density by 20%.</i>	This is not a consideration relative to the variance requests and the criteria provided by the <i>Charter</i> . The proposal meets the zoning standard as six bedrooms are permitted in the R-2 Zone.
<i>The home was operated as a boarding house by the previous homeowner, who rented out rooms to international university students.</i>	This is not a consideration relative to the variance requests and the criteria provided by the <i>Charter</i> . A rooming house is not permitted under the current zoning.
<i>We only wish to complete an internal conversion we are not increasing the size of the building.</i>	The land use by-law is clear in the application of the internal conversion provision in that it applies only to buildings that have not increased in height or volume since 1985. This is not the case for this property as a two storey addition was constructed in 2011.

Appellant's Appeal Comments	Staff Response
<i>We are planning exterior enhancements that will add to the value and beauty of the street, benefitting those around it as well. It will not be a rundown rental, but a brand new set of executive flats, attracting mature and professional people to the area.</i>	This is not a consideration relative to the variance requests and the criteria provided by the <i>Charter</i> . The land use by-law does not regulate exterior appearance.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were refused as it was determined that the proposal meets the statutory criteria for refusal 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 request for variances.

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 variances.
2. Community Council may allow the appeal and overturn the decision of the Development Officer and approve the variances.

ATTACHMENTS

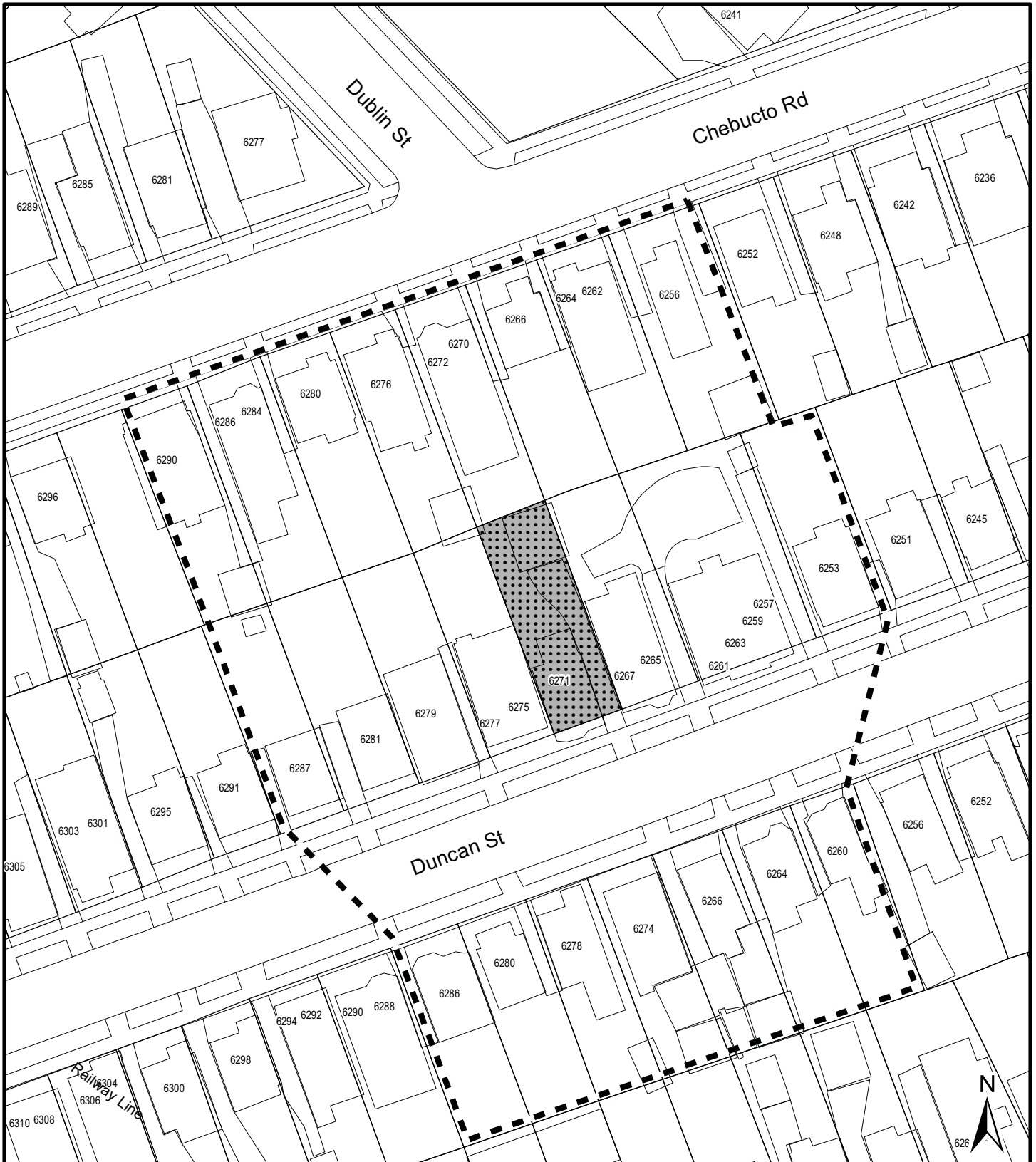
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Refusal Letter
Attachment B	Appeal Letter

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: Stephanie Norman, Development Technician, 490-7455
 Sean Audas, Development Officer, 490-4402

Original Signed

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



Map 1 - Notification Area

6271 Duncan Street
Halifax



Subject Property



Notification Area



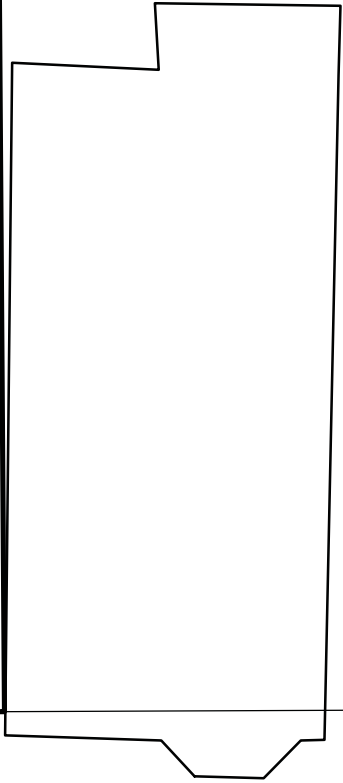
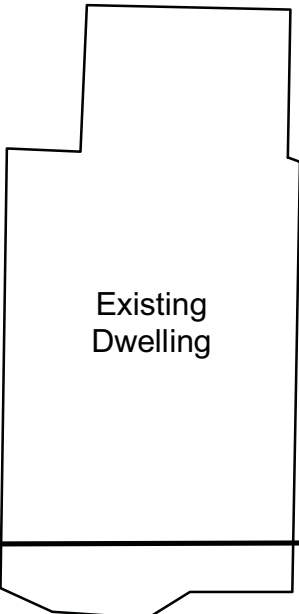
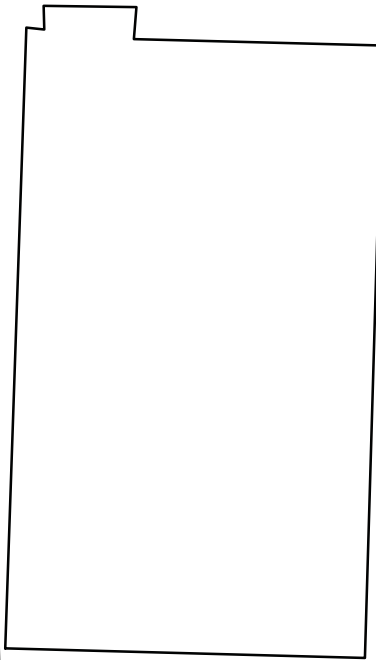
HRM does not guarantee the accuracy of any representation on this plan.



Lot Area
Required 5,000 Sq.ft.
Proposed 3,038 Sq.ft.

Lot Frontage
Required 50 Feet
Proposed 31 Feet

Left Side Setback
Required 5 Feet
Proposed 1 Foot



Requested Variance 1'

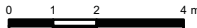
Sidewalk

Curb

Duncan Street

Map 2 - Site Plan

6271 Duncan Street
Halifax



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



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

COPY

January 6th, 2013

Mark Gentile

Dear Mr. Gentile,

RE: Variance Application No. 19016- Variance for lot area, lot frontage and left side yard requirements of the Halifax Peninsula Land Use Bylaw to convert a single unit dwelling to a two unit dwelling at 6271 Duncan Street, Halifax, NS, PID 00133819

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

Location: 6271 Duncan Street
Project Proposal: Convert single unit dwelling to two unit dwelling

	Requirement	Proposed
Lot Area	5,000 square feet	3,038 square feet
Lot Frontage	50 feet	31 feet
Left Side Setback	5 feet	1 foot

Section 235(3) of the Municipal Government Act 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 this variance application does not merit approval because:

- (a) variance violates the intent of the land use bylaw
- (b) the difficulty experienced is general to properties in the area

COMMUNITY AND RECREATION SERVICES- DEVELOPMENT APPROVALS

Tel: (902) 490-4402 Fax: (902) 490-4645

E-mail: audass@halifax.ca Web Site: www.halifax.ca

Pursuant to Section 236(4) of the Municipal Government Act 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 January 16th, 2014.

If you have any questions or require clarification of any of the above, please call Stephanie Norman at 490-7455.

~~Sincerely,~~

Original Signed

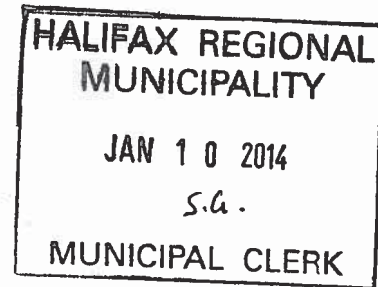
~~Sean Audas~~

Development Officer

cc. Cathy Mallet, Municipal Clerk
Councillor Jennifer Watts

7 January 2014

Municipal Clerk
c/o Sean Audas, Development Clerk
Halifax Regional Municipality
Development Services – Western Division
PO Box 1749
Halifax, NS B3J3A5



Dear Mr. Audas:

Re: Application for Variance No. 19016 – 6271 Duncan Street (PID 00133819)

Please accept this letter of appeal in response to our refusal of a request for variance of the Halifax Peninsula Land Use Bylaw for 6271 Duncan Street (PID 00133819), in Halifax. The application submitted was for a variance of the required lot area, lot frontage, and left side setback for the conversion of an existing single unit dwelling to a two unit dwelling. The objective of this renovation is to internally convert a 5 bedroom boarding house to two executive two bedroom apartments units.

Our initial application to complete an internal conversion of our home was refused as there was an HRM approved and inspected addition built on the property in 2010, by the previous owner. This triggered a violation of Halifax Land Use Bylaw 41C, which states,

41 A building in existence on or before the 11th of May, 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following:

- (a) A duplex dwelling containing not more than a total of six habitable rooms be permitted on a lot containing an area of not less than 3,300 square feet.
- (b) A duplex dwelling containing not more than a total of eight habitable rooms be permitted on a lot containing an area of not less than 4,000 square feet.
- (c) There is no increase in height or volume and that the external dimensions of the building have not changed since 25 October 1985.**
- (d) One separately accessible parking space at least 8 feet by 16 feet shall be provided on the lot for each of the two dwelling units.

Please note the addition to the property did not change the footprint of the house, as shown in the included survey from 1981. However, it did increase the volume of the house as a room was built above a porch at the rear of the building, bringing it to the same height as the rest of the building. Had this addition not taken place we would have been eligible for the internal conversion to two units and not triggered the violation as set forth in article 41c.

We applied for a variance and were denied as the variance a) violates the intent of the Land Use Bylaw, and that b) the difficulty experienced is general to the properties in the area. As some of the neighboring houses have constructed additions at some point, they too would need a variance if they were to ever apply for an internal conversion.

We would like to appeal this decision as those property owners may never decide to do an internal conversion. There are also many homes in the area that do not have additions, and are free to do an internal conversion whenever they wish. We do not feel that this small room added in the past by someone else should deny us the opportunity to convert.

The lot area, lot frontage and setbacks are typical of every home in the area, which include a substantial number of multi unit homes.

There are also a number of other reasons why we feel this variance should be granted.

- All three properties that border ours are multi unit buildings, with 2-5 units in each.
- We have parking at the rear of the property for multiple vehicles, as well as a garage that can be used to store bicycles, and so would not be adding to curbside parking should there be 2 units.
- There are 5 bedrooms in the home, one of which will be converted into a kitchen, so we would actually decrease the population density by 20%.
- The home was operated as a boarding house by the previous homeowner, who rented out rooms to international university students.
- We only wish to complete an internal conversion; we are not increasing the size of the building.
- We are planning exterior enhancements that will add to the value and beauty of the street, benefiting those around it as well. It will not be a run down rental, but a brand new set of executive flats, attracting mature and professional people to the area.

We thank you for taking the time to consider our request.

Sincerely,



Original Signed

Mark Gentile and Melanie Fewer