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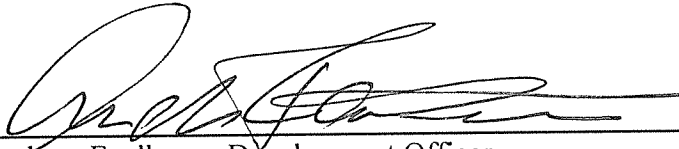


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
December 3, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: November 27, 2007

SUBJECT: Appeal of the Development Officer's decision to approve an application for
a Variance - 5677 Brenton Place

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance from the side yard, coverage, lot frontage, and lot area requirements of the Halifax Peninsula Land Use Bylaw to permit a Single Unit Dwelling.

RECOMMENDATION

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

BACKGROUND

Currently there is an commercial building with an existing side yard and rear setbacks of 0 feet. The lot is 2700 square feet in size and has 26 feet of frontage. The existing commercial footprint has 94% lot coverage. The applicant proposes to build an addition on top of the commercial building to create an apartment.

For the residential proposal, the required lot area is 3,000 square feet (2,600 square feet exists) and the required frontage is 30 (26 feet exists). The required side yard setbacks are 2'-6" (0 feet proposed) and the required rear yard setback is 20 feet (0 feet is proposed). The maximum residential lot coverage allowed is 35% and the proposed lot coverage is 55%.

Surrounding properties have similar or larger footprints and similar lot sizes. Most of them do not meet the setbacks. To require them to meet the setbacks would not be consistent with setbacks in the neighbourhood.

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 ?

One of the goals in planning policies adopted for the established neighbourhoods of the Halifax Peninsula is to maintain the character and stability of these areas through Municipal Planning Strategy (MPS) policies such as Policy 2.4 which states:

"... the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods."

The character of this neighbourhood is a mix of residential and commercial. The residential density in this neighbourhood ranges from single unit dwellings to large scale apartment buildings. Most of the single unit dwellings that already exist in this neighbourhood exceed the lot area, frontage or coverage requirements. Therefore, the residential component of this building would be similar to others in the area and the variance was approved.

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

The majority if the single unit dwellings within the buffer exceed the lot area, frontage, and coverage requirements. Therefore, the difficulty experienced is not general to the area.

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 grant the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

1. Location Map
2. Appeal letter
3. Site Plan
4. Elevations

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)

6013 Belmont Rd
Halifax, NS
B3H 1N3

October 19, 2007

Halifax Regional Municipality
PO Box 1749
Halifax, NS
B3J 3A5

Dear Mr. Faulkner,

Re: Case No 14163, 5677 Brenton Place Halifax

We, Joseph Farrell and Harold Bent, are co-owners of 5673 Brenton Place a neighboring property to the applicant of the variance. We would like to appeal the variance/ seek clarification and assurances prior to any further development of the neighboring property of 5677 Brenton Place.

The first renovation on 5677 has not been completed and we would request that this be completed prior to the start of yet another renovation. This first renovation began 10-15 years ago. The cement walls facing our property have never been finished i.e. cracks filled and painted. There are temporary eaves that overhang our back yard/driveway that were supposed to be cut off 10 years ago. The front of the building and one side facing South Park Street were painted this summer. (The side for the first time since the reno many years ago) The back and east side facing our property have never been painted.

With several windows in the submitted plan facing our property, what would the rule/plan be in future should we or future owners of 5673 wish to erect a wall on that property line. Since 5677 property goes to the line, how would this be handled in future? would the 5677 property have windows that were only inches away from a wall or would there be restrictions of future expansions to 5673??

The 5677 takes up at least the stated 94% of the property if not more. What would be the access plan for repairs and maintenance on this new addition?? We own 1460 Brenton Street and that yard and the neighboring yard on Brenton Street as well as our 5673 Brenton Place property share a common right of way to access these adjacent yards. 5677 does not share in this common right of way or ownership of the yards and I question again the plan to access this property (5677) to do the renovation.

What would be the access plan to carry out the renovation with almost 100% of the property already occupied? If there was to be access to do this addition from our property we will need to have a reasonable deposit held in trust until the completion of the potential renovation. We would not want to suffer the same insult that we did during and after the first renovation- industrial kitchen fan installed overhanging into our yard

spewing grease and fat all over our yard, decks and cars parked in the yard. Tar all over our building and cars from the roofers. The owners would not take responsibility for this and told us to seek damages from the roofers as they(the owners) were not responsible. Paint was split over the front of our house and not removed despite our requesting that it be removed. We were given a fine (\$120.00) by the city for their construction debris from the renovation at 5677 that was left on our property, as they were using our yard as the work site since there is no other space on the 5677 property from which to work. They removed a mature tree from our property in order to gain access for construction purposes. Despite the promise at the time to replace it , it was never replaced to this day. So common courtesy has not been used in the past and we have no reason to believe it would be any different based on our many experiences to date.

We would also like to know when notifying property owners within 30 meters of this property, does this mean 30metrs from any part of the 5677 property? Because we also own 1460 Brenton Street that is certainly within this 30 meter range but we did not receive this notice to that address.

In future please address all correspondence regarding 5673 Brenton Place to our mailing address of 6013 Belmont Road, Halifax, NS B3H 1N3. As we do not live at 5673 Brenton Place. I would also ask that the HRM records for 1460 Brenton Place be updated to also have any official HRM correspondence directed to the owners go to 6013 Belmont Road, Halifax, NS B3H 1N3.

Overall we feel the owners of 5677 have not been cooperative or responsible neighbors and the potential for us or our tenants to suffer physical or financial property damage is great. We are willing to discuss the variance but without some assurances, we would not be willing to simply agree to it moving forward.

Perhaps a meeting with someone in HRM development would be the best way for us to get a clear understanding of the issues raised in this letter. We would like to be kept informed with the variance process and what if anything we are being asked to consent to.

Sincerely,

Joseph Farrell 422-5323

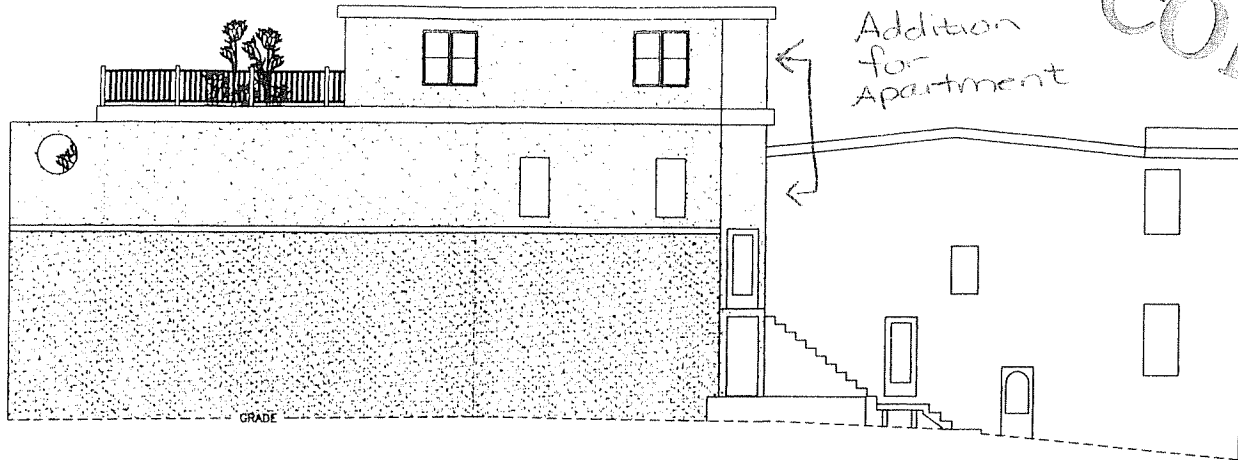
Harold Bent 477-7343



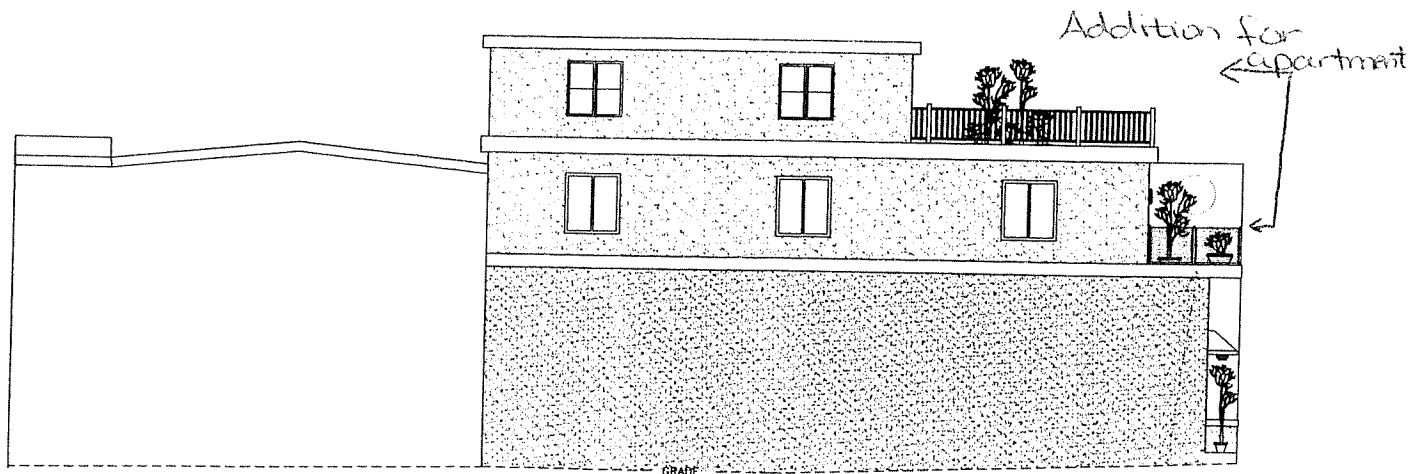
This map was prepared for the internal use of Halifax Regional Municipality(HRM) HRM takes no responsibility for errors or omissions For further information on Street Name or Community(GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca Date of map is not indicative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

ELEVATIONS

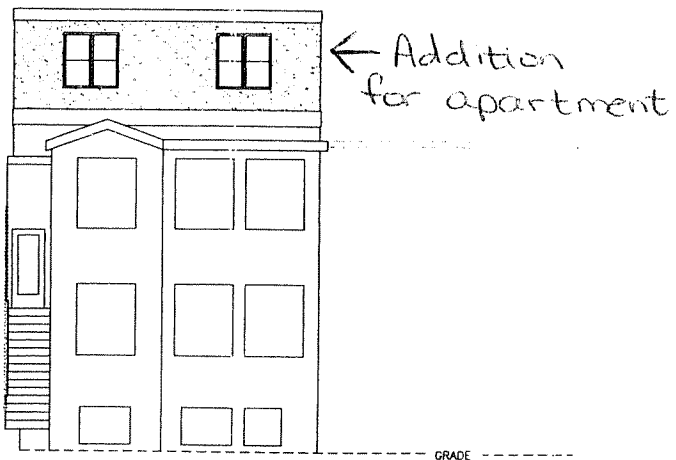
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WEST ELEVATION



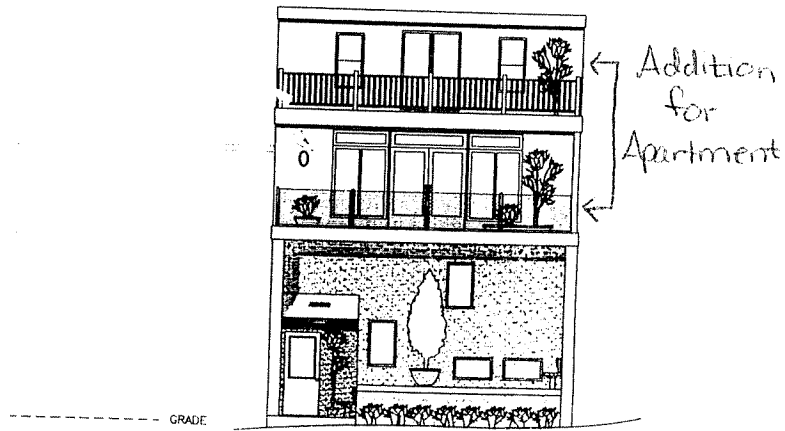
EAST ELEVATION



5677 BRENTON PLACE

5673 BRENTON PLACE

SOUTH ELEVATION



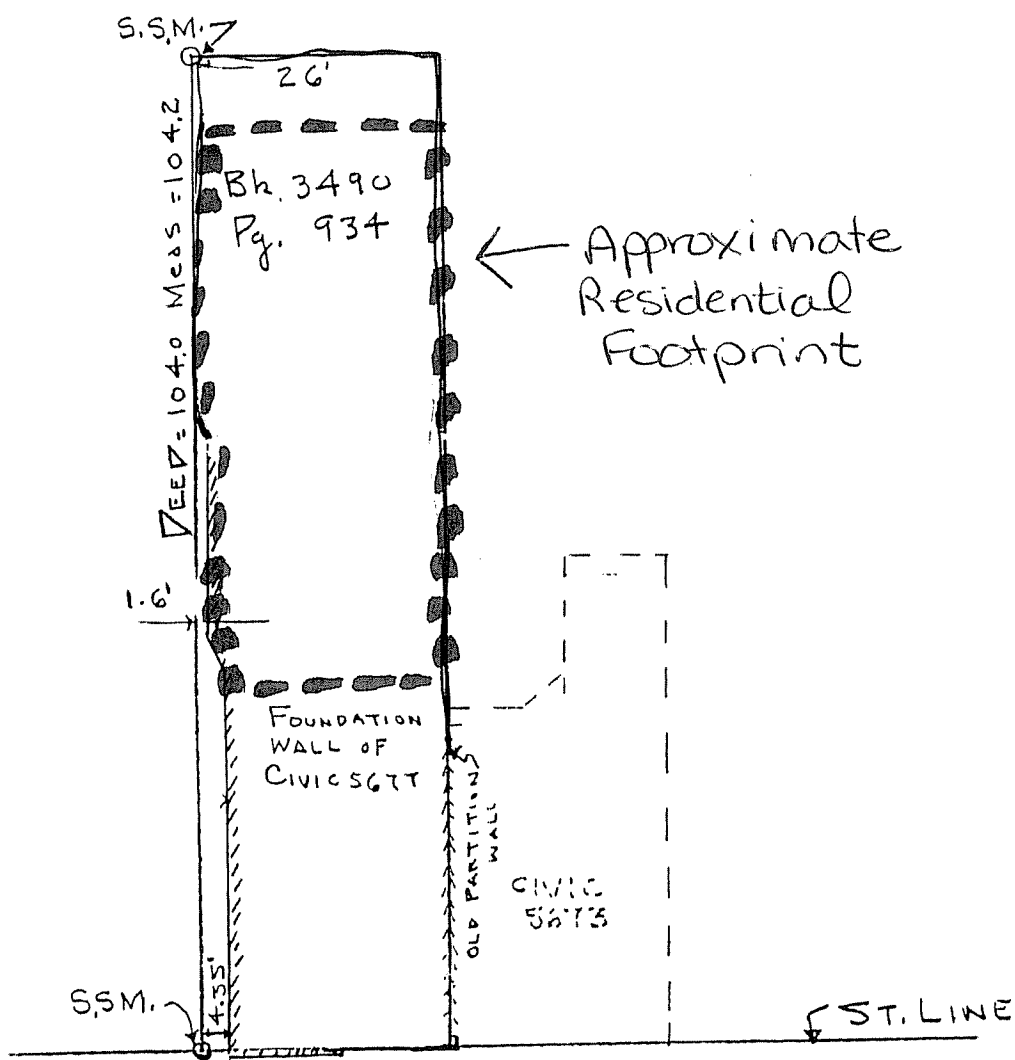
NORTH ELEVATION

DATE: October 15, 2007

SUBJECT: Development Officer's decision to approve an application for a variance -
5677 Brenton Place

SITE PLAN

COPY



BRENTON PLACE