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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 18502: Appeal of Variance Approval – 130 Main Avenue,
Halifax

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 variance request has been submitted to construct a four storey building with a grocery store on the main level and three (3) residential units on the upper levels. In order to facilitate this project, variances have been requested to relax the minimum lot area and left side yard requirements.

The property is currently developed with a two storey building accommodating a grocery store on the main level and a single residential unit on the upper level. Should the requested variances be approved, the existing building will be removed and replaced by the proposed building.

Site Details:

Zoning: RC-1 (Neighbourhood Commercial Zone) under the Halifax Mainland Land Use By-law.

	Zone Requirement	Variance Requested
Minimum Lot Area	5,000 sq. ft.	4,810 sq. ft.
Minimum Left Side Yard	8 feet	5 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variances 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 *HRM 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?

The requested variances are minor in nature and, therefore, do not violate the intent of the Land Use By-law. Except for the requested variances, all other requirements of the Land Use By-Law, including height and lot coverage will be met. The variance for lot area is required because the lot area is a total of 290 square feet less than the minimum required lot area. This is not seen to be a significant variation from the by-law requirement.

The variance for the left side yard is a function of the proposed building design and occurs on the building's upper levels. As proposed, the upper levels housing the residential units are designed to project over the lower floor of the building by 3 feet along its northern, eastern and western walls, resulting in a reduced setback of 5 feet at this location (Map 2 and Attachment A). The variance request is found to be reasonable given that the actual footprint of the building will meet all required yards and the variation occurs at the adjoining street rather than at any of the abutting private properties.

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 not general to properties in the area. The 15 properties within the notification area are all zoned R-2 and permit residential uses. This proposal is unique to the subject property and the RC-1 Zone.

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 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
-concerns the proposed building will be too large for the existing lot	The proposed building does exceed the maximum height (35 feet) or the maximum lot coverage (35%). These requirements do not change based on density. The proposed building does not exceed the maximum 1,000 square feet of commercial floor area permitted in this zone.
-concerns the proposed building is too close to the neighbouring properties	The RC-1 Zone permits a proposed building to be located a minimum of eight (8') feet from its side yards. The proposed building is to be located eight (8') from the right side yard and five (5') from the left side yard. The proposal meets the required right side yard where it abuts the residential property at 132 Main Ave. The variance request occurs at the opposite side of the building (abutting Skeena St.) from the residential property and at the upper storeys. If the cantilevered floor area was to be removed, the proposed building would not require a variance for side yard setback.
-concerns related to the proposed entrance to the residential units	Section 34AF(c) of the RC-1 zone requires the commercial use have a separate access from any R-1, R-2 or R-2P uses. The RC-1 zone does not specify a required location.
-concerns of traffic, noise etc.	These items are not pertinent to the criteria of the <i>HRM Charter</i> to be considered when granting a variance request.

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

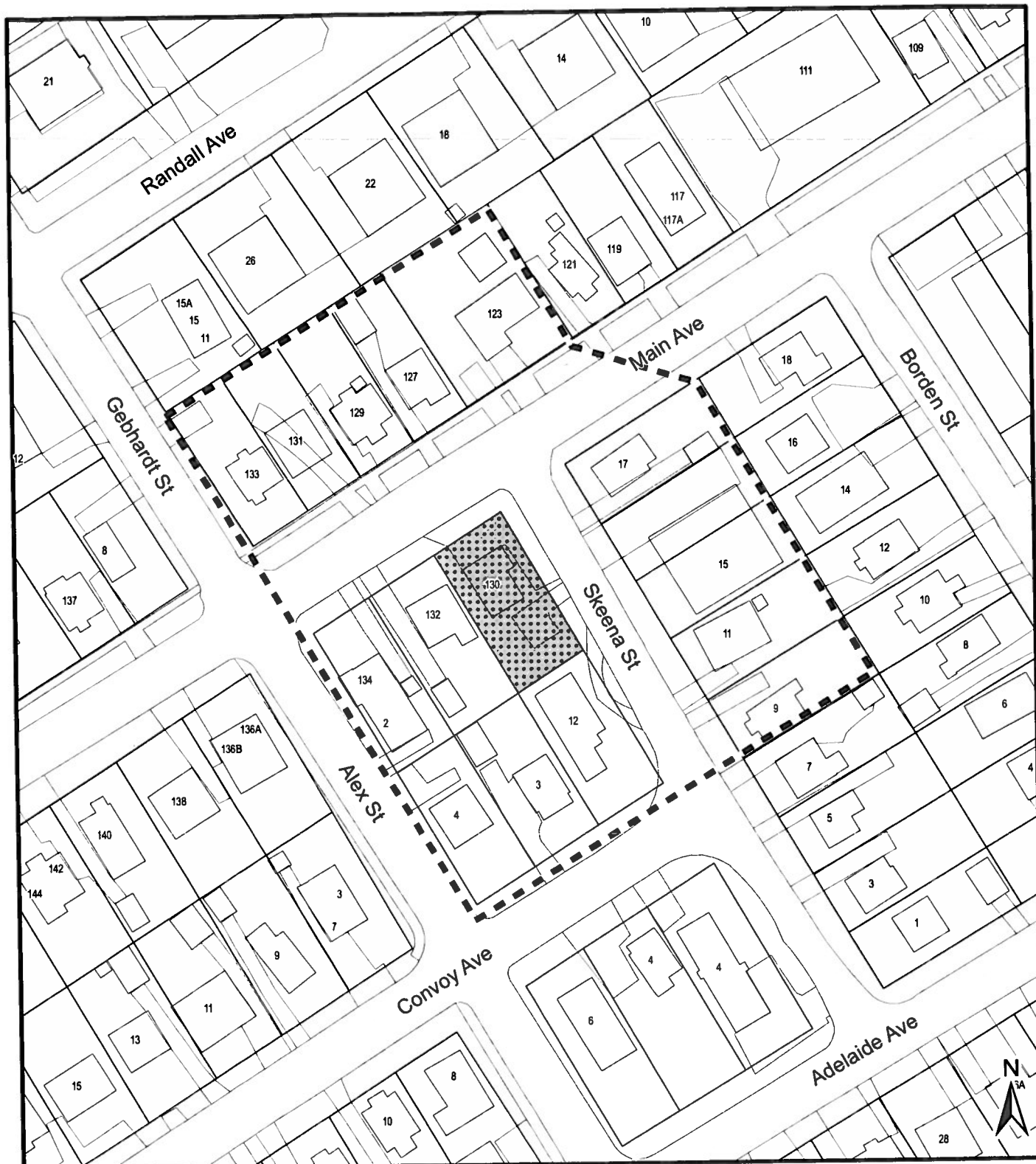
Map 1 Notification Area
Map 2 Site Plan
Attachment A Proposed Building Elevations
Attachment B Letter of Appeal from the Applicant

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: Janice MacEwen, Development Technician, 490-4338
 Sean Audas, Development Officer, 490-4402

Original Signed by

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



Map 1 - Notification Area

130 Main Avenue
Halifax



Subject Property



Notification Area

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 30 m

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

Main Ave

Curb

Curb

Skeena St

Requested
Variance 5'

20'

Second Floor Overhang

5'

8'

Proposed
Building

Second Floor Overhang



Map 2 - Site Plan

130 Main Avenue
Halifax



Area of requested Variance

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 1 2 4 m

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

Attachment A - Elevation Plan



1. This drawing is a perspective view of the proposed building. It is not a photograph of an existing building. It is a computer-generated image based on the architectural drawings. It is not a representation of the actual building. It is a representation of the proposed building. It is not a representation of the actual building. It is a representation of the proposed building.

130 MAIN AVENUE
ALFAR, NOVA SCOTIA

WM FARES

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PERSPECTIVE FROM
MAIN AVE / SKEENA ST

2013 05 A8

Sean Audas Development Officer
 C/o Municipal Clerk
 Halifax Regional Municipality

132 Main Ave
 Halifax N.S.
 B3M1B1
 May 16, 2013

Dear Sir or Madam

My name is Dorothy Desreux and with my husband George own and live at 132 Main Ave Halifax. We have lived here for 58 years, brought up 2 sons (now deceased) in a quiet residential neighbourhood, a lot has changed over the years but we still expected to continue living in the same way.

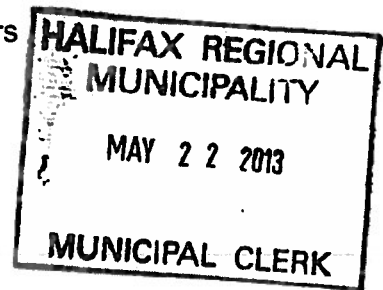
This is a residential block except for the store at 130 Main Ave next to us. All neighbours have lived here a long time and all are outstanding citizens.

In the mail we received notice that Joseph the store owner has applied to put up an apartment complex on an undersized lot, one side which would be a few feet from our ground floor bedroom window, there is concern of an entrance put there.

Over the years owners of the store lived there and there was never a problem but since Joseph moved out he has rented to tenants of questionable character: loud music, alcohol, drugs and bad language. One summer my neighbour could not sit in her yard because of the language, the point I am making is if this goes on now in 1 rental unit what can we expect from 3 rented units. This certainly does not give me peace of mind at my age.

Concerns are undersized lot, entrance ways, noise and pollution from cars in the parking lot next to us and several neighbours, type of tenants and other things of having an apartment next to us. We strongly oppose this development.

Sincerely



May 18, 2013

Sean Audas, Development Officer

Wendy and Donald Scott the homeowners and residents of 4 Alex Street, are appealing the variance application #18502, PID #00320879 proposed project at 130 Main Avenue, Halifax.

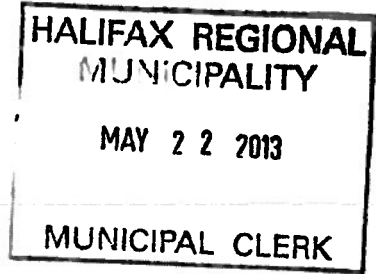
The lot size does not meet the requirements of the building code, and is just too large for the size of the lot. If this variance is approved, this will make this commercial building that much closer to the existing homeowners.

The residents of this block on which the proposed project is located are all middle age and senior citizens that have resided here since the houses were built. We are not interested in having this building that much closer to our homes than it is now. This structure will increase the amount of noise and traffic in all our side and back yards.

Our main concern is this project is just too large for the size of the lot. It does not meet the minimum lot size for the proposed building.

Sincerely

Wendy & Donald Scott
4 Alex Street
Halifax, NS



May 19, 2013

Sean Audas, Development Officer

Mrs. Ethel Power homeowner and residents Ethel and James Power of 3 Skeena Street are appealing the variance application #18502, PID #00320879 for the proposed commercial building at 130 Main Avenue.

This building is too large for the existing lot and does not meet the minimum requirements of the building code. If this variance is granted it will make the parking lot that much closer to my back yard than it is now.

We have had many sleepless nights from the present structure due to the noise and traffic. What is it going to be like with three residential units and a commercial store on the existing lot?

This proposed building is too large for the lot size and will make it that much closer to my house.

Sincerely

Ethel Power, James Power

May 22, 2013

Robert Boudreau
12 Skeena Street
Halifax, NS B3N2V8

Sean Audas, Development Officer
C/o Municipal Clerk
Halifax Regional Municipality
Planning and Development – Western Region
P.O. Box 1749, Halifax, NS B3J 3A5

Dear Mr. Audas

Re: Variance Application # 18502, 130 Main Avenue, Halifax PID # 00320879

I own the property located at 12 Skeena Street, Halifax. I am very concerned about the above variance application and would like to file this letter to request an appeal.
I am concerned about the following things:

- Concern that the proposed building is greater than the approved lot size for our civic block;
- I do not currently have enough information about the actual building structure to make an informed decision as to how the building would impact both my block and the actual neighbourhood as a whole re: traffic, noise, parking etc.

Should there be a revision in the variation application proposal with respect lot area and more detailed information provided about the actual building structure, I would be more than willing to take a look at the new proposal.

Your attention to this matter would be greatly appreciated.

Yours truly,

Robert Boudreau

May 22, 2013

Fran Mac Dougall
2 Alex Street
Halifax, NS B3N2V9

Sean Audas, Development Officer
C/o Municipal Clerk
Halifax Regional Municipality
Planning and Development – Western Region
P.O. Box 1749, Halifax, NS B3J 3A5

Dear Mr. Audas

Re: Variance Application # 18502, 130 Main Avenue, Halifax PID # 00320879

I own the property located at 134 Main Ave & 2 Alex Street, Halifax (it is a corner lot) and I would like to appeal the above noted variance application. My concerns are as follows:

- Concern that the proposed building is greater than the approved lot size for our civic block;
- I do not currently have enough information about the actual building structure to make an informed decision as to how the building would impact both my block and the actual neighbourhood as a whole re: traffic, noise etc.

Should there be a revision in the variation application proposal with respect lot area and more detailed information provided about the actual building structure, I would be more than willing to take a look at a new proposal.

Your assistance in this matter is greatly appreciated.

Yours truly,

Fran Mac Dougall