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

Halifax and West Community Council
September 23, 2013

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed by
Brad Anguish, Director, Community and Recreation Services

DATE: September 9, 2013

SUBJECT: Case 18137: Appeal of Variance Approval – 5677 Harris Street,
Halifax, NS

ORIGIN

Appeal of the Development Officer's decision to approve 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

A Development Permit has been issued for a four storey, 56 unit apartment building for this property. This proposal for which the permit has been issued meets all applicable Land Use By-Law (LUB) requirements including angle controls. The angle control requirements of the LUB result in the third and fourth storeys of the building being stepped back from the lower portions of the building.

As an alternative to the proposal which has received a permit, the applicant has requested consideration of a revised building design which requires the relaxation of the angle controls in eight areas of the building to:

- allow the third and fourth storeys to be situated in line with the lower storeys;
- accommodate the inclusion of balconies; and
- allow for a canopy over the front entrance.

Angle Controls

The Halifax Peninsula Land Use By-Law requires various angle control provisions to be applied to multiple unit buildings to control such elements as building setback, size and distances between external building walls. For this proposal, two angle control requirements are applicable; a 60 degree vertical angular plane and a 80 degree horizontal angular plane. The 60 degree vertical angle control is used in elevation to control height, while the 80 degree horizontal angle is used in the Plan to control mass. The application of both angular planes to a building result in affecting its setback from property lines. An illustration of the angle control requirements is contained in Attachments B and C.

Site Details:

Zoning: C-2 (General Business Zone) under the Halifax Peninsula Land Use By-law.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance and notified the property owner and residents within the notification area (Map 1). This decision was appealed by the owners of five (5) properties within the notification area. 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, 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. 2008, c. 39, s. 250; 2008, c. 41, s. 9."

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?

As noted in the Background section of this report, the intent of the angle controls is to limit an apartment building's setback from property lines in proportion to its lot. In order to meet the angle control requirements, portions of the third and fourth storeys of the proposed building have to be set back from the lower portions of the building. The building proposed under the variance has very slight differences in the footprint and siting from the approved as-of-right building which meets the by-law requirements. The only difference between the as-of-right building and the building approved by this variance is slight architectural modifications which are shown on Maps 2&2A and Attachment A. The variance does not increase the density or number of units within the building which were approved under the existing Development Permit. Approval of the variance will result in an aesthetic rather than material difference and for these reasons, it is staff's opinion that the intent of the by-law is not violated.

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 neighborhood has no consistency with respect to lot size or use, and is a mix of residential and commercial buildings. The lots within the block (Agricola Street, West Street, Harris Street, and Maynard Street) are all zoned C-2. The C-2 Zone also allows for a commercial building. The LUB does not contain setback requirements for commercial buildings, so buildings are able to be placed up to the property line, provided Building Code requirements are achieved. Most of these lots within this block are not large enough to consider an apartment building because of the zoning criteria. This particular lot has sufficient lot size and frontage to build an apartment building. The difficulty is not general to the area because this is a condition/circumstance that does not apply generally to 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 variance prior to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the approval 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 appellants have raised certain points in their letters of appeal (Attachment D) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant Appeal Comments	Staff Response
-the proposed development is taller than other structures on Harris; large footprint, inappropriate mass	The proposed building does not exceed the maximum height (50') allowed by the Land Use By-law. The footprint of the building is permitted by the Land Use By-law, and no adjustment to the footprint is proposed as part of the variance. The proposed difference in building mass resulting from the variance is minimal.
-increase in density at the expense of current residents	The proposed density of the building meets the Land Use By-law requirements and is not proposed to increase as a result of the variance request.
-reduced light quality, increase in noise, lack of regard for existing character of streetscape, proposed building does not match the architecture of the existing buildings. Increase in number of balconies leads to lack of privacy for adjacent neighbours.	The items are not pertinent to the criteria of the <i>HRM Charter</i> to be considered when granting a variance request.
-insufficient proposed parking	54 vehicular parking spaces and bicycle parking proposed in accordance with LUB requirements.
-HRM by Design, Phase 3, Agricola Street corridor streetscape consultations in 2012 for the vision of the neighbourhood were not considered.	These meetings were general discussions about the area. The Land Use By-law has not been amended for these potential changes.

Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict 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 approval is appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellants to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may uphold the decision of the Development Officer to approve the variance.
2. Council may overturn the decision of the Development Officer and deny the variance.

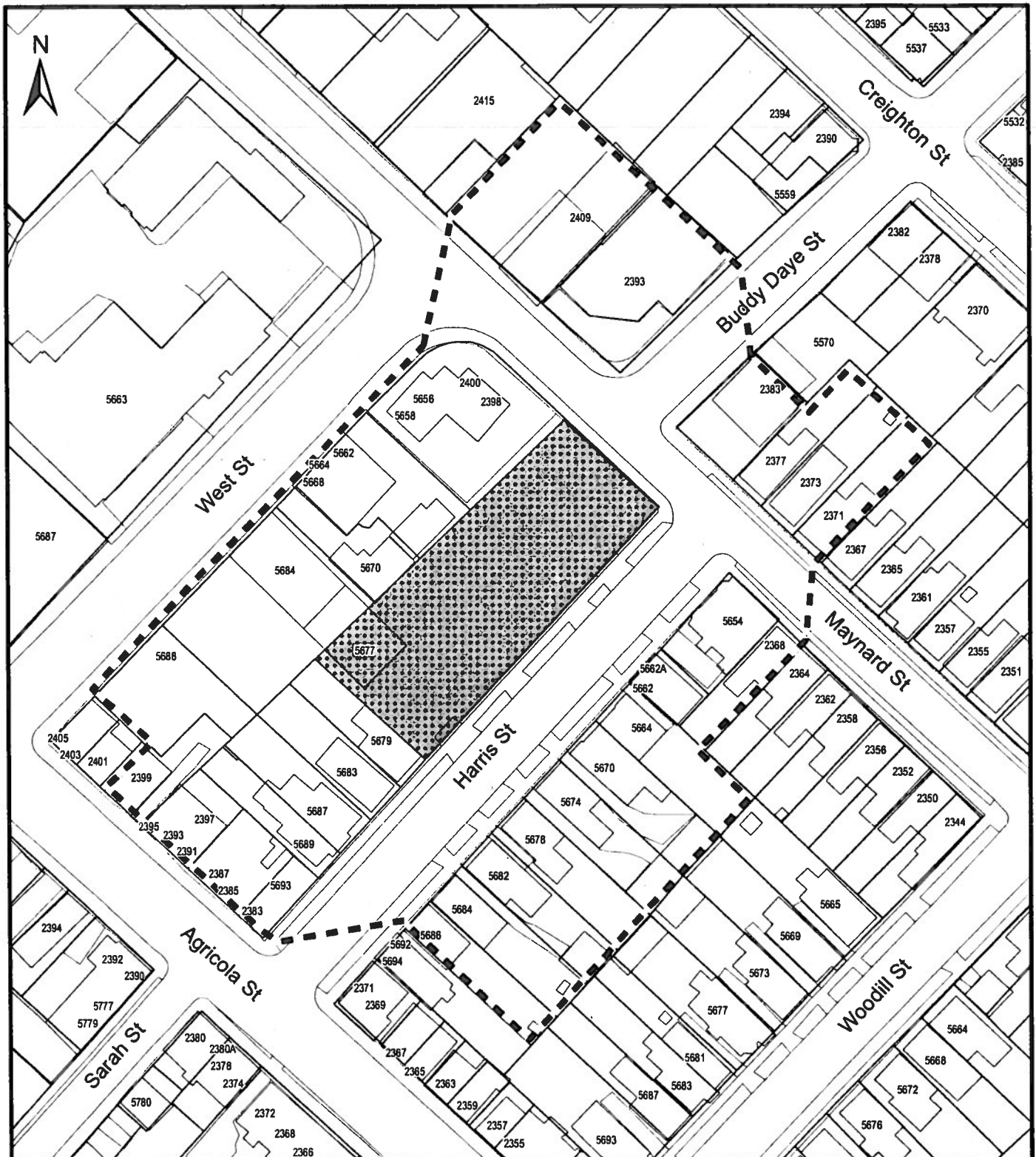
ATTACHMENTS

Map 1	Notification Area
Map 2	Site Plan – Area of Requested Variance
Map 2A	Site Plan – Existing Development Permit
Attachment A	Proposed Building Elevations (3 pages)
Attachment B	Graphic Representation of 60° Angle Control
Attachment C	Graphic Representation of 80° Angle Control
Attachment D	Appeal Letters

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: Erin MacIntyre, Development Technician, 490-4338
Sean Audas, Development Officer, 490-4402

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



Map 1 - Notification Area

5677 Harris Street
Halifax



Subject Property

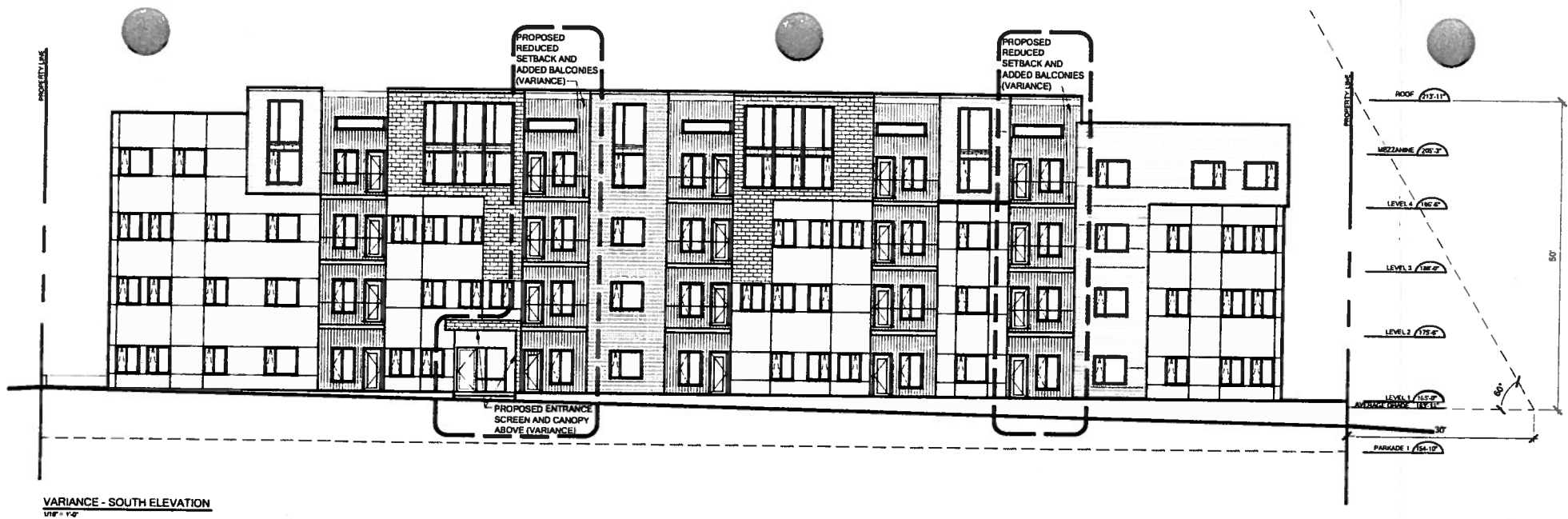


Notification Area

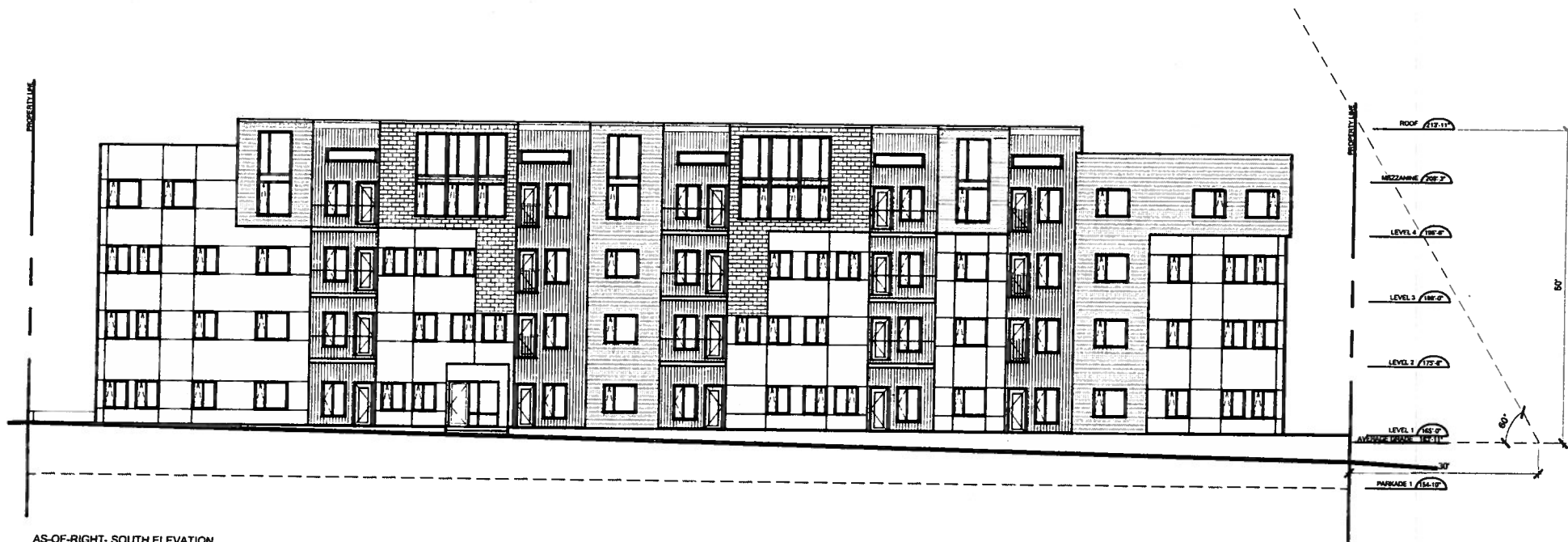
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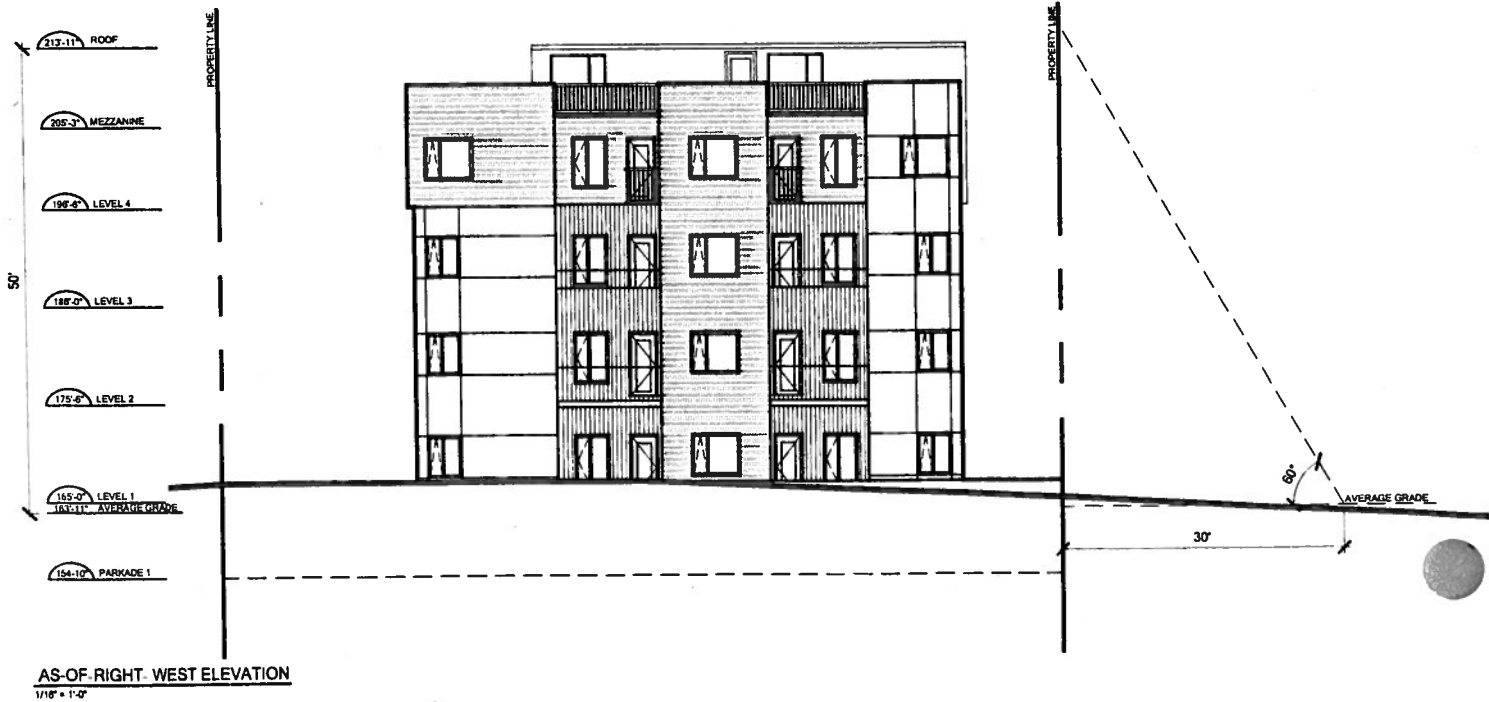
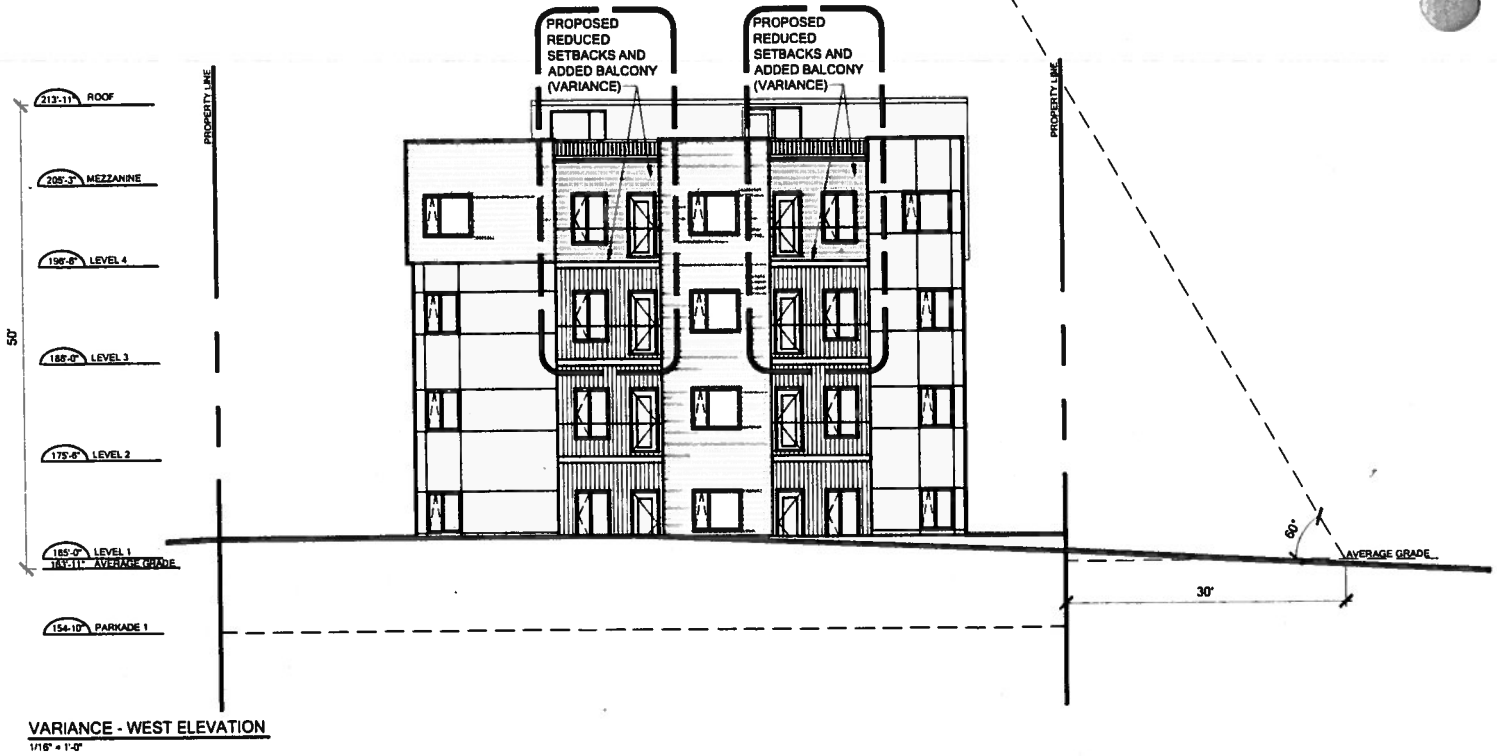
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of any representation on this plan.

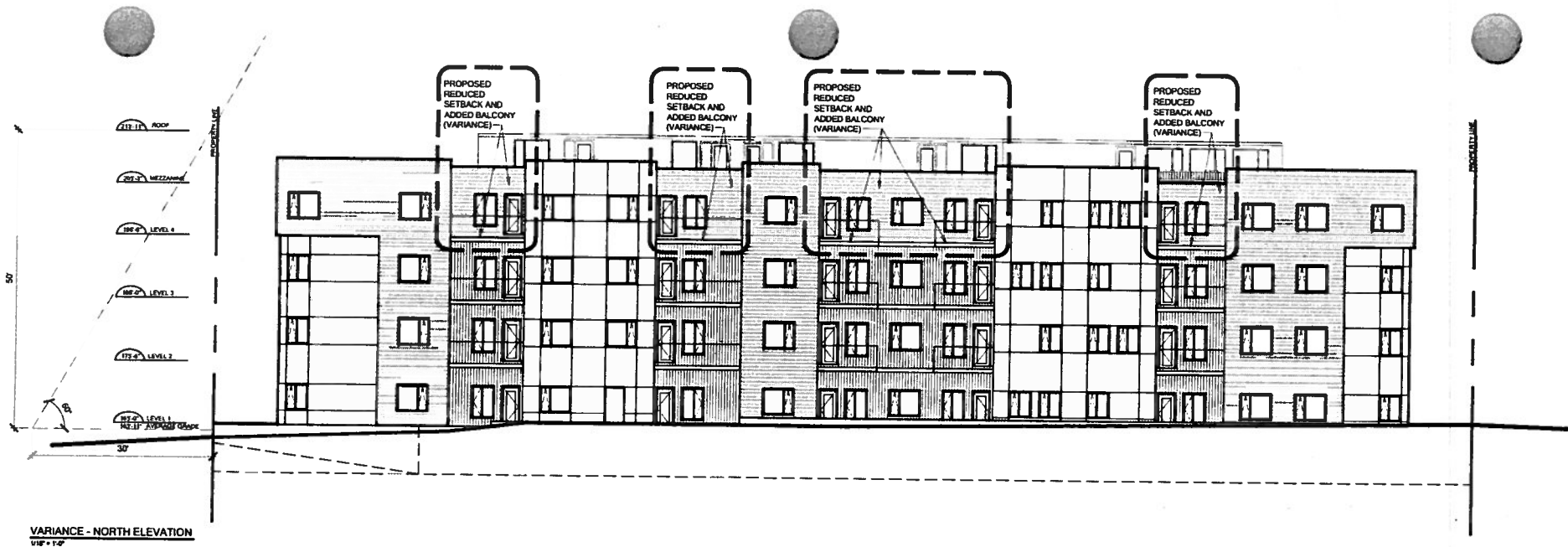


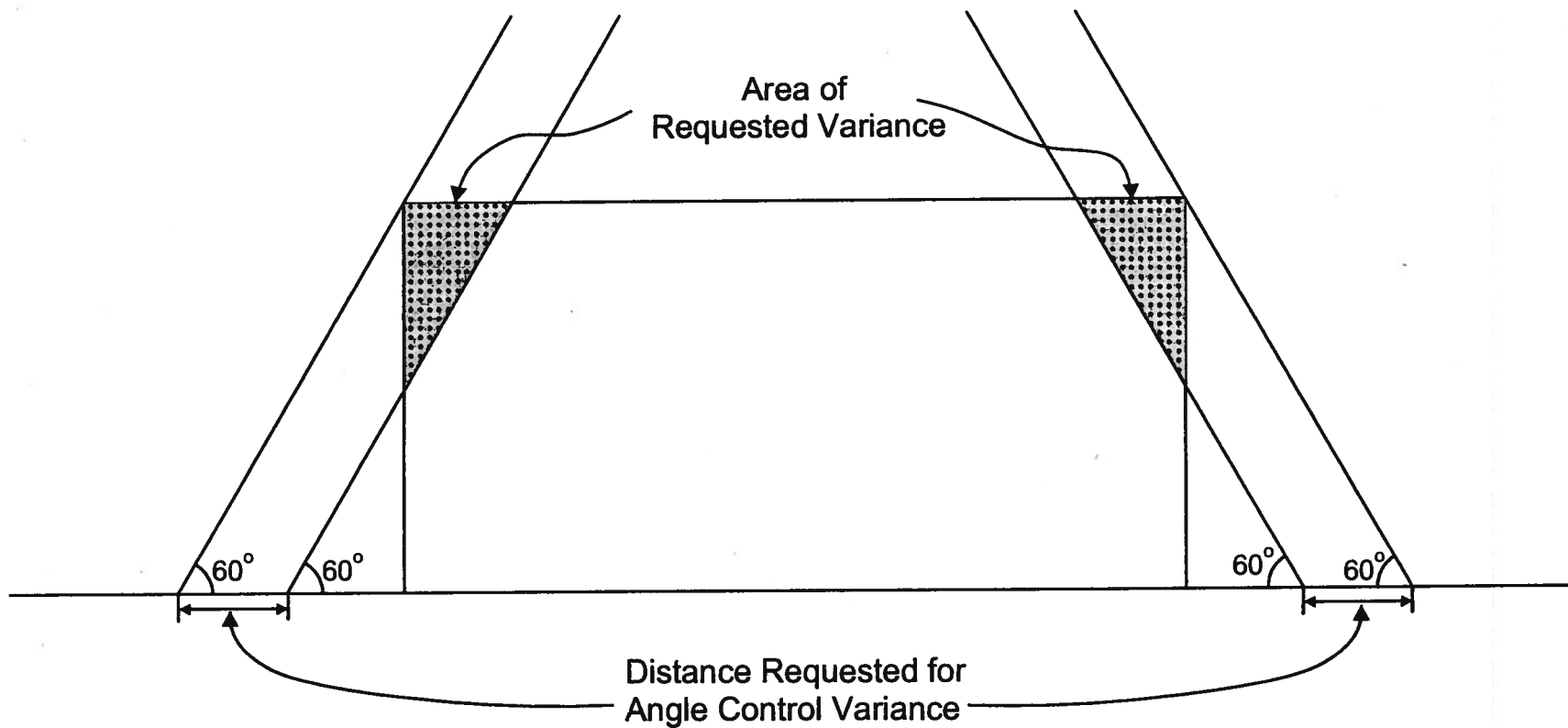
VARIANCE - SOUTH ELEVATION
1/16" = 1'-0"



AS-OF-RIGHT - SOUTH ELEVATION
1/16" = 1'-0"







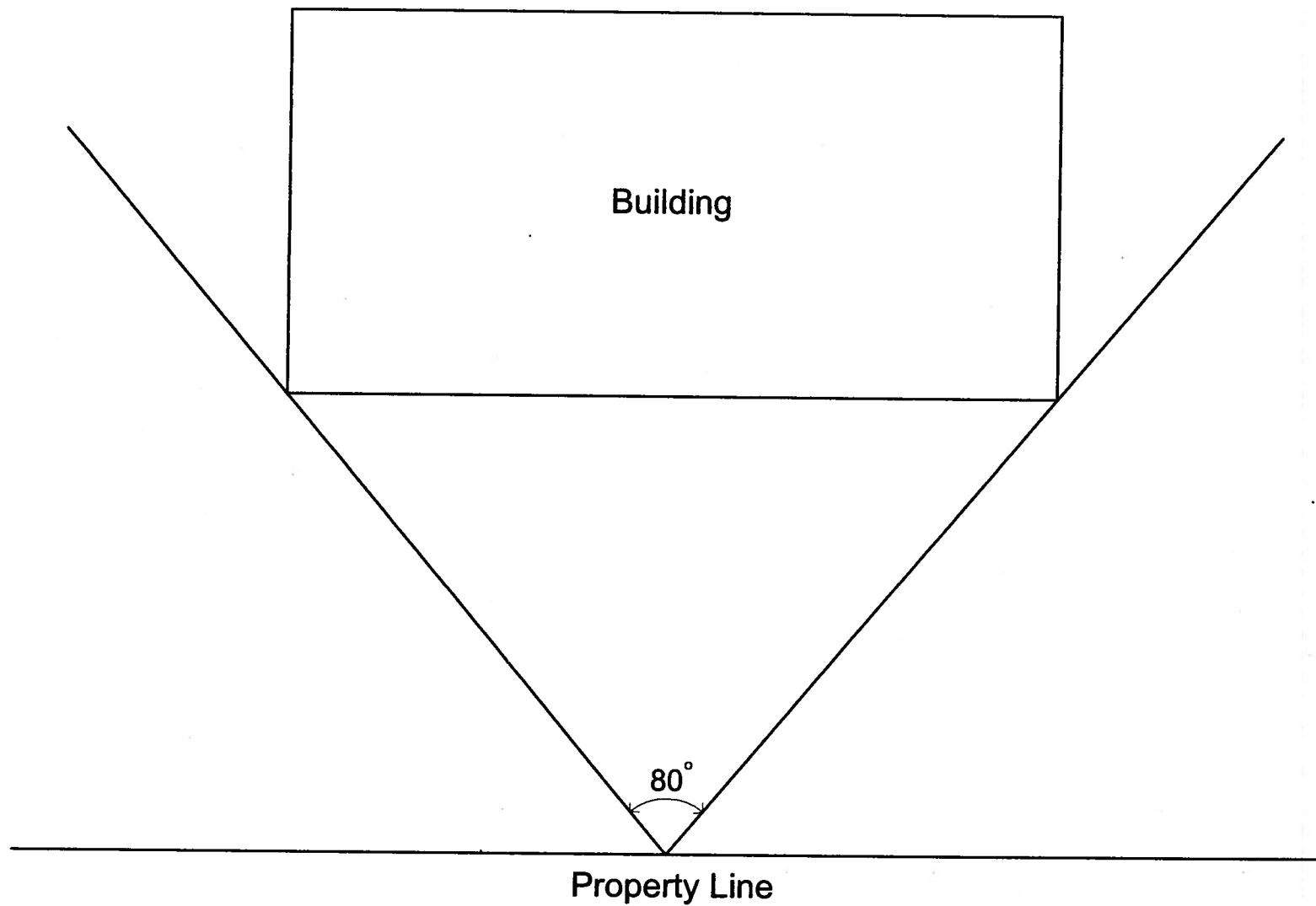
Attachment B
Graphic Representation of 60° Angle Control



Area of Requested Variance

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



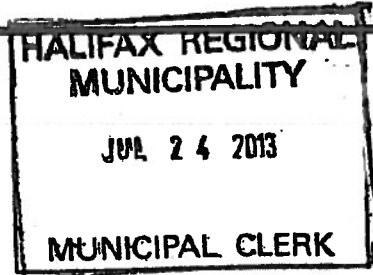
Attachment C
Graphic Representation of 80° Angle Control

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DEVELOPMENT APPROVALS

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

Stewart, April

From: Jasmine Oore
Sent: July-24-13 3:59 PM
To: Office, Clerks
Cc: Watts, Jennifer; Irene Oore
Subject: Notice of Appeal re: 5677 Harris Street



Wednesday, July 24, 2013

NOTICE OF APPEAL

RE: HRM File No. 18137: Variants to the angle controls (setback) required of the Halifax peninsula land bylaw at 5677 Harris Street, Halifax, NS, PID 00152025

To: Sean Audas,
Development Officer,
c/o Municipal Clerk,
Halifax Regional Municipality,
Development Services – Western Region,
P.O. Box 1749
Halifax, NS,
B3J 3A5
Email: clerks@halifax.ca

c.c.: Jennifer Watts, Councillor (District 8),

Dear Mr. Audas:

We have recently received from your office a notification approving a bylaw variance to the property development firm *Atlantic Developers Inc.* Their request cites the need to alter the present Land Use Bylaw for the Halifax Peninsula at 5677 Harris St. (PID: 00152025) in order to obtain a reduction in the existing setback ordinance along three sides of the proposed development – a 56 unit apartment building.

We are committed to the development of the North End, and are happy to hear about all projects relating to the area, but we feel it is appropriate that the development of our neighbourhood proceed carefully, as a conversation between the key stakeholders: this includes the developers, our city council, and, critically, the residents who already live in this area and have made it their home. This not a naive case of anti-development, we just want to experience development in a sustainable way: in a way that preserves the integrity, character, feel, and quality of life of our street. We have grave concerns about the tone and character of the current plans.

For one thing, the proposed development is significantly taller than any other structure on Harris Street, or other surrounding streets, which makes it almost impossible to preserve the character, light quality and streetscape of the area. From the perspective of the residents, it seems both possible and desirable to develop the site at 5677 Harris in a way that takes cognizance of existing structures and styles. We would ask that the developers listen not just to the residents, but also to the precedent set by the existing buildings, pulling out the best features (eg.: shingles, Victorian ornament) of the architectural vernacular of the neighbourhood.

We are also concerned about noise: not just the noise of construction, which is inevitable, but the lasting noise of individual air conditioning units, for example. It does not seem possible to add 50 plus units to a street without impinging in lasting ways on the noise quality of the street.

Parking is another obvious concern, as we try to envisage resident and visitor parking being accommodated on a quiet street that is already struggling to meet the parking needs of its residents.

We also feel that the current number of bachelor units invites a transient population that might not share the values of the residents of the street.

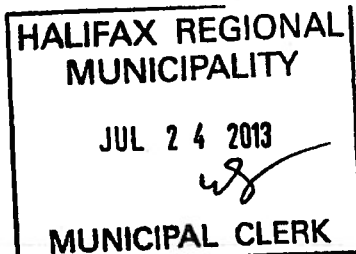
If the above considerations were to be addressed and integrated into the plans for 5677 Harris Street, the developers and the city council could expect to build some true and important goodwill with the existing neighbourhood community.

On the specific issue of the developers' application for variants to the bylaws regarding setback, **we strongly appeal against the granting of any such variants**. We want to see tighter bylaws, not looser ones. We want development, but thoughtful development; accountable development. We want development that involves us, and brings greater character to a part of Halifax that we live in, and are very proud of.

We would be happy to meet with all the major stakeholders in this process in order to begin the conversation that will bring us together and ensure that the building on 5677 does credit to the developers, the residents, and to the city council. City council plays a critical role in situations like these, and has an important role to play in delivering sustainable development to Halifax. We look forward to hearing from you.

Sincerely,

Jasmine Oore/Irene Oore
5670 Harris Street
Halifax, NS
B3K 1H2



NOTICE OF APPEAL

**RE: HRM File No. 18137: Variance to the angle controls (setback) required of the
Halifax peninsula land bylaw at 5677 Harris Street, Halifax, NS. PID 00152025**

To: Sean Audas,
Development Officer,
c/o Municipal Clerk,
Halifax Regional Municipality,
Development Services – Western Region,
P.O. Box 1749
Halifax, NS,
B3J 3A5
Email: clerks@halifax.ca

Dear Mr. Audas:

I, Michelle Pettipas and my spouse, James Little, received your letter advising us of your approval of a request of variance from HRMs angle controls bylaw put forth by the firm Atlantic Developers Inc in regards to their proposed development project at 5677 Harris Street of a 56 unit apartment building.

After having thoroughly reviewed the proposed variances and meeting in person with the developer and members of the architectural firm involved, my response is that:

We are appealing the granting of this variance.

I believe that the as-of-right setbacks will help to make this new development more pleasing to the eye as well as result in fewer total number of balconies, which will help to reduce it's natural intrusiveness with fewer eyes falling upon our once mostly-private front and back yards. There is also the possibility that it could help with some of the sunlight blockage that the building will create.

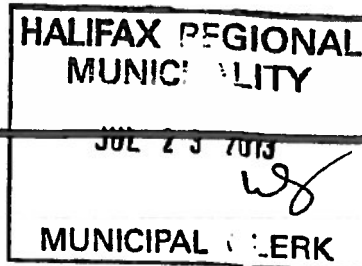
This is my 19th year of ownership and residence of my 5678 Harris street property and home. Previous to this, I grew up on Roberts street...2 blocks away. This has been my community for a long time. I am very happy to have residences arrive at the 5677 address (directly across the street from me). It has had a variety of commercial/industrial occupants which were not always pleasant to live across from. I cannot choose the style of building or demeanor of residents that I would love to see around me...but I believe my appeal of these variances is something I can do to make change for the better.

Sincerely,

Michelle Pettipas and James Little
5678 Harris street
Halifax, NS. B3K 1H2

Stewart, April

From: John Kennedy
Sent: July-22-13 9:51 PM
To: Office, Clerks; Watts, Jennifer
Subject: Notice of Appeal, File No. 18137: at 5677 Harris Street, PID 00152025
Attachments: 5677_variance.doc



Monday, July 22, 2013

NOTICE OF APPEAL

RE: HRM File No. 18137: Variance to the angle controls (setback) required of the Halifax peninsula land bylaw at 5677 Harris Street, Halifax, NS, PID 00152025

To: Sean Audas,
Development Officer,
c/o Municipal Clerk,
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Development Services – Western Region,
P.O. Box 1749
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B3J 3A5
Email: clerks@halifax.ca

c.c.: Jennifer Watts, Councillor (District 8),

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In response: **We firmly appeal the granting of any variance whatsoever.**

We are aware of HRM's pressing desire to increase the density of housing on the peninsula of Halifax in order to obtain additional tax revenue – this, however, must not be attempted at the expense, both social and financial, of well established area residents, whose choice it has already been to live and work in neighbourhoods that they themselves have built.

Sincerely,

John Kennedy / Lorelei Horne

5674 Harris St.,

Halifax, NS,

B3K 1H2

Stewart, April

**HALIFAX REGIONAL
MUNICIPALITY**

JUL 24 2013

WJ
MUNICIPAL CLERK

From: Heather Breeze
Sent: July-23-13 1:26 PM
To: Office, Clerks
Cc: Watts, Jennifer
Subject: Appeal of variance to angle control requirements, Harris Street

Follow Up Flag: Follow up
Flag Status: Flagged

Heather Breeze
2379 Moran St.
Halifax NS B3K 4K1

Sean Audas
Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Development Services – Western Region
Via e-mail: clerks@halifax.ca

Dear Mr. Audas:

Re: HRM File No. 18137

I am writing to appeal the variance to the angle control requirements granted for the proposed development at 5677 Harris Street. I am the adjacent property owner (5679 Harris Street).

The proposed development has a much larger and taller building footprint than the previous building. When combined with the development proposed for West Street, my property will feel both hemmed in and overlooked. The relative privacy and seclusion we have developed in the backyard through judicious use of plants and screening will be gone. As such, I do not support the variance that would further expand the existing, and in my mind, already inappropriate building mass and footprint.

I understand that because of the C-2 zoning, the developer has a right to develop a multi-unit residential building. I can't help but feel that the extensive planning and design processes of the last few years have failed us when a development of 56 units is planned for a quiet one-block street with mostly one and two-unit dwellings. With 24 units planned for a separate building on West Street, this will substantially change those two streets, with no neighbourhood input. The 2012 consultations on the streetscape for this area (HRM by Design Phase 3, Agricola Street corridor) proposed much greater setbacks and angle controls for upper stories than is permitted under the current land use bylaw, in order to maintain the neighbourhood character.

While those proposed setbacks have not yet been passed, in my view, granting the variance for the current setbacks is contrary to the vision for the neighbourhood that has been put forward.

I—and others in the neighbourhood—would be happy to discuss our concerns with the developer and/or HRM staff.

Sincerely,
Heather Breeze

c.c. Jennifer Watts

Syms, Lee

HALIFAX REGIONAL
MUNICIPALITY

From: margaret anderson
Sent: July-24-13 6:35 PM
To: Office, Clerks
Subject: HRM file 18137

JUL 25 2013

W8

MUNICIPAL CLERK

To Erin MacIntyre

As the owner of 5683 Harris St, i would like to appeal the variance to the proposed project at 5677 Harris St.

Regards

Margaret Anderson

Sent from my iPad

