

**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 17936: Appeal of Variance Refusal - 2590 Oxford 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 2590 Oxford Street, Halifax.

BACKGROUND

Proposal:

Variance requests have been submitted for the property at 2590 Oxford Street to permit the existing building to be expanded to enlarge its second storey and to permit the construction a new, third storey (Attachment 1). In order to facilitate this work, 5 variances have been requested to relax the required lot area, lot coverage and the front, flankage and side yard setbacks.

The property contains an existing mixed-use, two storey building. The ground floor is occupied by commercial space and the second storey contains 1 residential unit (Attachment 2).

An application for a Development Permit has been filed to extend the existing second storey to match the footprint of the first storey and to construct a new, third storey on top of the expanded second storey. The second storey addition will serve to expand the existing residential unit on this level and the new third storey will accommodate a second residential unit. No alterations are proposed to the first storey commercial use.

Site Details:

Zoning: C-2A (Minor Commercial) Zone, Halifax Peninsula Land Use By-Law

	Zone Requirement	Variance Requested
Lot Area:	5,000 sq. ft.	2,200 sq. ft.
Front Yard:	15 feet	0 feet
Flankage Yard:	6 feet	0 feet
Side Yard:	5 feet	0 feet
Lot Coverage:	35%	49.9%

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 July 30, 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 and building setbacks should increase based on the number of residential units to be established on a property.

The subject lot is 2,200 sq.ft. in area and was created by deed on March 5, 1969. While the required minimum lot area for a single dwelling unit is 4,000 sq. ft., the Land Use By-law provides for a relaxation of this requirement to 3,000 sq. ft. for lots in existence prior to June 23, 1995. For two dwelling units to be developed, the By-law requires a lot area of 5,000 sq. ft. Therefore, the existing residential unit on the property is already non-conforming to the By-law and adding another dwelling unit to the property would only increase the degree of non-conformity.

The setbacks for the residential expansion, which are proposed to match the footprint of the existing ground floor commercial space, are 0 feet for the front, flankage, and right side yards; the lot coverage is 49.9%. The C-2A Zone does not require commercial uses to have any setbacks or maximum lot coverage, but requires the residential portion of the building to meet the requirements of the R-2 (General Residential) Zone. As the proposal represents a complete reduction of the required setbacks, lot area and lot coverage, it violates the intent of the land use by-law for the proposed development.

2. Is the difficulty experienced general to 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 *HRM Charter* provides for notification to all assessed property owners within 30 metres of an approved or appealed variance request. All properties within the 30 m notification radius of the subject property are zoned R-2, except for the subject property and the corner lot at the opposite end of the block fronting on Chebucto Road and Kline Street, both of which are zoned C-2A. Most of the R-2 zoned lots within the 30 m radius contain single unit dwellings that are

located on lot sizes that range from just below 3,000 sq. ft. to over 5,000 sq.ft. The lots in the surrounding neighbourhood are generally larger lots than the subject property, but are only large enough to accommodate single unit dwellings (4,000 sq. ft). To propose the development of two dwelling units on the 2,200 sq. ft. subject property presents a similar difficulty as it would to the surrounding lots. The side yard setbacks of the existing buildings on the R-2 zoned lots vary from approximately 2 feet to greater than 5 feet and none extend across the full width of the lot, as does the subject proposal. The front yard setbacks also vary, however, none appear to be at 0 feet although they are generally closer than the required minimum of 15 feet (Civic 2583 Oxford St. is approximately 3.5ft., and 6410 Chebucto Rd. is approximately 5ft.).

With respect to lot coverage, the majority of the lots, within the 30 m radius, contain dwellings that are close to the maximum 35% lot coverage. In consideration of the neighbourhood built form characteristics and the variance requests for reduced lot area, setbacks, and lot coverage, it is the Development Officer's opinion 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 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.

Applicant'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 his letter of appeal (Attachment 4) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Applicant's Appeal Comments	Staff Response
The applicant disagrees that the proposed variance violates the intent of the Land Use By-law as the proposed third storey will meet the maximum building height requirement of 35 feet.	The maximum height for all buildings, regardless of use, in the C-2A Zone is limited to 35 feet. The proposed building does not exceed the height requirement and therefore it was not a consideration in review of the variance application as all properties in the area are permitted to build to that height. Further, there is no ability to vary the height requirements of the Land Use By-law.

Applicant's Appeal Comments	Staff Response
<p>Although the two residential units would exceed the maximum lot coverage, there are many duplexes in the neighbourhood and the proposal is in keeping with the character of the neighbourhood and policy 2.4 of the Halifax MPS which 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."</p>	<p>Variance requests by their very nature are localized; they typically only impact the immediate neighbours. The <i>HRM Charter</i> specifies a 30 m notification radius and only those assessed property owners within that radius receive notice of a granted or appealed variance and only those neighbours have the right of an appeal to Council.</p> <p>Consistent with the notification provisions of the <i>HRM Charter</i>, staff apply the 30 m radius when comparing any proposed variance with the use and built form of neighbouring properties. There are many duplexes in Halifax, however, single unit dwellings dominate properties within 30 m of 2590 Oxford Street. As noted in the Development Officer's analysis of the proposal, the requested variances were determined not to be in keeping with the character of the existing neighbourhood.</p> <p>While policy 2.4 of the Municipal Planning Strategy is typically used by Council when considering a Planning application such as a development agreement, re-zoning or MPS amendment, the Development Officer refers to the Policy when determining whether a proposed variance violates the intent of the land use by-law. For the reasons already noted in this report, the Development Officer believes the proposal represents such a violation.</p>
<p>Regarding building setbacks, they will not change as a result of the third storey addition; the proposed development does not represent a significant level of departure from what is currently on site.</p>	<p>While this is accurate, the proposed variances represent a complete reduction of the required setbacks, lot area and lot coverage. As such, the Development Officer believes the requests violate the intent of the Land Use By-law.</p>
<p>Each apartment unit will have a dedicated parking spot.</p>	<p>This is a requirement of the Land Use By-law that must be met, regardless of the variance requests. There is no authority to vary parking requirements.</p>

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 budgets, policies and procedures regarding withdrawals from the utilization 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.

ALTERNATIVES

1. Council may uphold the decision of the Development Officer to refuse the variances.
2. Council may overturn the decision of the Development Officer and approve the variances.

ATTACHMENTS

Map 1 – Notification Area

Map 2 – Site Plan

Attachment 1 – Building Elevations (Existing and Proposed)

Attachment 2 - Existing 2nd Floor Plan

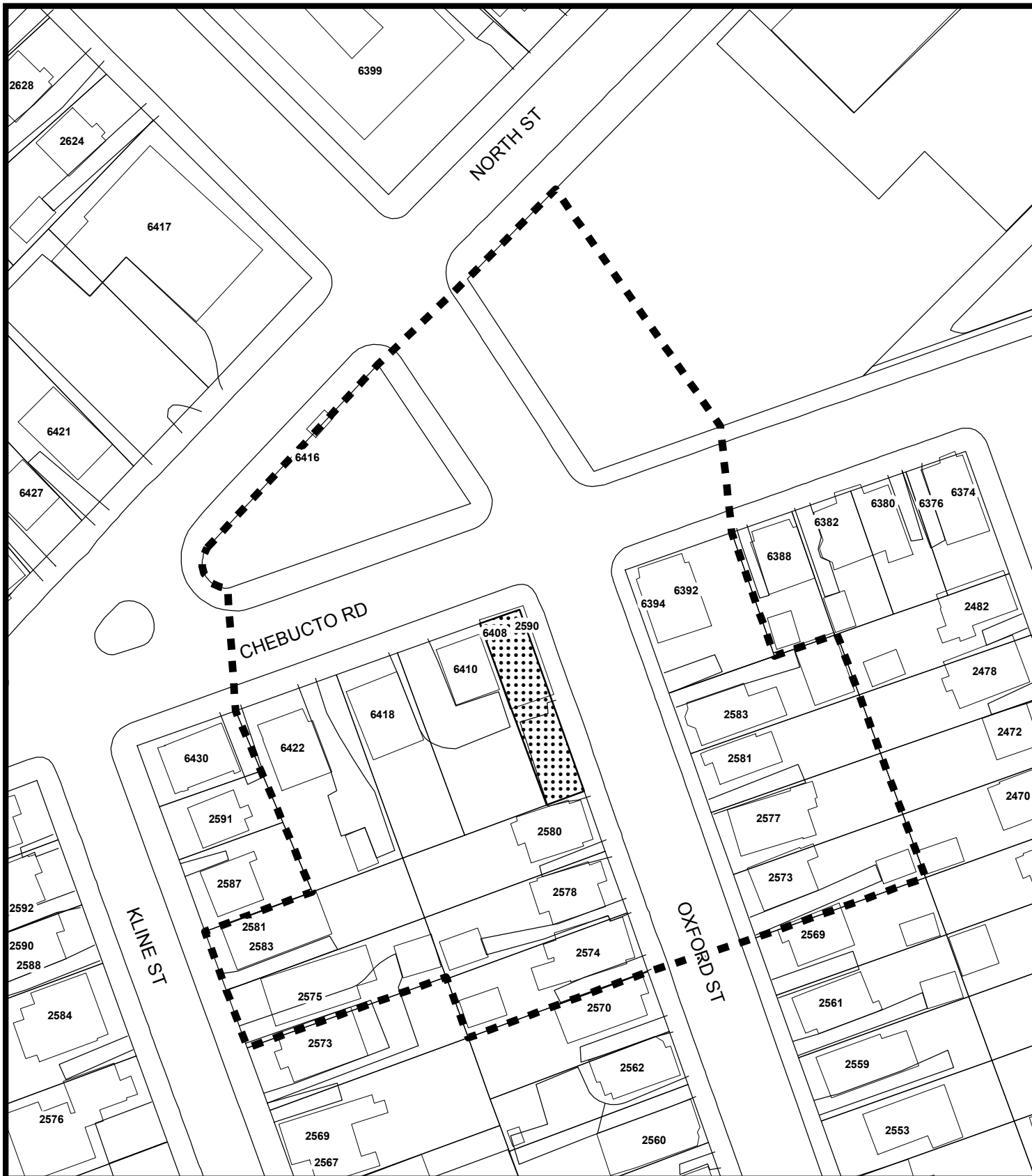
Attachment 3 – Variance Refusal Letter

Attachment 4 – 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.

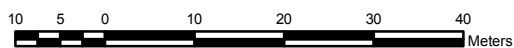
Report Prepared by: Mark Inness, Development Technician, 490-6257 and
Andrew Faulkner, Development Officer, 490-4341

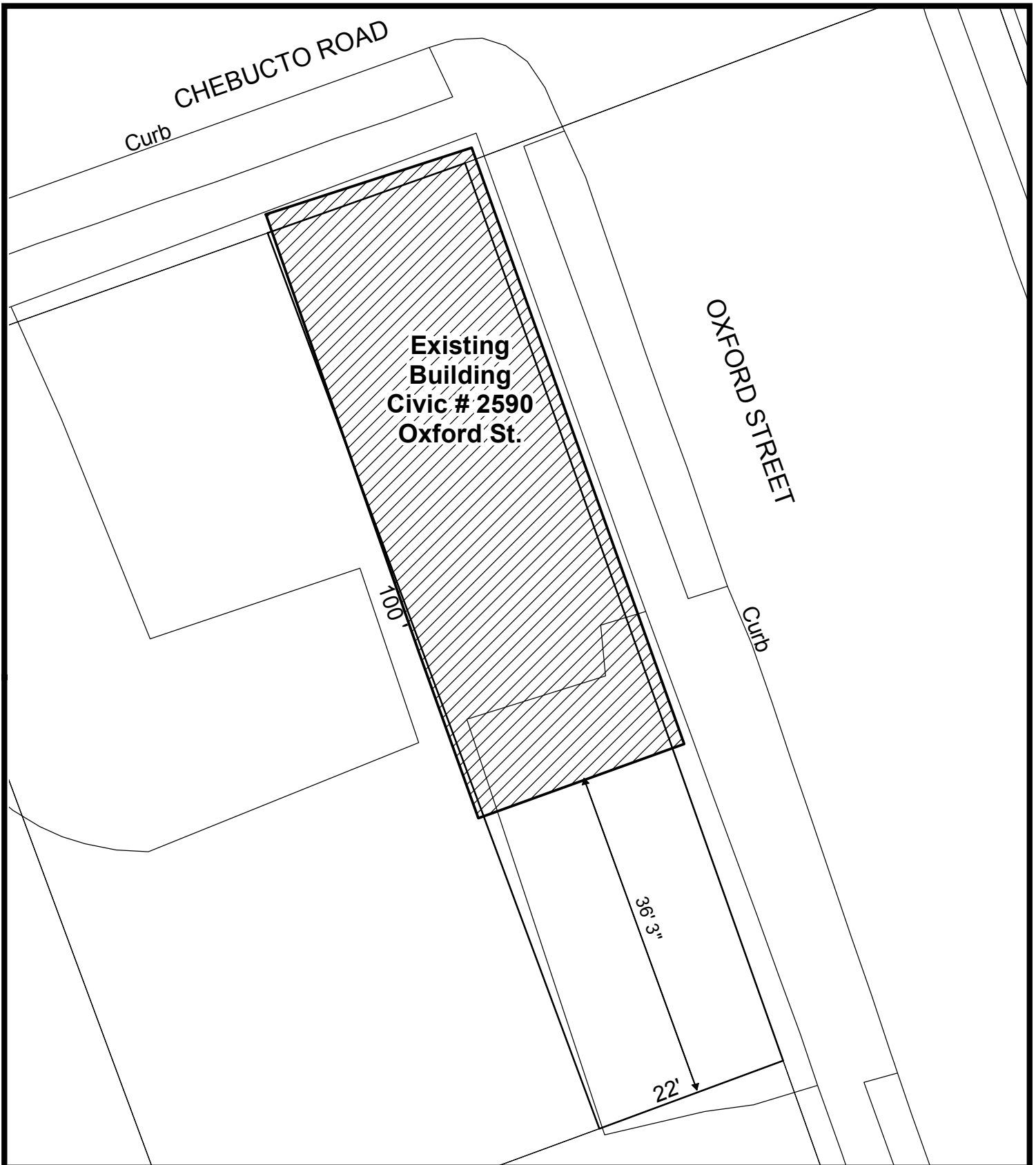
Report Approved by: 
Kelly Denty, Manager, Development Approvals, 490-4800



Map 1
Notification Area

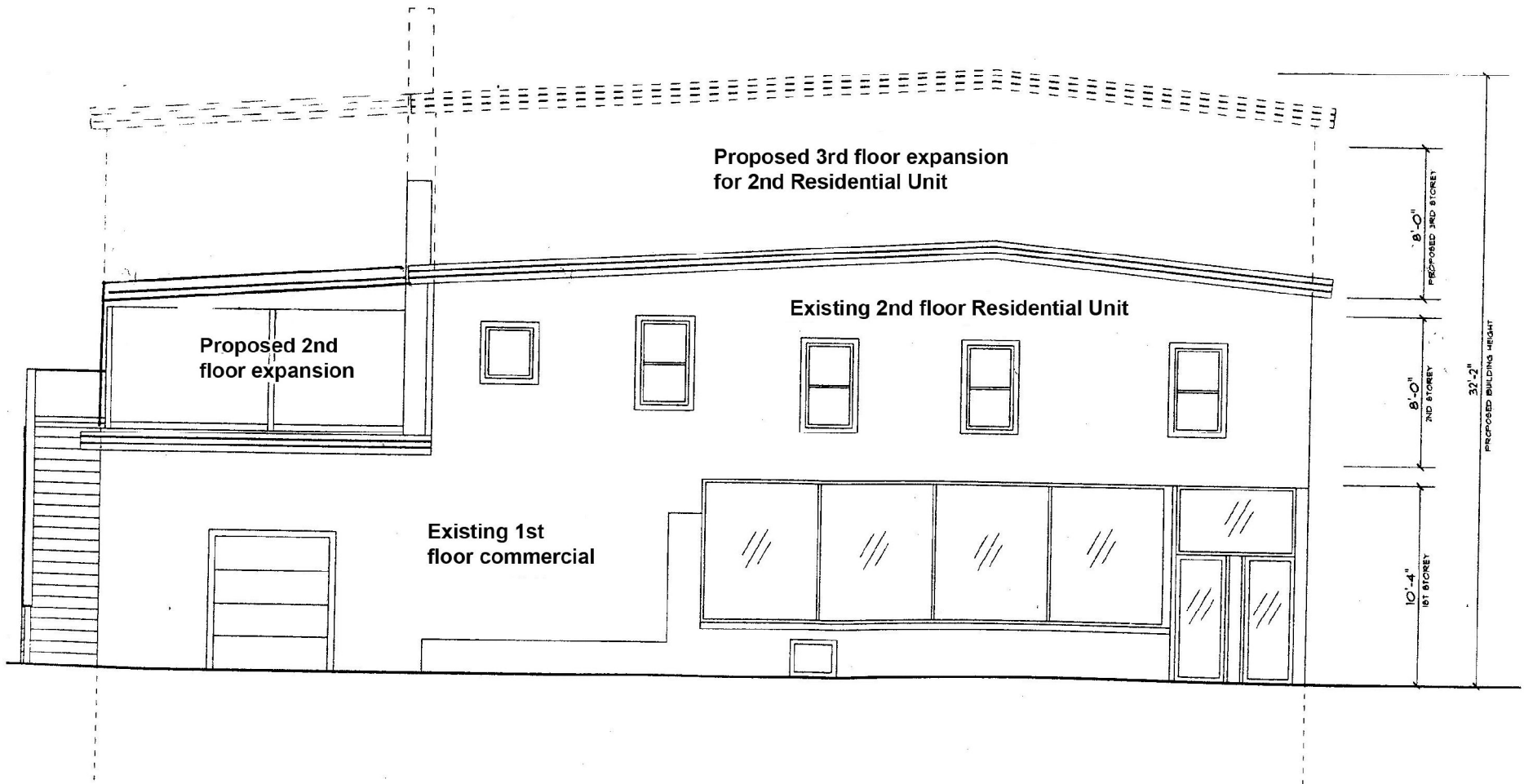
- ■ ■ ■ ■ Notification Area
- ▤ Subject Property





Map 2
Site Plan





Attachment 1
Existing and Proposed Elevations





EXISTING SECOND FLOOR PLAN

21

Attachment 3 - Variance Refusal Letter



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

DEVELOPMENT APPROVALS - EASTERN REGION

COPY

July 20th, 2012.

Marion Marchant
Case Remodeling
6070 Almon Street, Suite 112
Halifax, NS B3K 1T8

Dear Ms. Marchant,

RE: Application for Variance #17936 – 2590 Oxford Street

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: 2590 Oxford Street
- Project Proposal: Expand the existing 2nd floor residential unit and add a 3rd floor for a 2nd residential unit.
- Variance Requested: Lot size for two residential units, to exceed the maximum allowed lot coverage for two residential units, and reduce the minimum allowed set-backs for two residential units.

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.

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

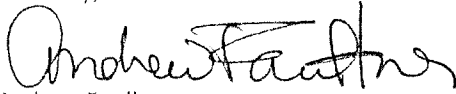
Your appeal must be filed on or before July 31st, 2012.

2/...

Page 2.

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

Sincerely,

A handwritten signature in black ink that reads "Andrew Faulkner". The signature is written in a cursive style with a large initial 'A'.

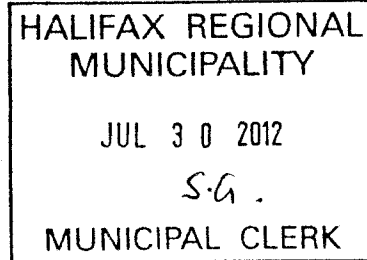
Andrew Faulkner
Development Officer

cc. Cathy Mallett, Municipal Clerk
Councillor Jennifer Watts, District 14

Attachment 4 - Letter of Appeal from the Applicant

July 30, 2012

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



Dear Mr. Faulkner:

Re: Appeal of the refusal of the application for variance #17936 - 2590 Oxford Street

I am representing Richard Abbass, the owner of the above property, and wish to appeal the decision of the Development Officer to deny the variance pursuant to Section 250 (3)(a) of the Halifax Regional Municipality Charter. Mr. Abbass has signed this letter confirming his agreement with the contents.

I disagree that the proposed variance violates the intent of the Land Use Bylaw. The proposed development will add a third floor to create a second residential unit on the property. With the addition, the height of the building would be under the required 35 foot maximum.

Although the two residential units would exceed the maximum allowed lot coverage, there are many duplex properties in the neighbourhood and the proposed development is in keeping with the character of the neighbourhood.

This, in turn, is in keeping with the main goal of HRM planning policies such as Policy 2.4 which 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."

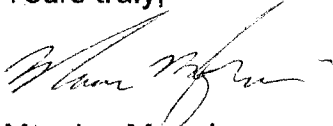
On the issue of setbacks, the setbacks for this property will not change with the third floor addition. The proposed development does not represent a significant level of departure from what is currently on site.

I would also note that each apartment unit will have a dedicated parking spot.

The proposed development, being an addition to an existing structure, is also consistent with the HRM Planning Strategy for Peninsula Centre.

I look forward to hearing from you as to the appeal date.

Yours truly,



Maurice Meagher
Case Design/Remodeling
6070 Almon Street
Suite 101
Halifax, NS B3K 1T8



Richard Abbass
Owner