

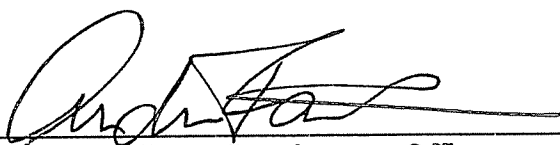


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
March 6, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: February 26, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 2693 Agricola Street, Halifax: Variance No. 12642

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the side yard, frontage and lot area requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to a nonconforming two unit dwelling to create a three 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 2693 Agricola Street in Halifax (see location plan - Attachment 1). The property is zoned C-2 General Business, Peninsula North Area 5 Secondary Plan, Halifax Peninsula Land Use Bylaw. The legal occupancy of the building is a two unit dwelling.

On August 22, 2005, an application was received for construction of an addition to an existing nonconforming two unit dwelling with the intention of creating a third dwelling unit (see site plan - Attachment 2). On August 29, 2005, that application was refused as the proposed use would not comply with the requirements for side yard setbacks, lot frontage and lot area.

In response to the refusal letter, the owner revised her building plans to indicate the addition was to a two unit dwelling and no third unit was created. Building Permit No. 71957 was issued on October 31, 2005, for "add to two unit dwelling" based upon the revised plans.

During the course of regular scheduled inspections the Building Official noted that the works were not completed as shown in the approved plans. The owner had proceeded with construction of a third dwelling unit in the addition as originally proposed and refused.

The owner subsequently made a variance application on January 19, 2006, to construct an addition and create a three unit dwelling. The variance was refused on February 6, 2006 (see refusal letter - Attachment 3) and subsequently appealed on February 14 (see letter of appeal - Attachment 4).

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 ?

The C-2 Zone permits a wide range of uses, commercial and low to high density residential. However, in all those cases it directs development back to the relevant zone for the use. In this case the R-2 General Residential zone.

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. In the case of the subject property, the standard requirements have been reduced to allow a minimum lot area of 3000 square feet for single unit dwellings, with 30 feet of frontage. There are no area exceptions for semi-detached and three 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.

In this case the owner has already gained a relaxation of sorts by having a nonconforming duplex on a lot that is not of sufficient size for a single unit dwelling. That two unit dwelling use can be maintained indefinitely on the property.

Given that the intent of the bylaw in this case is clear, and noting that buildings in this area are already subject to reduced requirements, the Development Officer believes that further reduction 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 existing use of the land as a nonconforming duplex on a lot deficient in frontage and area must be taken in context with all such circumstances on the Peninsula. There is no situation in any part of the Peninsula which would grant an owner the right to construct an addition and add a third dwelling unit "by-right". 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?

The owner was advised by letter that the proposed third dwelling unit could not be approved. She then amended her building plans and floor layouts to satisfy the bylaw and obtain a permit. By the owner's admission she then proceeded to build with a clear intention of occupying it as a third dwelling unit (see Attachment 4).

As a result, the current difficulty is clearly the result of intentional disregard on the part of the owner. The circumstances make it impossible for the Development Officer to approve the proposed variance.

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

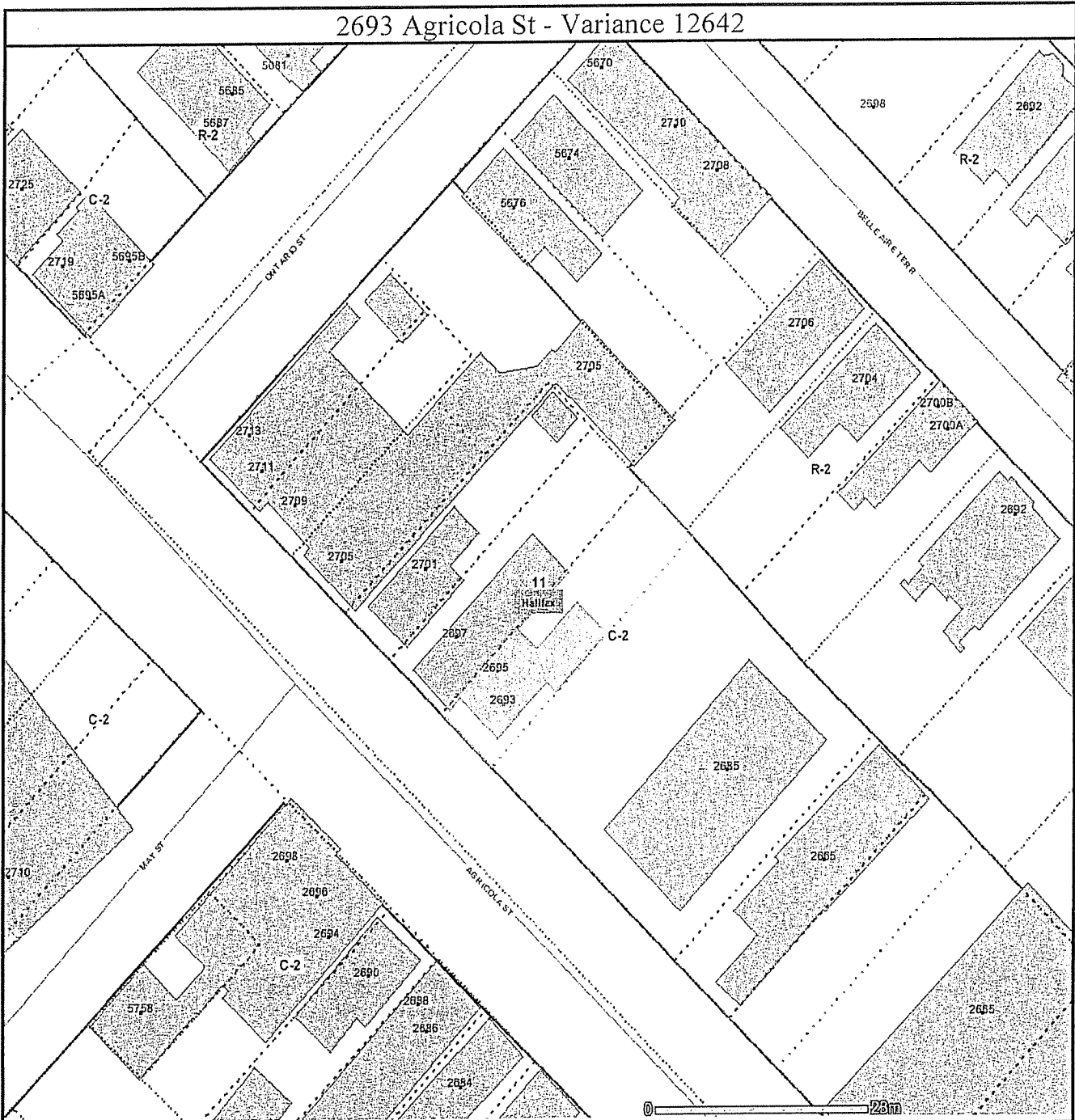
1. Location Plan
2. Site Plan
3. Refusal Letter
4. Appeal Letter

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)

2693 Agricola St - Variance 12642



Selected Features
 Civic Numbers

- Streets
- Parcels
- Building
- Zoning

Legend

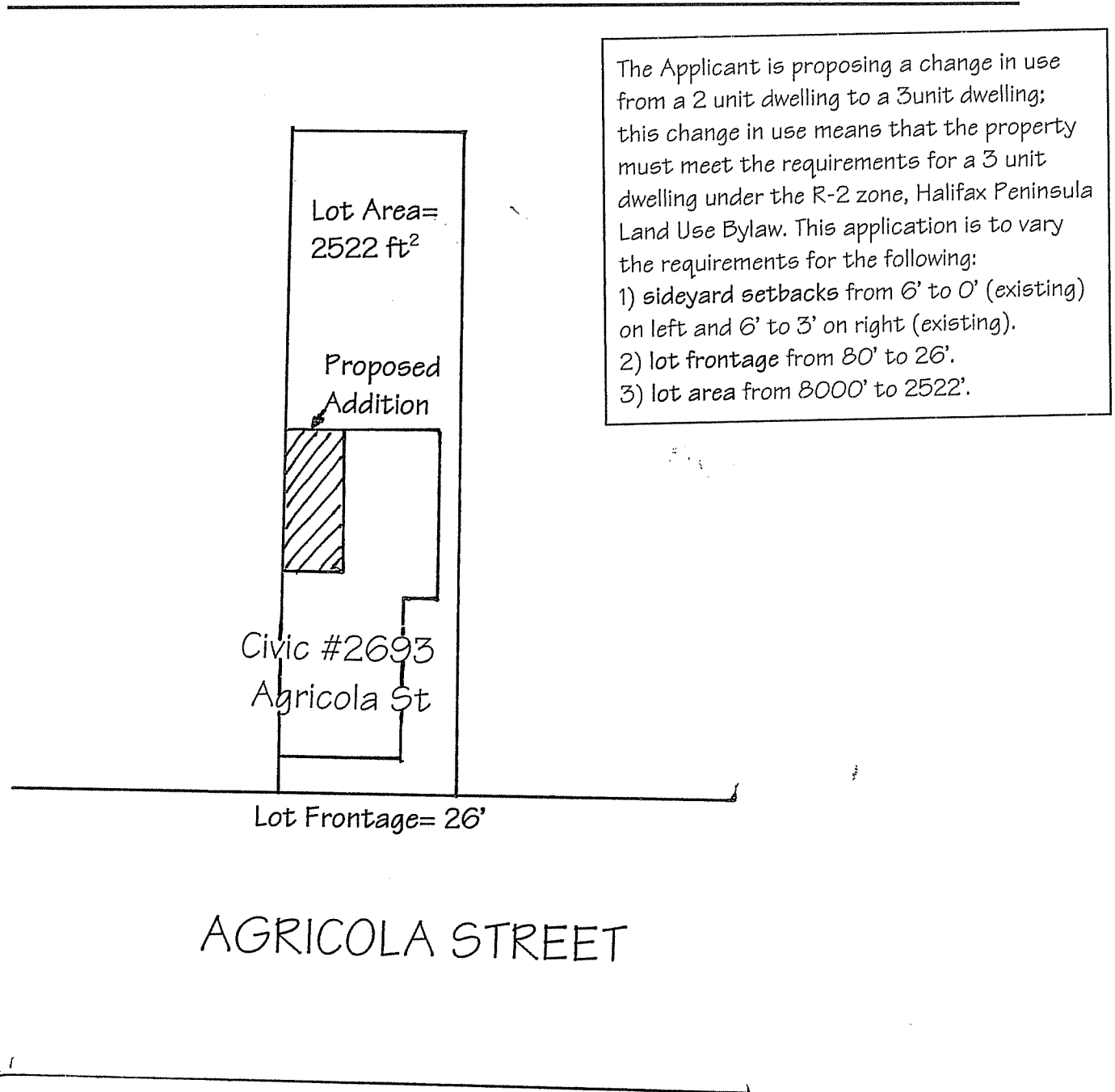
- Plan Areas
- Lakes

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

DATE: February 24th, 2006

SUBJECT: Case No. 12642 - Variance at 2693 Agricola Street, Halifax

SITE PLAN





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

February 6, 2006

Diane Louise Bailey

Dear Diane

RE: Application for Variance , Case # 12642- 2693 Agricola Street, Halifax

This letter is to advise you 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 the Halifax Peninsula as follows:

Location: 2693 Agricola Street, Halifax
Project Proposal: Conversion of 2 unit dwelling to 3 units
Variance Requested: Vary side yard requirements from 6' to 0'(left) and 6' to 3' (right), frontage from 80' to 26', lot area from 8000' to 2522'.

Section 235(3) of the **Municipal Government Act** 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 this variance application does not merit approval because:

- a) it violates the intent of the bylaw, and
- b) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

A relaxation of the side yard, lot area, frontage and lot coverage requirements would represent a violation of the land-use bylaw. The Halifax Peninsula Land Use Bylaw requires larger lots with greater street frontage for increased densities. The subject property is too small for the proposed density and the requested variances are too divergent from the requirements of the bylaw to be approved.

In addition, it can be argued that the applicant has created the difficulty through a disregard of the bylaw as the addition and third unit were constructed without the necessary permits.

Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision



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

of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before February 16th, 2006.

If you have any questions or require additional information, please contact this office at **902-490-4046**

Sincerely,

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

Andrew Faulkner
Development Officer

cc. Jan Gibson, Municipal Clerk
Councillor Patrick Murphy, District 11

12642

Diane Bailey

RECEIVED FEB 15 2006

February 14, 2006

Dear Mr. Faulkner,

I am writing to appeal the decision to convert a 2 unit dwelling to a 3 unit dwelling. As mentioned in the variance my mother will be moving to this property with her caregiver.

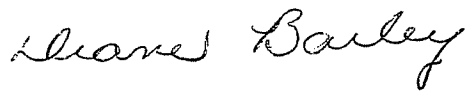
Briefly, her property on Chebucto Rd. is presently being sold, she's 83, suffered a heart attack in '90, and has had several strokes, the most recent in November '05. She is still self sufficient, she cooks, cleans, walks everyday (weather permitting), plays cards and wants to have her privacy and own space. Having someone close to her whom she trusts, offers her comfort and peace.

I know we created this problem ourselves by not applying for a permit and we take full responsible. My husband and I take much pride in our properties, and believe it or not, respect our community.

I have included a letter signed by members of our community who also know how much pride we take in our buildings and community.

If you have any questions please contact me. Thank you.

Sincerely yours,



Diane Bailey

15 signatures in support.

February 14, 2006

Dear Neighbour,

We are in the process of appealing a decision made by the Development Officer for the Halifax Regional Municipality to convert a 2 unit dwelling to a 3 unit dwelling at 2693 Agricola St.

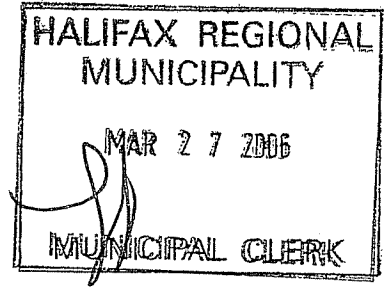
We realize by not applying for a permit in the first place we created the difficulty ourselves but we are hoping because of the changes we've made to the property location and the community you will support this appeal.

Thank you,

Co. Sheriff / Murphy



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



February 24th, 2006

Diane Bailey

Dear Sir

RE: Variance #12642 - 2737 Agricola Street, Halifax

This is to advise that advise that your appeal of the Development Officer's decision to refuse the above application for variance #12642 will be presented to **the Peninsula Community Council on April 10th, 2006 in the Council Chambers at City Hall, 1841 Argyle Street.** The Council meeting will commence at **7:00pm.**

Should you require further information, please do not hesitate to contact this office at (902) 490-4046.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

Andrew Faulkner
Development Officer
Halifax Regional Municipality

cc: Councillor Patrick Murphy
Jan Gibson, Municipal Clerk

PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

February 24th, 2006

Dear Sir/Madam:

RE: Application for Variance No. 12642 - 2693 Agricola Street, Halifax, NS

As the Development Officer for the Halifax Regional Municipality, I have refused a request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw. Specific details of the proposal are as follows:

Location: 2693 Agricola Street, Halifax, NS

Project Proposal: Conversion of 2 unit dwelling to 3 units

Variance Requested: Vary side yard requirements from 6' to 0'(left) and 6' to 3' (right), frontage from 80' to 26', lot area from 8000' to 2522'.

Section 235(3) of the Municipal Government Act states that:

No variance shall be granted by the Development Officer where:

- 1) the variance violates the intent of the Land Use Bylaw;
- 2) the difficulty experienced is general to properties in the area; or
- 3) the difficulty experienced is a result of intentional disregard for the requirements of the Land Use Bylaw.

The proposed variance is seen to be contrary to the intent of the bylaw and the difficulty is the result of intentional disregard for the requirements of the land use bylaw.

As provided for in the Municipal Government Act, the applicant has exercised the right to appeal this decision to the Peninsula Community Council. As a property owner within 30 m of the subject property, you have the right to speak or make written submissions with respect to this proposal.



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

The appeal will be heard by the Peninsula Community Council on April 10th, 2006 in the Council Chambers at City Hall, 1841 Argyle Street. The Council meeting will commence at 7:00pm.

If you have questions or require additional information, please contact me directly at 490-4402.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

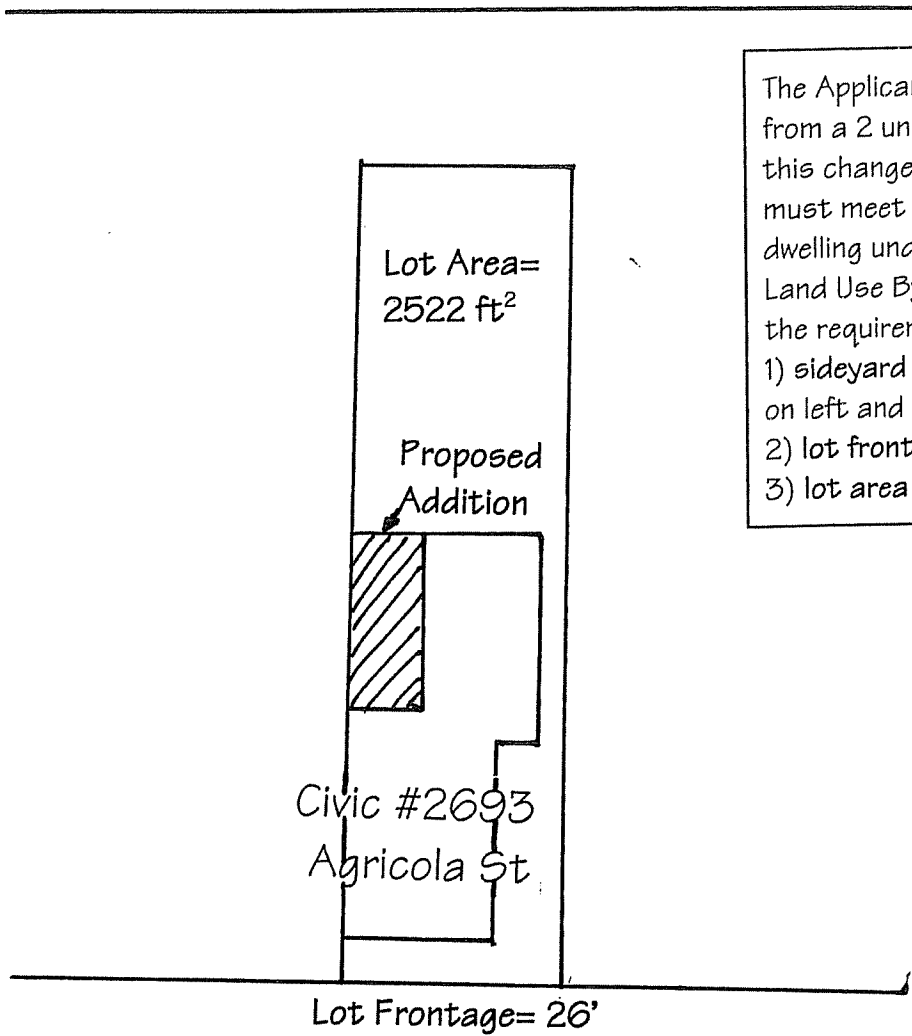
Andrew Faulkner
Development Officer

cc: Jan Gibson, Municipal Clerk
cc: Councillor Patrick Murphy, District 11

DATE: February 24th, 2006

SUBJECT: Case No. 12642 - Variance at 2693 Agricola Street, Halifax

SITE PLAN



The Applicant is proposing a change in use from a 2 unit dwelling to a 3 unit dwelling; this change in use means that the property must meet the requirements for a 3 unit dwelling under the R-2 zone, Halifax Peninsula Land Use Bylaw. This application is to vary the requirements for the following:

- 1) sideyard setbacks from 6' to 0' (existing) on left and 6' to 3' on right (existing).
- 2) lot frontage from 80' to 26'.
- 3) lot area from 8000' to 2522'.

AGRICOLA STREET