



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Peninsula Community Council  
December 11, 2006

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** November 24, 2006

**SUBJECT:** Appeal of the Development Officer's decision to deny an application for a  
Variance No. 13429 - **3421 - 3423 Oxford Street, Halifax**

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to deny a variance from the Lot area and Gross Floor Area requirements of the Halifax Peninsula Land Use Bylaw to permit a second unit.

**RECOMMENDATION**

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

**BACKGROUND**

The subject property is located at 3421 - 3423 Oxford Street in Halifax. The property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use Bylaw. The subject property is a 5000 square feet in area as shown on Survey Plan No. 2061 dated 1954.

The applicant is requesting a variance of lot area (existing 5000 sq ft; requirement is 8000 sq ft) and Gross Floor Area (from 3,000 square feet to 3,096 square feet) to convert two unit dwelling into a three unit dwelling.

Section 37 of the R-2 zone requirements state:

*“buildings erected, altered or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:*

|               | <u>Lot Frontage</u><br><u>(Ft.)</u> | <u>Lot Area</u><br><u>(Ft.)</u> | <u>Side Yard</u><br><u>(Ft.)</u> |
|---------------|-------------------------------------|---------------------------------|----------------------------------|
| <i>duplex</i> | 50                                  | 5000                            | 5                                |
| <i>3-unit</i> | 80                                  | 8000                            | 6                                |

**Lot area is 5000 sq ft.**

**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. Side lot line setbacks are increased as density increased, from 4 feet to 6 feet. 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 and greater open space between the buildings and the lot line.

Given that the intent of the bylaw in this case is clear, the Development Officer believes that further reduction of the lot area to allow an additional unit would violate the intent of the bylaw. Therefore the variance was refused.

The variance in gross floor area from 3,000 square feet (0.60 GFAR) to 3,096 square feet (GFAR 0.62) is consistent with GFAR in the immediate vicinity and was not a reason for refusal.

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

The zone permits up to four units, dependent on the frontage, lot area and side yard setbacks. The area, lot frontage and front yard setback found on this property do not meet the requirements for a three unit dwelling. All lots within the thirty metre buffer have a lot area ranging from 5,000 square feet to 6,100 square feet with only one exception. Land use in the immediate area consists of single unit dwellings or two unit dwellings on lots of appropriate size. Therefore, the difficulty experienced is general to the area and the variance to create a three unit dwelling was refused.

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

There is no intentional disregard.

**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 deny the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

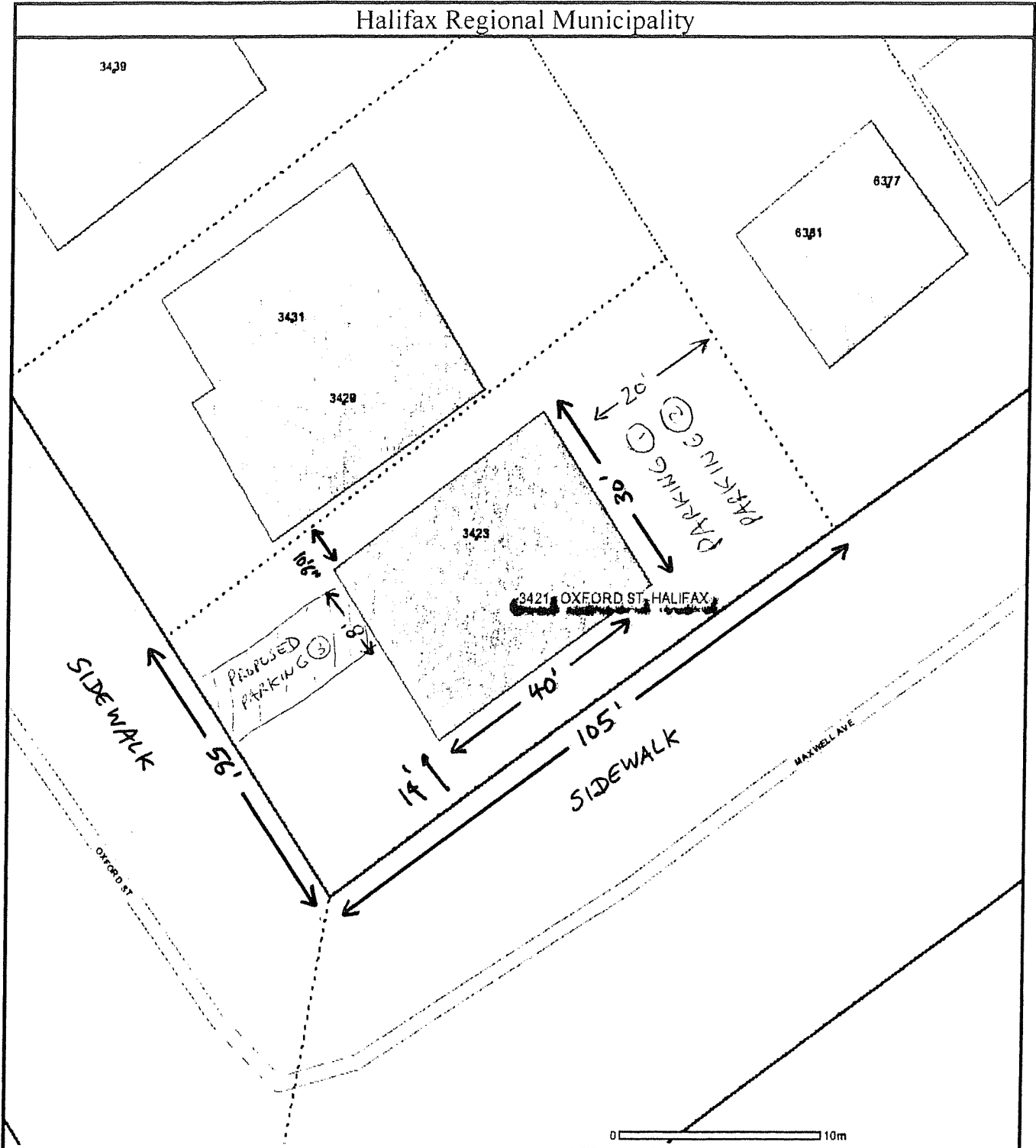
**ATTACHMENTS**

1. Location Plan
2. Notification Letter
3. Site Plans.
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: Shilo Gempton - Development Technician (490-6796)



This map was prepared for the internal use  
 omissions For further information on Street  
 5347 or email civicadd@halifax.ca Date of

**Application # 81139**

Civic Addr: **3423 OXFORD ST HALIFAX**  
 Lot #: **6**

Applicant: **AMIR NEVO**  
 Ph (902)452-0889 x

RENOVATE THREE UNIT DWELLING



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

November 17, 2006

Amir Nevo

Dear Mr. Nevo:

**RE: Application for Variance, Case Number 13429, 3421-3423 Oxford St, Halifax**

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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 Halifax Peninsula Land Use Bylaw as follows:

**Location:** 3421 - 3423 Oxford St  
**Project Proposal:** To add a third unit to an existing two unit building  
**Variance Requested:** Vary lot area from 8,000 square feet to 5,000 square feet  
Vary Gross Floor Area from 3,000 square feet to 3,096 square feet

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) the variance violates the intent of the Land Use Bylaw; and
- (b) the difficulty experienced is general to properties in the area

Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:



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

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Mr. Nevo  
November 17, 2006

**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 November 28, 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". The signature is fluid and cursive, with a long horizontal stroke at the end.

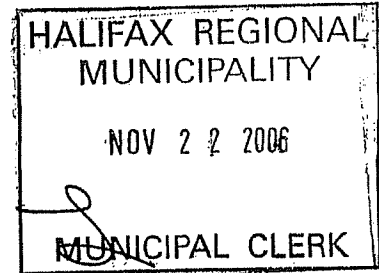
**Andrew Faulkner**  
Development Officer

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

cc: J. Weagle  
Andrew Faulkner.

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



November 21, 2006

RE: Case Number 13429, 3421-3423 Oxford St., Halifax

To Whom It May Concern:

I recently applied for a permit for a third apartment in my newly purchased property at 3421-3423 Oxford St., and was refused. I was told that I should apply for a minor variance since the requirements missing were minimal. I applied for the minor variance and was immediately turned down. I am filing this appeal in hopes that you will reconsider this decision based on the following reasons:

This property has been neglected for many years, and in need of numerous repairs and upgrades to the electrical, plumbing, windows, doors, and almost everything you can mention on the inside. I purchased this property with the anticipation of improving it, making the property more aesthetically pleasing, safer, and improving the neighborhood by bringing a building in disrepair back to life. I also purchased this property in anticipation that I would be granted a permit for a third unit since I own one other property on Novalea Drive that is identical in structure, floor plans, and lot size, and is a legal three unit building.

The proposed unit would be an internal conversion, not involving any additions to the building on the outside. What will change on the outside, however, are cosmetic enhancements such as new doors and windows, a better maintained lawn and foliage, repaving of the driveway, and other landscaping improvements.

I know your department has many problems with illegal apartments in the city, probably hundreds of which are not safe. I fully understand the need to build an apartment that follows all code requirements and is safe for all concerned. This is exactly my goal in applying for this minor variance.

There could be other issues such as low ceiling height that would be a much more serious issue, in my opinion, than too little lawn around the building. I have 10ft high ceilings! The basement area is absolutely huge, and so is the lot. It seems to me that the difference between my 6550ft<sup>2</sup> (not 5,000ft<sup>2</sup> as the refusal letter states) and the required 8,000ft<sup>2</sup> is not a safety matter since it cannot hurt either anyone in the unit or my neighbours.



The minor variance was also refused because the gross floor area is 3,096ft<sup>2</sup> and the area required is 3,000ft<sup>2</sup> – a difference of only 96ft<sup>2</sup>. I feel that this must be considered minor since it is approximately the size of a small bathroom or walk-in closet.

My efforts at improving this property and adding a unit are all positives, and can only happen with the help of the city to allow this minor variance to go through. Everything I plan to do to this property will benefit the neighborhood and the city. I am redoing all the electrical, and much of the plumbing, which will make the building safer, and I am in the process of replacing all the windows and doors, which will make the building more energy efficient.

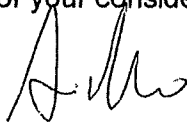
I cannot see any harm in allowing me to add this third unit, improving the building and neighbourhood in the process.

Please reconsider the decision to refuse this minor variance application, and I promise you that I will build a first-class apartment.

If you have any questions or concerns that I have not addressed above, please do not hesitate to contact me at .

Thank you for your consideration.

Amir Nevo

A handwritten signature in black ink, appearing to read 'Amir Nevo', written over the printed name.

cc. Councillor Patrick Murphy, District 11