

8.2.1

Peninsula Community Council
September 12, 2005

TO: Chairperson and Members of Peninsula Community Council

SUBMITTED BY:



Steven Higgins - Development Officer

DATE: September 12, 2005

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a variance - 2750 Swaine Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse an application for a variance from the requirements of the land use bylaw for property at 2750 Swaine Street, Halifax

RECOMMENDATION

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

BACKGROUND

The subject property is located on the south side of Swaine Street near the intersection with Berlin Street (see location plan - attachment 1). The property is zoned R2 under the Peninsula Land Use Bylaw. The lot currently contains a two unit building which was converted from a single unit without a permit. The authorized permitted use for the property is a single unit dwelling.

The land use bylaw allows two unit dwellings in this zone but the minimum lot area and frontage requirements for two units are 5000 square feet and 50 feet respectively. The subject property contains 4050 square feet of lot area and has a frontage of 45 feet.

The owner applied for a permit for renovations and a change of use from one unit to two units in 1999. That application was denied on April 19, 1999 (see refusal letter - attachment 2). In late 2004, enforcement staff received a complaint regarding the use of the property and an investigation was conducted resulting in the owner being given an order to remove the second unit due to a conflict with the zoning regulations for lot size and lot area.

As an alternative to removal of the unit, the owner applied for a variance to relax the required area and frontage. If approved, this would legalize the two dwelling units and eliminate the violation. This application was considered and refused by the Development Officer. The owner has exercised his rights under the Municipal Government Act and appealed the refusal (see appeal letter - attachment 3).

DISCUSSION

The *Municipal Government Act* (MGA) sets out 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 ?

The land use bylaw limits developments with larger numbers of units to lots with greater frontage and area. Given this feature of the bylaw, it can be said that the proposed variance violates the intent. However, the degree of departure from the general intent of the regulations in this case is not severe. While there is a minor violation of the bylaw’s intent in this instance, staff do not feel that the degree of departure is sufficient to justify refusal on this basis alone.

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

There is a mix of low density residential land uses and lot configurations in the general area. The subject lot is among the largest in the area with the majority being between 2800 to 3900 square feet. As a result, the difficulty experienced on this lot is common to the vast majority of lots in the area.

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

Staff note the owner applied for a permit to create the two unit dwelling in 1999. This permit was refused and a letter was provided to the owner. Under these circumstances, the creation of the second dwelling unit constitutes an intentional disregard for the land use bylaw and, pursuant to the MGA, the application must be refused.

However, in discussions with the owner, he has indicated that he was unaware of the refusal and did not receive the refusal letter. He has documented this assertion in the appeal letter attached to this report. Staff have considered this suggestion and it seems clear from municipal files that the refusal letter was forwarded by regular mail in the usual manner. Staff acknowledge that, although unlikely, it is possible the owner never received the letter. It is also possible that it was misplaced after delivery prior to being read. Under these circumstances, it is within Council’s authority to determine the violation is the result of “unintentional” disregard.

In considering this alternative, Council should note that, while he may not have been aware of the refusal, the applicant was aware of the requirement for a permit and no approval was ever issued. Ultimately the

work was undertaken without having received a permit.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused.

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

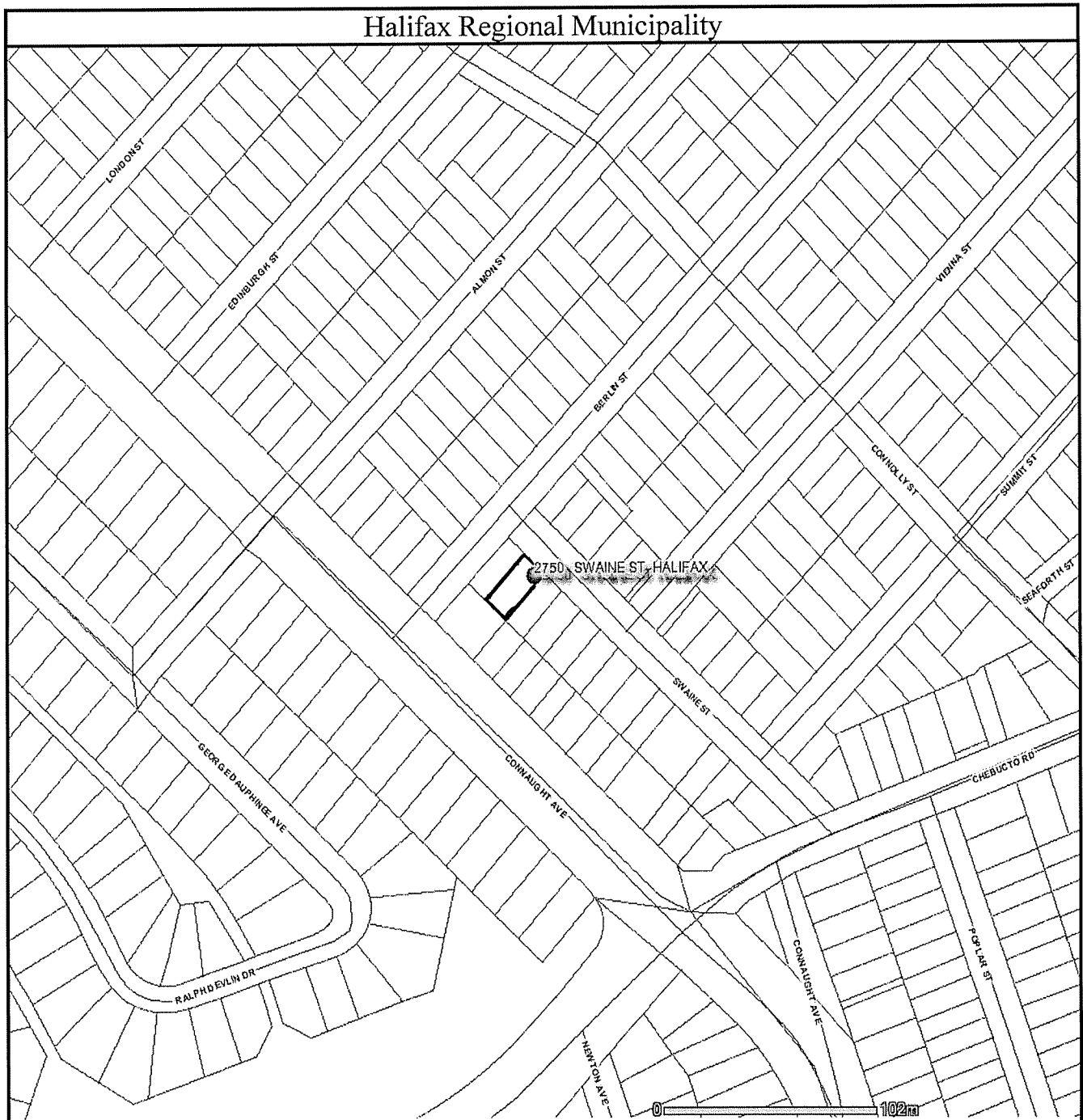
ATTACHMENTS

1. Location plan
2. 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: Steven Higgins - Development Officer



Legend
 ~ Streets □ Parcels

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.

Attachment 1

Martin Alford
2752 Swaine Street
Halifax, N.S. B3L 3R5

Municipal Clerk
C/o Steven Higgins Development Officer
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5
June 3, 2005

Dear Mr. Higgins,

Re: Application for Variance - 2750 Swaine Street, Halifax

I am in receipt of your letter of May 26, 2005, refusing my application, on the chief grounds that I “intentional(ly) disregard(ed) the requirements of the bylaw in that a second dwelling unit was created without a permit.” This was an incorrect perception of me and shocked me deeply. I am not a scheming, dishonest person, but rather an incompetent manager with no head for organization or business. At 80 years of age, I do my best. If only I had had a secretary to keep my papers in order none of this trouble would have developed. Instead, a glance at my garden may reveal that I am artistically inclined and have, I believe, improved the neighbourhood since coming here.

I have absolutely no record or recollection of the refusal of my first variance application (1999) and can only surmise that the state of my health at the time made me more incompetent than usual. In 2003, after a long waiting period, I finally succeeded in having two hip replacement operations to restore my mobility and end the crippling pain. During this period of incapacity, I got used to thinking of the house division as permitted, so that when Halifax Regional Municipality (HRM) gave me a separate street number for my back entrance (at my request but without demur) I was more than ever confident that the division was approved. It did not occur to me that HRM might thus be breaking its own rules. Accordingly, I went ahead and invested \$5000 in a new kitchen for the front apartment.

I understand that the variance that I’ve requested to the minimum lot area and minimum lot frontage is permitted under the Municipal Government Act. I disagree that this variance violates the intent of the Land Use Bylaw. Duplexes are permitted under the bylaw and the variance that I have requested is very minimal.

In the matter of population density, it is the purpose of the bylaw to keep it low. The bylaw states, sec.41(a), that a total of six habitable rooms are permitted on a lot of not less than 3,300 square feet. My house, as one unit, would contain six habitable rooms if the large ground floor room is counted as two, in accordance with the definitions in the bylaw. However, in the two unit conversion, one half of that large room becomes a kitchen, thus reducing the number of habitable rooms in the building to five. So, ironically, by dividing the house, and giving it two

kitchens, I am following the spirit of the bylaw more closely.

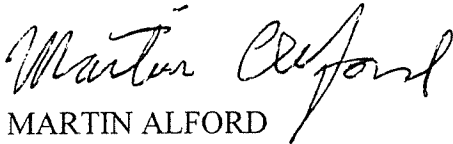
Although my property is not unique in the neighbourhood in terms of lot size and frontage, most of the lots on my street, and on Connaught Avenue, are small. None of these smaller lots are so close to the requirement for a two-unit dwelling as mine.

Finally, I have spoken to all my neighbours who are within one hundred feet of my property and found not one opposed to my house division. All are in favour, and sympathetic to my cause.

I disagree that the variance requested violates the intent of the Land Use Bylaw, that my difficulty in creating a two-unit dwelling is general to properties in the area or that I have engaged in any intentional disregard of the requirements of the Land Use Bylaw.

These points form my appeal to the members of the Municipal Council to grant me a variance on lot size requirement as stated in my application. I humbly beg their indulgence.

Sincerely,


MARTIN ALFORD

cc. Sheila Fougere



REGIONAL MUNICIPALITY
Development Services - Western Region
2750 Dutch Village Road
Halifax, N.S. B3L 4E5

Halifax Regional Municipality

Apr 19, 1999

Phone: (902) 490-5650 Fax: (902) 490-4645

MR. MARTIN ALFORD
2750 SWAINE STREET
HALIFAX, NS ,
B3L 3R5

FILE NUMBER: 007164

LOT:
CIVIC: 2750 SWAINE STREET
COMMUNITY: HALIFAX

Dear Applicant,

During a review of this application, the Development Officer determined that:

The proposed conversion of the existing single unit dwelling to a two unit dwelling DOES NOT conform to the requirements of the R-2 zone under the Land Use By-Law for Halifax Peninsula. The minimum lot area required for the proposed use is 5000 square feet. Our records indicate the current lot area to be 4050 square feet.

Pursuant to Section 259(e) of the Municipal Government Act, the Development Officer's decision maybe appealed. The notice appeal must in writing and made within fourteen (14) days of the date of this letter and sent to the following address:

Nova Scotia Utility and Review Board
Box 1692, Unit M
Halifax, NS B3L 3S3

This application is, therefore, refused and is cancelled.

Any questions or comments relative to the above should be directed to Development Services at the number above.

Signed,

G. R. Smith, Development Officer, 490-4402