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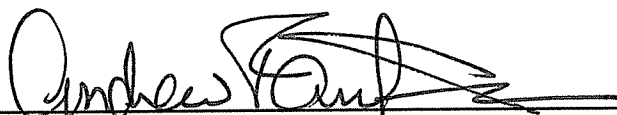


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
October 2, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: September 22, 2006

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance - **3727 Rosemeade Ave, Halifax**

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the Lot coverage, Front yard setback and lot frontage 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 **3727 Rosemeade Ave** in Halifax. The property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use Bylaw. The subject property is a 4497 ft² lot with 37' frontage.

The applicant is requesting a variance on lot frontage {existing 37 ft; requirement is 50 ft, lot area {existing 4497 sq ft; requirement is 5000 sq ft) and side yard setback (from 5 ft to 3 ft) to convert existing single unit dwelling into a two unit dwelling. Applicant wants to raise dwelling to create a second floor to add the second unit.

A variance application was received August 30, 2006, and was refused September 1, 2006 and subsequently the applicant appealed the refusal.

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.

Secondly; 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.”

A review of the occupancy of properties in the area finds the majority of residential, R-2 Zoned parcels of a similar size are occupied as single family dwellings. 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 zone permits up to four units, depending on the frontage, lot area and side yard setbacks. The area, lot frontage and side yard setback found on this property do not meet the requirements for a two unit dwelling. The majority of parcels in the immediate area consist mainly of single unit dwellings on lots of appropriate size. Therefore, the difficulty experienced is 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 deny the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

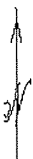
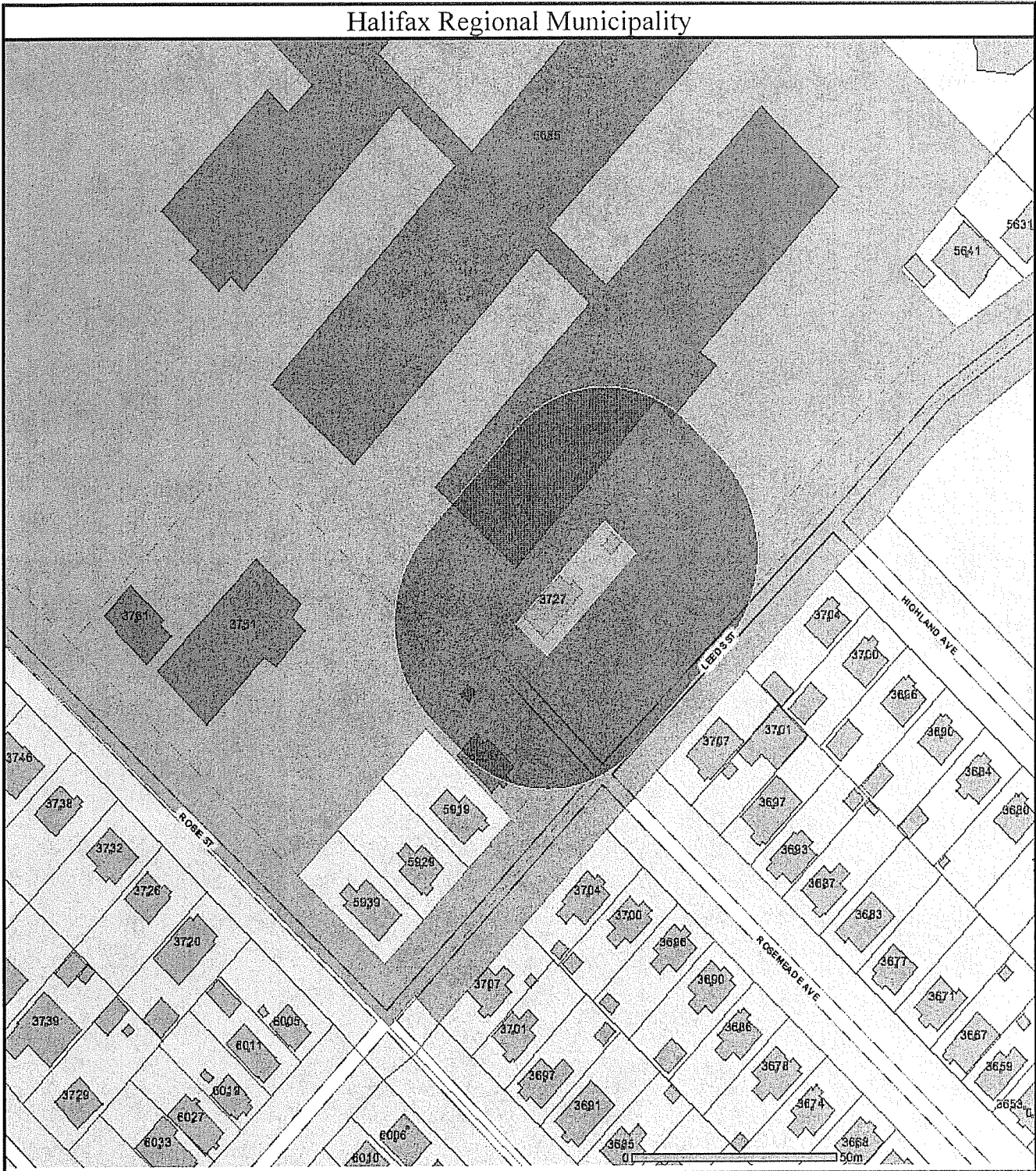
1. Location Plan
2. Notification Letter
3. Site and Elevation Plans.
3. Appeal Letter

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: Brenda Seymour - Development Technician (490-7455)

Halifax Regional Municipality



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.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

September 12, 2006

Dear Assessed Owner:

RE: Application for Variance, File No. 13257, 3727 Rosemeade Ave, Halifax

This will advise that the Development Officer for the Halifax Regional Municipality has refused a request for a variance from the requirements of the Land Use Bylaw for *Halifax Peninsula Land Use Bylaw* as follows:

Property Owners:	Thomas H. Gerrior
Location:	3727 Rosemeade Ave, Halifax
Project Proposal:	Raise dwelling and create second unit
Variance Requested:	Vary Lot Area requirements from 5000 sq ft to 4497 sq ft; Vary Lot Frontage from 50' to 37' Vary Front Setback from 15' to 1'

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 the variance (a) violates the intent of the Land Use Bylaw and (b) the difficulty experienced is general to properties in the area, and therefore the request for a variance has been refused.

The applicant has appealed the Development Officer's refusal of the application for variance.

The appeal will be heard by the Peninsula Community Council on October 2, 2006 at the Council Chambers, 3rd floor at City Hall, 1841 Argyle Street at 7:00 p.m.

If you have any questions or require additional information, please contact this office at **490-4402**.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner", with a long horizontal line extending to the right.

Andrew Faulkner
Development Officer

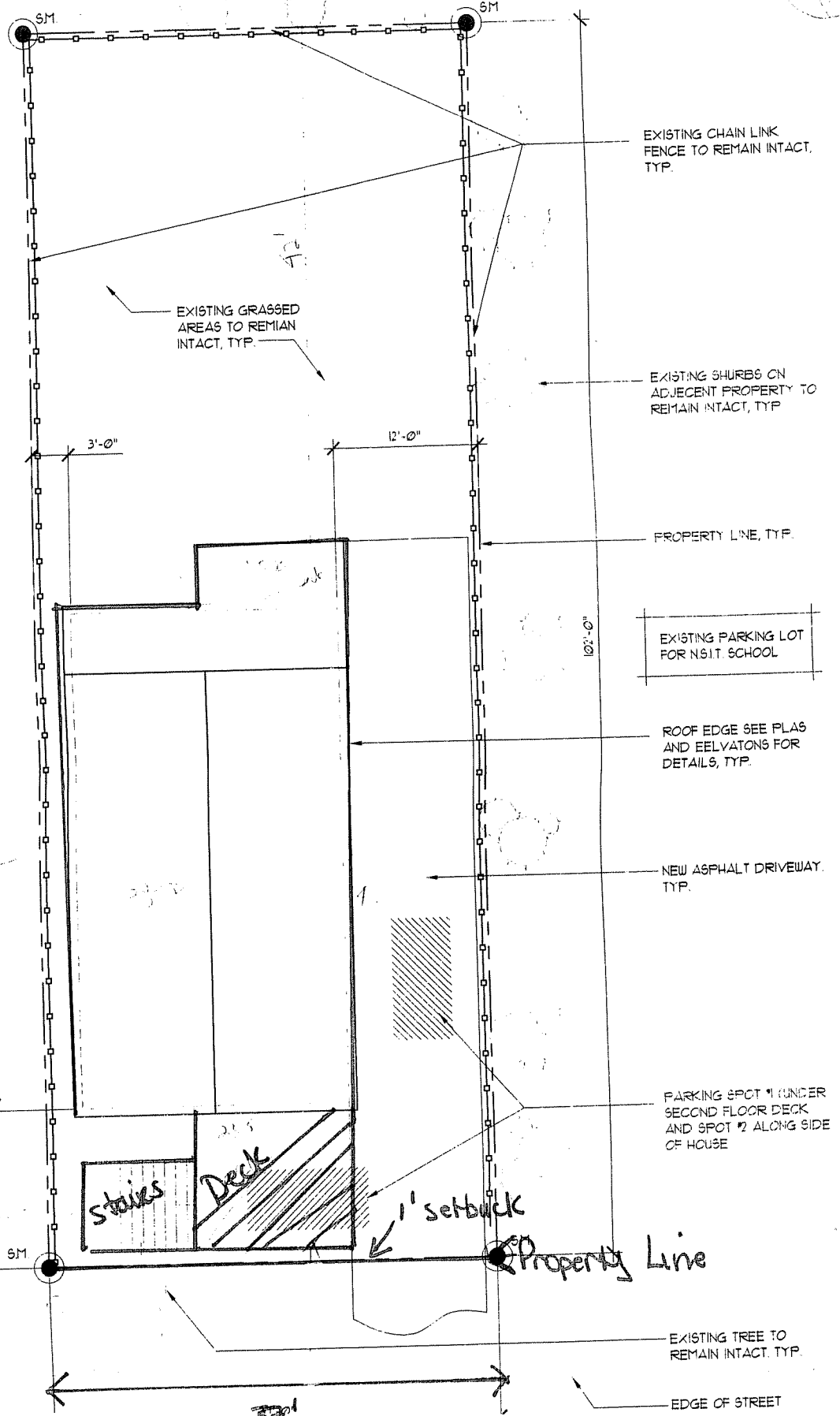
cc.

Jennifer Weagle, Municipal Clerk
Councillor Patrick Murphy

CASE # 13257

EXISTING NS.IT. SCHOOL PROPERTY

SITE PLAN



EXISTING NS.IT. SCHOOL PROPERTY

EXISTING CHAIN LINK FENCE TO REMAIN INTACT, TYP.

EXISTING GRASSED AREAS TO REMIAN INTACT, TYP.

EXISTING SHRUBS ON ADJACENT PROPERTY TO REMAIN INTACT, TYP.

PROPERTY LINE, TYP.

EXISTING PARKING LOT FOR NS.IT. SCHOOL

ROOF EDGE SEE PLAS AND EELVATONS FOR DETAILS, TYP.

NEW ASPHALT DRIVEWAY, TYP.

PARKING SPOT #1 UNDER SECOND FLOOR DECK AND SPOT #2 ALONG SIDE OF HOUSE

EXISTING TREE TO REMAIN INTACT, TYP.

EDGE OF STREET

Lot Area 4497 ft²
Required 5000 ft²

Frontyard Setback 14 ft
Required 15 ft

Lot Frontage 37'
Required 50'

Stairs

Deck

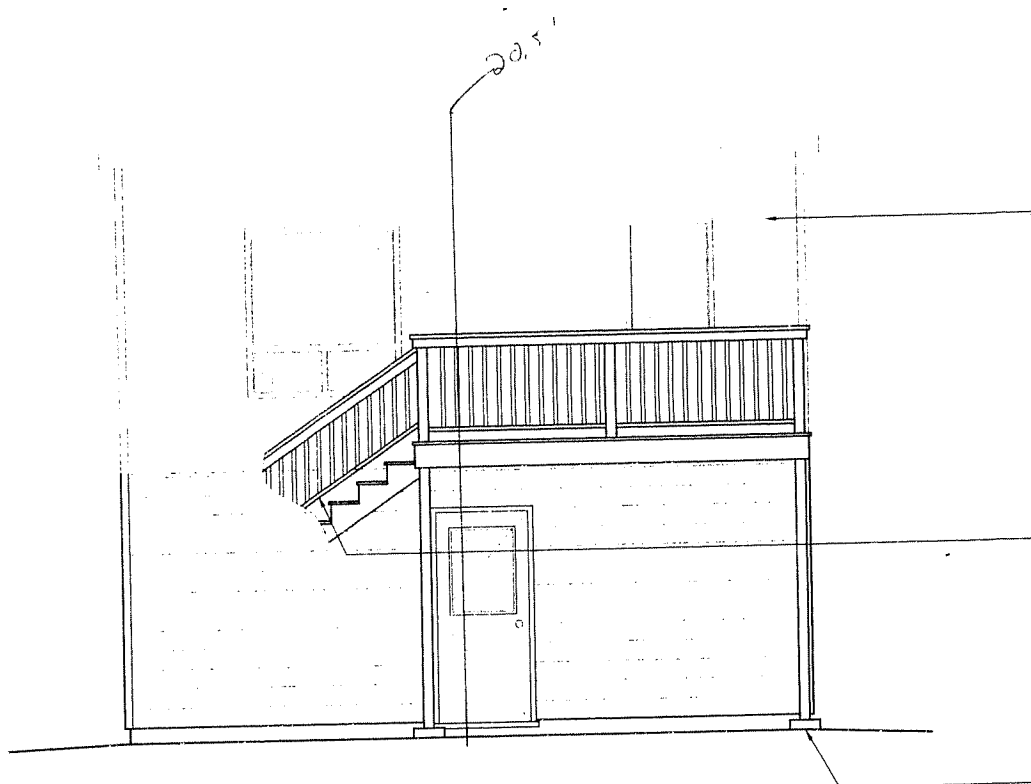
1' setback

Property Line

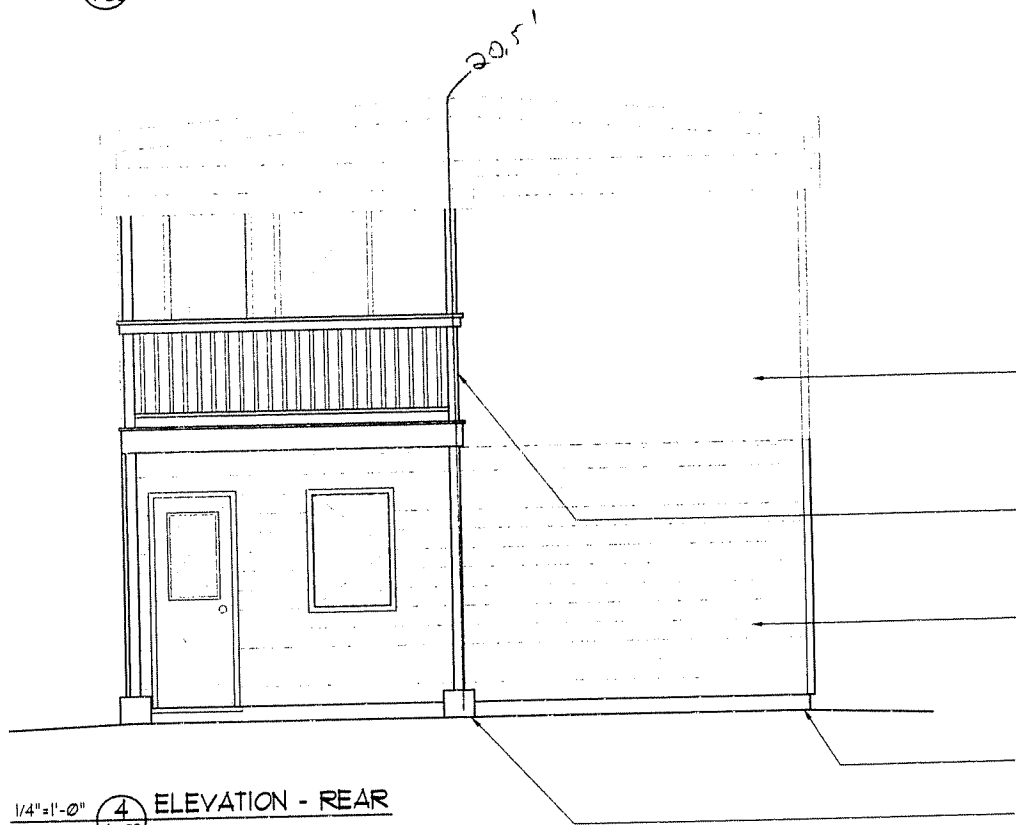
37'

CASE
13257

Raise house
to add first
floor.



1/4"=1'-0" 2 ELEVATION - FRONT
A-02



1/4"=1'-0" 4 ELEVATION - REAR
A-02

Variance Application Appeal

File No. 13257

Sept 10/2006

To The Development Office,

I wish to appeal the decision you have given to allow me to raise my home and make a two bedroom basement apartment. The basement apartment is not for income. My mother is 84 years old and has numerous health issues. I would like for her to live down stairs where she would be on level ground and my wife and I would live up stairs in order to care for her. Northwood home care have cut back on my mother's service to once a week. She is unable to get around with out a walker. "She will not use STAIRS"

Second off all I have different homes remodiled in my area. One home is only two doors down at 5919 Leeds Street. They are making a upstairs and downstairs apartments to rent. The other home is at 6019 Leeds Street and they have just finished raising it and it has only 3185 square feet of property.

I also have signatures from all my surrounding neighbors and they have no problem with me raising my home.

Thank You.
Thomas H. Herrion

3727 Rosemeade Ave.
Halifax N.S.
B3K-4M2.