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Peninsula Community Council
March 6, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner - Development Officer

DATE: February 26, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 6435 Roslyn Road, Halifax: Variance No. 12439

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the frontage and lot area requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 6435 Roslyn Road in Halifax (see location plan - Attachment 1). The property is zoned R-2 General Residential, Halifax Peninsula Land Use Bylaw. The legal occupancy of the building is a two unit dwelling.

On January 3, 2006, the Development Officer refused a variance request to enclose a covered porch as an addition to an existing two unit dwelling (see site plan - Attachment 2). That application was refused as the two unit dwelling was created in 2003 using the internal conversion provisions of the bylaw. Under those provisions there can be no increase in building volume.

The owner appealed the Development Officer's refusal on January 11, 2006 (see Attachment 3).

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may 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. Within these standard requirements, there are also a number of exemptions that reduce these requirements based on the character of sub-areas throughout the peninsula area of the city. 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.

In the case of the subject property, the bylaw has provisions for internal conversions of single dwelling units to create two dwelling units regardless of lot frontage, area or setbacks. The subject property is 4,176 sq.ft in area (5,000 sq.ft required) with 40 ft. of frontage (50 ft required). The owner exercised the conversion option in October of 2003, when the single unit dwelling was converted to two units.

To consider this variance staff had to treat the application as if it was to create a two unit dwelling on the land for the first time. Staff examined land use in the immediate area and found that the properties within 30 metres of 6435 Roslyn Road are of similar area and frontage and used with very few exceptions as single unit dwellings. Of the three duplexes in the area; one was created by conversion; one predates the land use bylaw and is nonconforming; and, one is an active enforcement case for creation of an illegal unit. If there are other duplexes in the area, they are either nonconforming or illegal.

Given that the intent of the bylaw in this case is clear the Development Officer believes that an addition to the building for the a two unit dwelling 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 existing use of the land as a duplex on a lot deficient in frontage and area must be taken in context with all such circumstances on the Peninsula. The option is open to most owners in the immediate area of this application to convert to a two unit dwelling. However, in none of those cases would an an increase in building volume be permitted.

There is no situation in any part of the Peninsula which would grant an owner the right to construct an addition and add a dwelling unit “by-right” where the lot area and frontage were deficient. Therefore, this situation could be seen to be general to all such properties and the variance must be refused.

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

There is no intentional disregard for the requirements of the land use bylaw.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance. This is staff's recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the applicant to proceed with the conversion to a dwelling unit.

ATTACHMENTS

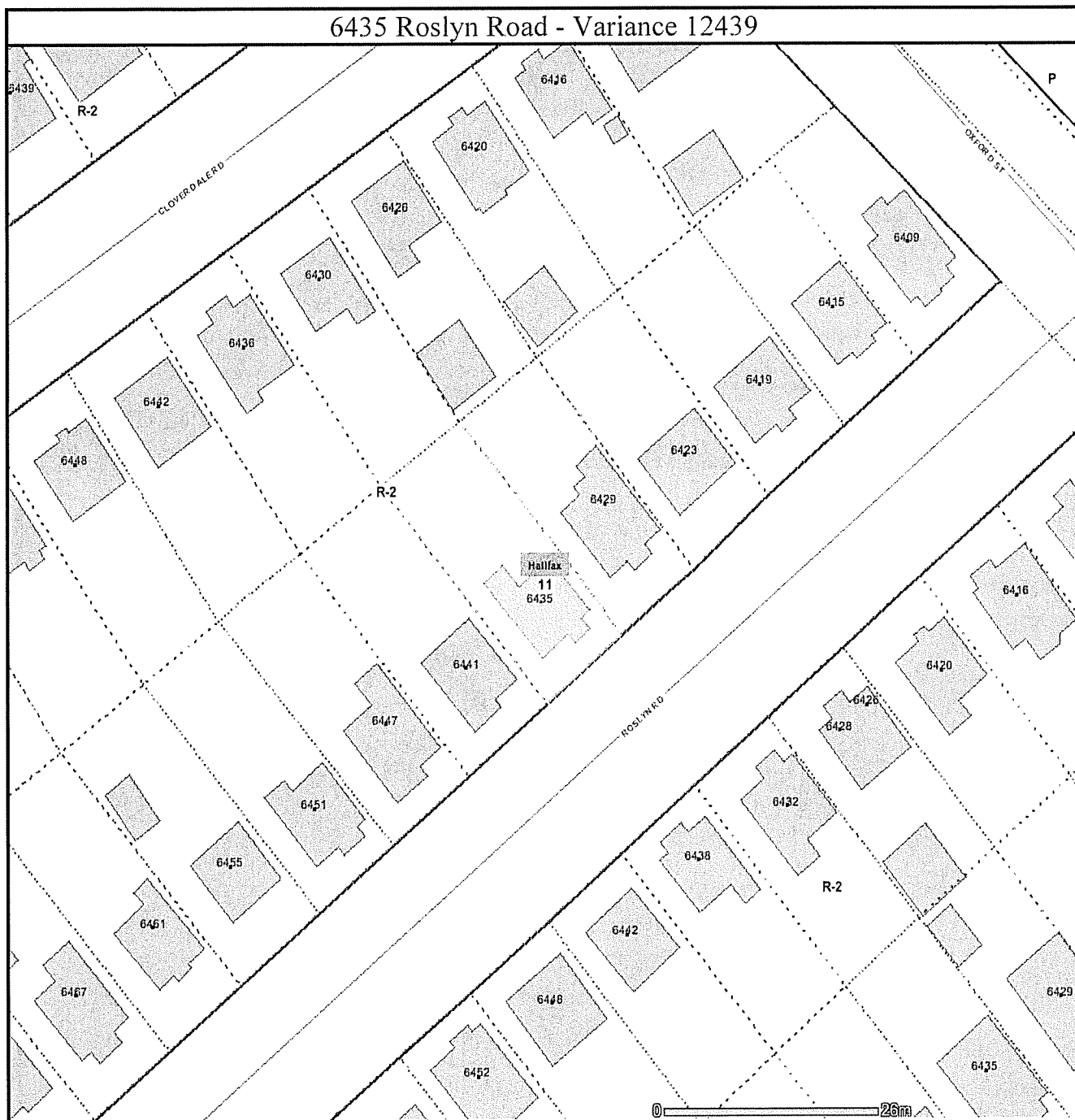
1. Location Plan
2. Site Plan
3. Appeal Letter

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)

6435 Roslyn Road - Variance 12439



Selected Features

• Civic Numbers

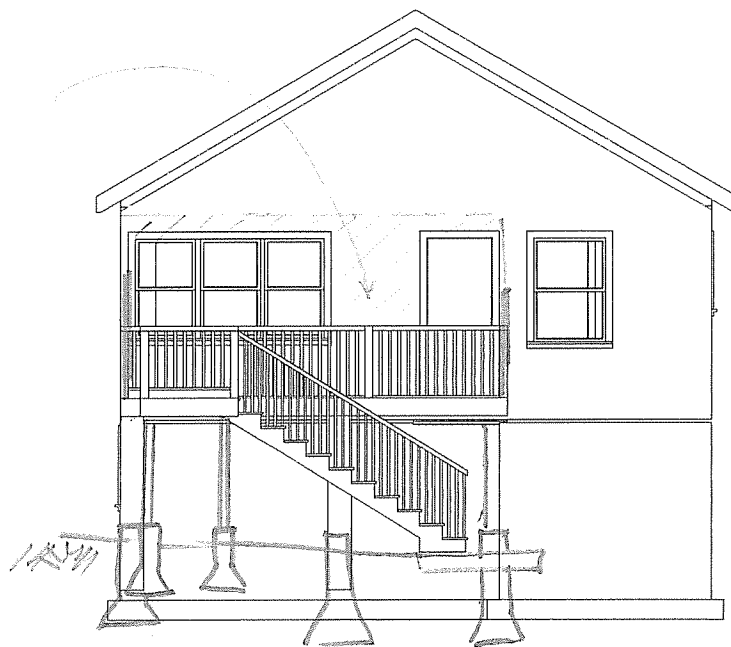
- Streets
- Parcels
- Building
- Zoning

Legend

- Plan Areas
- Lakes

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

NEW EXTERIOR
WALL



REAR ELEVATION FINISH DECK

Attention:
Mr. Andrew Faulkner, Development Officer,

Fax:

RE: Minor Variance 12439

January 12, 2006

Councilors,

I hereby invoke my right to appeal the decision of Mr. A. Faulkner, Development Officer, regarding the refusal for a variance at 6435 Roslyn Rd. Following a letter and phone conversation with him I understand that keeping strictly to the regulations this addition is not permitted, however, I hope you may see your way to grant an exception in this case.

The area in question is only a one story consolidation of a presently existing deck which is also covered by a roof. This would only require two (2) walls to be constructed as this merely squares off the building. Because this area is already occupying covered square footage it will not infringe on neighbours.

This residential area has a mix of single family and multi-unit construction. Across the street we see a two story duplex and out of the rear window we find another two story duplex both occupying more square footage and volume and the examples are many. And so we believe this modification will not adversely affect anyone.

My Brother-in law/partner ,in this building searched for almost a year to find a building to suit the need of my in-laws who occupy the main floor unit which this affects. This consolidation would add 150 square feet to their 825 sq. ft.. apartment greatly enhancing their living space while not infringing on others. Your careful consideration of these issues will be greatly appreciated.

Sincerely,

Michael S Furlong

