

**West Community Council
December 10, 2012**

TO: Chair and Members of West Community Council

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

DATE: November 20, 2012

SUBJECT: **Case 17476: Appeal of Variance Refusal - 2890 Connolly Street,
Halifax**

ORIGIN

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

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the request for variances at 2890 Connolly Street, Halifax.

BACKGROUND

Proposal:

Variance requests have been submitted for the property at 2890 Connolly Street to permit the site to be developed with a new, two unit dwelling (Map 2 and Attachment 1). In order to facilitate this project, two variances have been requested to relax the required lot area as well as the maximum gross floor area ratio. The property contains an existing, one storey, single unit dwelling which will be demolished.

Site Details:

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

	Zone Requirement	Variance Requested
Min. Lot Area:	5,000 sq. ft.	3,774 sq. ft.
Max. Gross Floor Area:	2,642 sq. ft.	3,988 sq. ft.

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment 3). The applicant subsequently filed an appeal of the refusal on May 23, 2012 (Attachment 4). The matter is now before 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 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 By-law intends that lot sizes should increase in relation to the number of residential units and the building mass.

One of the goals in the Halifax Municipal Planning Strategy (MPS) is to maintain the character and stability of established neighbourhoods within the Halifax Peninsula. In this regard, Policy 2.4 of the MPS states:

".... the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods."

The Land Use By-law carries out this intent through the application of zones containing provisions respecting land use, building setbacks, lot size, lot area, height, and building mass relative to lot area. The By-law requires a 5,000 sq. ft. lot to accommodate a two unit dwelling. The subject property's lot area amounts to approximately 75% of this requirement.

The maximum residential gross floor area (GFA) requirements were adopted in October 2005 to achieve two objectives: To prohibit the development of dwellings containing an excessive number of bedrooms; and, to limit the mass of dwellings relative to their lot size and dwellings on similar lot sizes in the same neighbourhood.

Gross floor area is regulated by lot size. The subject property has a lot size of 3,774 sq. ft. which would permit a total gross floor area of 2,642 sq. ft. The proposed dwelling has a gross floor area of 3,988 sq. ft., exceeding the permitted GFA by 1,346 sq. ft., or 33%.

Granting these variances would result in the site being redeveloped with a building that would be out of scale and therefore, incompatible with the existing residential neighbourhood. Such a situation is seen to be 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 the variance requests, staff must review the built form 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 proposed two unit dwelling would be situated on one of the smaller lots within a neighbourhood where lots sizes range from approximately 3,770 sq. ft. to 4,000 sq. ft. in area. The majority of the dwellings within the surrounding area are single unit dwellings, most of which appear to meet the applicable zoning standards.

The general area is developed with modest homes and the average gross floor area in the neighbourhood is 1,854 sq. ft. This is considerably less than the maximum permitted which ranges from 2,450 sq. ft. to 2,800 sq. ft. for lots 3,500 sq. ft. to 4,000 sq. ft. in area, respectively.

In comparing the site to the surrounding neighbourhood, the difficulty experienced 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 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 variances prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in the refusal of the variance requests.

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 conflicts with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

BUDGET IMPLICATIONS

There are no budget implications related to this variance.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

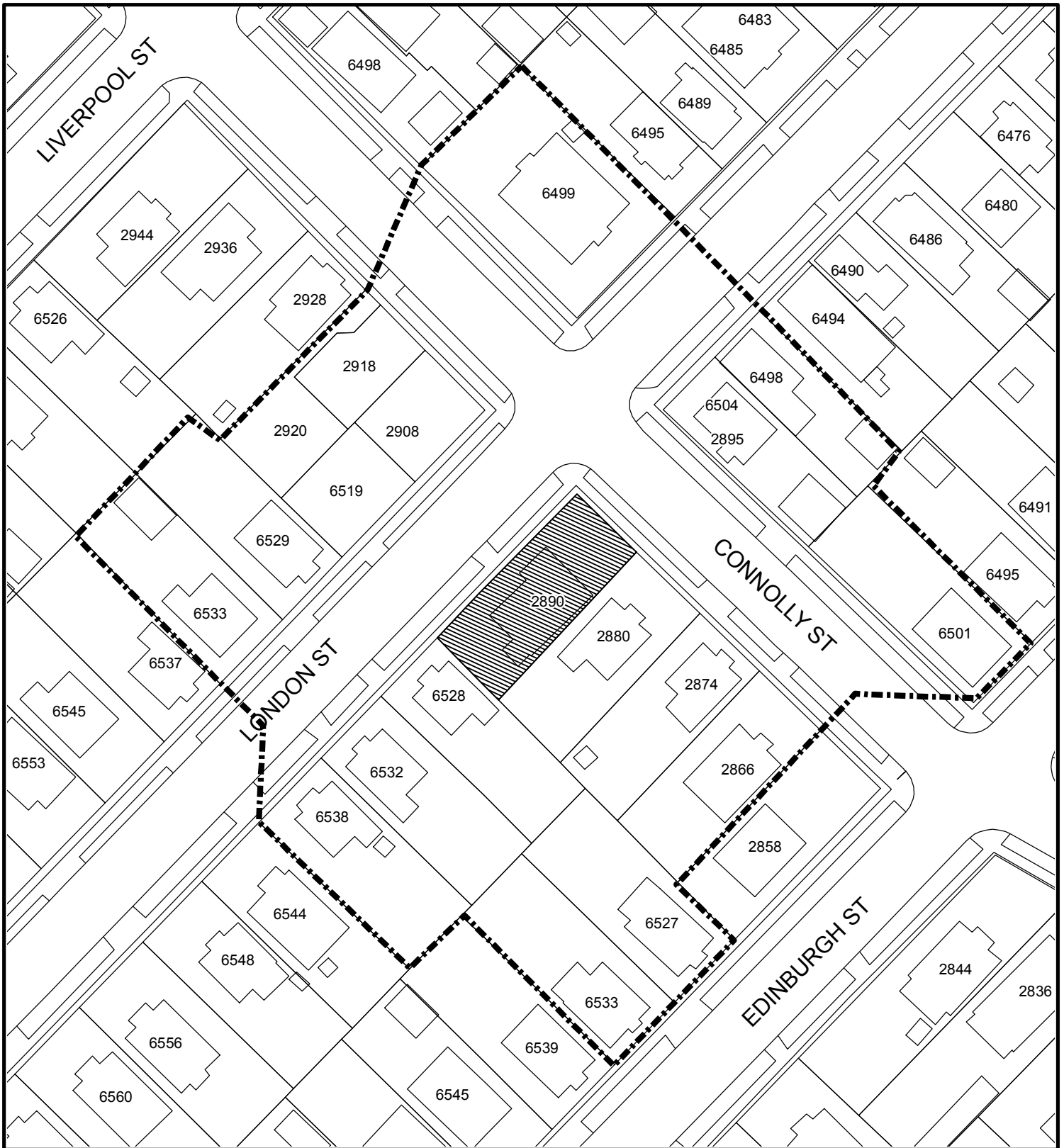
This report complies with the Municipality's Multi –Year Financial Strategy, the approved Operating, Project and reserve budget, policies and procedures regarding withdrawals from the utilizations of Project and Operating reserves, as well as any relevant legislation.

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.



Map 1 - Notification Area
 2890 Connolly Street, Halifax



Subject Property



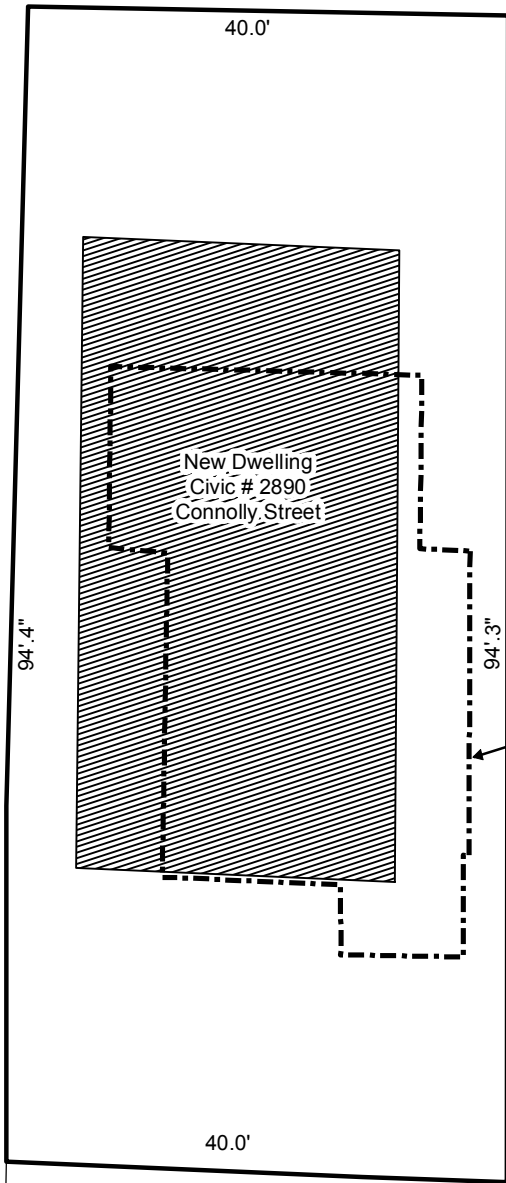
Notification Area



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

CONNOLLY STREET

LONDON STREET

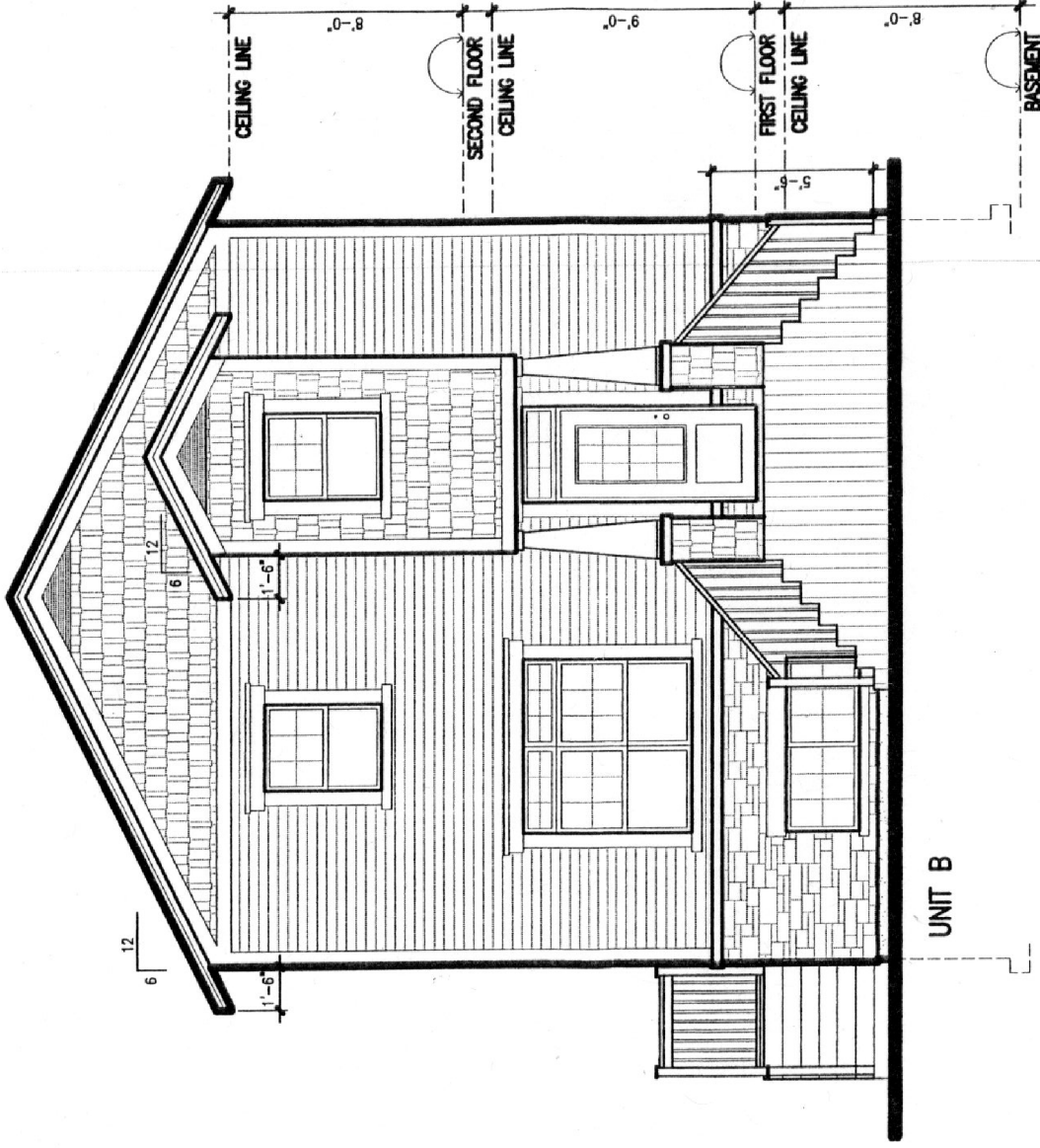


Map 2
Site Plan

HALIFAX
REGIONAL MUNICIPALITY
Community & Recreation Services
Development Approvals



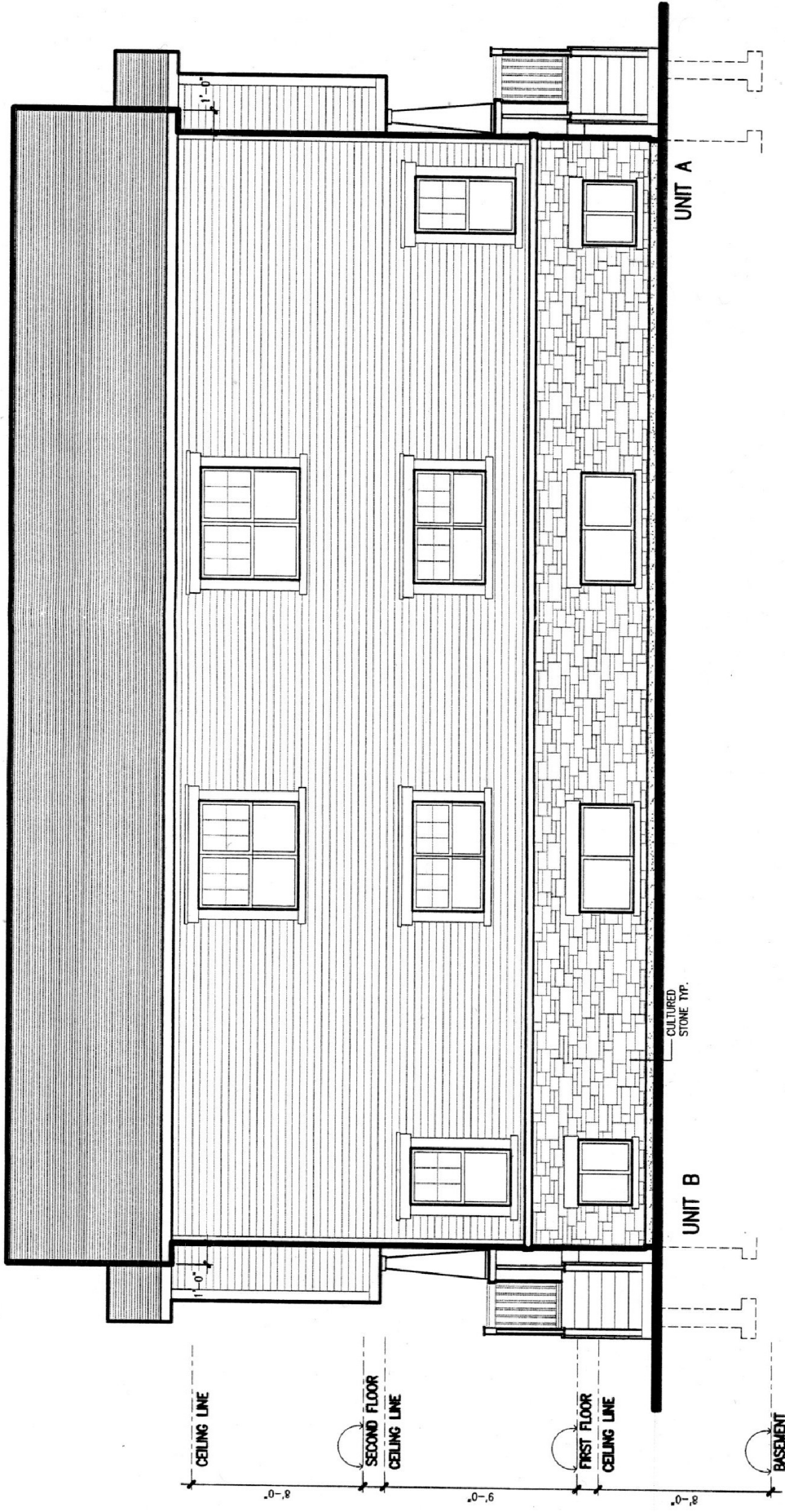
HRM does not guarantee the accuracy of any base map information on this plan.



FRONT ELEVATION
SCALE: 3/16" = 1'-0"

**Attachment 1 Front Elevation
Connolly Street**

HRM does not guarantee the accuracy of any base information.



RIGHT SIDE ELEVATION
 SCALE: 3/16" = 1'-0"

**Attachment 2 - Right Side Elevation
 London Street**

HRM does not guarantee the accuracy of any base information.

PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

May 18, 2012

Nottingham Developments
c/o Greg Kelly
2890 Connolly Street
Halifax, NS
B3L 3N5

Dear Mr Kelly:

RE: Application for Variance File No. 17476 – 2890 Connolly Street, Halifax, NS

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: 2890 Connolly Street, Halifax, Nova Scotia
Project Proposal: To construct a 2 unit dwelling
Variance Requested: To reduce the required lot area from 5000 sq ft to 3770 sq ft and to increase the gross floor area from the max 2,625 sq ft , permitted, to 3,987 sq ft , proposed.

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

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.**

It is the opinion of the Development Officer that the variance **(a)** violates the intent of the Land Use By-law, and **(b)** the difficulty experienced is general to the properties within the area, therefore your request for a variance has been refused.

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 for the appeal, and be directed to:

Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region

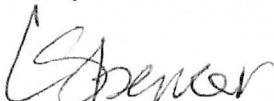
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P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before *May 28, 2012*.

If you have any questions or require additional information, please contact Laura Walsh at *490-4462*.

Sincerely,


for Andrew Faulkner
Development Officer

cc. Cathy Mellett - Acting Municipal Clerk
Councillor Sue Uteck

Attachment 4: Letter Of Appeal



Greg Kelly
19 Nottingham Street
Bedford, Nova Scotia
B4A 3A8
(902) 497-5246

May 23,2012

Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services – Eastern Region
PO Box 1749
Halifax, NS B3J 3A5

Dear Mr. Faulkner:

RE: File No. 17476, Nottingham Developments; c/o Greg Kelly
2890 Connolly Street; Halifax, NS B3L 3N5

The intent of this letter is to appeal the decision of the development officer for the above address.
File No. 17476.

The grounds for filing this appeal is that the proposed project fits in with the neighbourhood as there are two dwellings of the same construction on the northwest corner and a four unit on the northeast corner.

The building would bring two 2 bedroom units that would be attractive to new families wanting to move into the neighbourhood.

Sincerely,

A handwritten signature in black ink, appearing to be "Greg Kelly", written over a horizontal line.

Greg Kelly

GK/np