



Chebucto Community Council
June 12, 2006

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: June 2, 2006

SUBJECT: Appeal of the Development Officer's decision to deny an application for a Variance - 3667 Deal Street, Halifax.

STAFF REPORT

ORIGIN

Pursuant to Section 236(3) of the Municipal Government Act any person served notice of a variance may appeal the decision of the Development Officer to the Municipal Council.

This is an appeal of the Development Officer's decision to deny a variance for 3667 Deal Street, Halifax.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to deny the variance.

BACKGROUND

The subject property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land-Use Bylaw, Fairview Secondary Planning Strategy. The property is currently occupied as a three unit dwelling, the basement apartment was created without benefit of a construction permit.

In April, 2005, a land use investigation case was opened for illegal units against numerous properties in the area. HRM Community Standards Officers had made a site visit and found this building to have an illegal basement apartment.

On March 7, 1983, there was a permit issued to occupy a portion of the basement of this building as an office for a home occupation. Then on August 16, 1983, there was a permit issued to occupy a duplex. The current owner believes this basement apartment was illegally converted shortly after these permits were issued. When the current owner purchased the property in the early 1990's, he did not realize that the legal use of the property was a duplex with a home occupation in the basement. Therefore, this structure has been rented out as a three unit dwelling for approximately 20 years, 14 of which were by the current owner.

As the land use bylaw does not permit a three unit building on this parcel the property owners applied for a variance and the application was denied by the Development Officer. Notification in accordance with the Municipal Government Act was sent to the surrounding affected property owners. A Copy of the appeal letter is attached.

DISCUSSION

The *Municipal Government Act* sets out the guidelines under which the Development Officer may not consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

- “A variance may not be granted where the
- (a) variance violates the intent of the land use bylaw;
 - (b) difficulty experienced is general to the properties in the area;
 - (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw?

Throughout the Land Use Bylaw, density is directly or indirectly controlled by lot area requirements. Staff believes the intent of the regulations is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard R-2 guidelines require a lot area of 4000 square feet for single unit dwellings, 5000 sq.ft. for duplexes and 8000 sq.ft. for three and four unit buildings. However, in every case, for low density residential development, it is clear the bylaw intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas.

The subject property at 3667 Deal Street has 60 feet of road frontage where 80 feet is required and 4,635 square feet in area where 8,000 square feet is required. Given that the intent of the bylaw in this case is clear the Development Officer believes that further reduction of lot area to

allow additional units would clearly violate the intent of the bylaw. Therefore the variance was refused.

Is the difficulty experienced general to the properties in the area ?

The subject property has a similar area as the majority of lots in the neighbourhood (most are in the range of 4,000-7,750 square feet) however it has no unique features that would make it more difficult to develop according to the bylaw requirements. The immediate neighbourhood (variance notification area) consists of a 68 unit apartment building, several commercial properties, three 4-unit apartment buildings, a duplex, and seven single unit dwellings. There are three existing four unit apartment buildings in the area which do not meet the requirements in the Land use By-law today, but do have larger lots than the subject property. Therefore the difficulty experienced in this case is not necessarily general to the properties in the area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

There has been an intentional disregard for the requirements of the by-law as the duplex dwelling with a home occupation in the basement was converted to a three unit apartment building without a permit. The current owner states that he purchased the property as a three unit dwelling with the expectations that his lawyer was protecting his interests.

Regardless of intent, the difficulty is the result of intentional disregard for the requirements of the land use bylaw and the variance was denied.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to deny the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer.

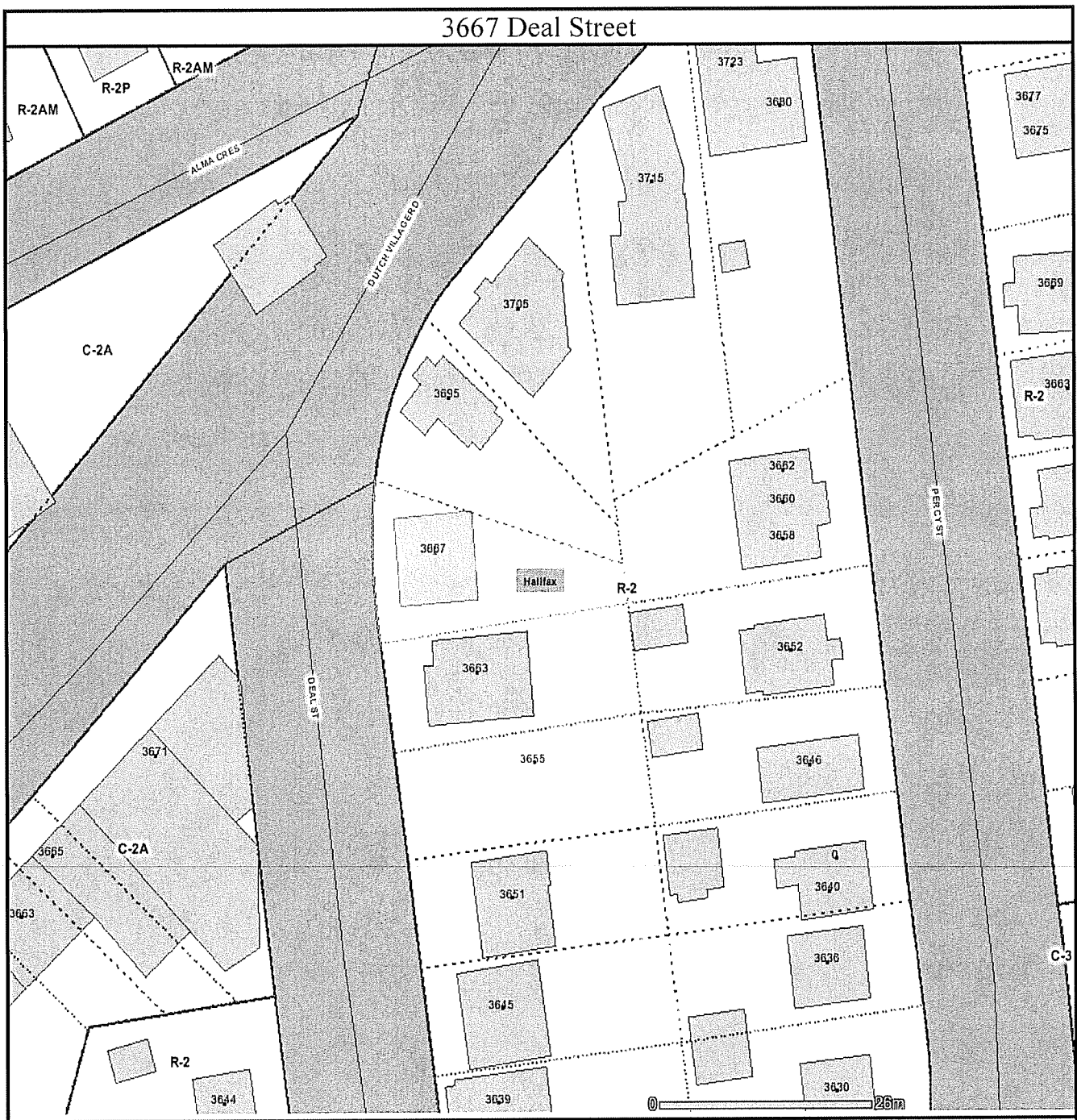
ATTACHMENTS

1. Site plan/Location Plan
2. Refusal letter
3. Appeal letter

INFORMATION BLOCK

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andrew Faulkner - Development Officer (490-4402)



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation. User: geoinfo@halifax.ca

SITE PLAN

