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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
June 11, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: June 5, 2006

SUBJECT: Appeal of the Development Officer's decision to grant an application for a
Variance - 1165/1171 Waterloo St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance from the Gross Floor 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 grant the variance.

BACKGROUND

The subject property is located at 1165/1171 Waterloo Street in Halifax. The property is zoned R-1, Single Family Dwelling Zone, in the Halifax Peninsula Land Use Bylaw. Currently there is a semi-detached building located on the property. Two lots were consolidated into one lot to create a lot that is 9,600 square feet in size. The existing building is two storeys at street level and three storeys in the back. Using our mapping system to calculate the existing footprint, the footprint of the existing building is 1722 square feet with a total estimated Gross Floor Area of 5,167 square feet or 0.54 Floor Area Ratio.

Similar to the existing building, the proposed Single Unit Dwelling is two storeys at street level and three storeys in the back. The proposed footprint is 2,585 square feet with a total Gross Floor Area of 6767 square feet. The Gross Floor Area requirements allow a Floor Area Ratio (FAR) of 0.45. The existing FAR for this lot is 0.54 and the proposed FAR is 0.70.

Before and after the variance was applied for, the community has had concerns regarding the use in this dwelling (see appeal letters attached). Staff has worked with the Feldmans to clarify the use of the dwelling. The Development Officer determined from discussions and a letter from the Feldmans that the use of the dwelling is in compliance with the Land Use Bylaw. When we received general inquiries from the public by phone or email, staff have been clear to describe that the intended use of this dwelling is permitted by the Land Use Bylaw. The variance is strictly for Gross Floor Area and does not involve use of the dwelling.

To clarify one point in the appeal letters regarding notification of the variance, the technician utilized the Internet Mapping System to generate a map with the 30 metre buffer and every assessed owner within that buffer was sent notification. Under the MGA, we are required to give 14 days notice. The letters were mailed April 16, 2007 which allowed for four days mailing time and fourteen days notice for appeal with a deadline of May 3, 2007 to appeal the variance.

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 new house will be two stories at the street grade and three stories in the back. From the front it will appear to be a two storey house. The new house will resemble the same approximate size as the

existing house in terms of height and width at the front.

In order for this application to meet the Gross Floor Area requirements, the basement ceiling would have to be lowered to less than 6.4 feet, making it unusable. The overall footprint of the proposed building will not change, regardless of whether or not the variance is granted or refused. The overall mass of the building does not change whether or not the variance is granted or refused. The impact of the variance allows the basement height to be increased from 6.3 feet to 6.4 feet in order to make the basement habitable and usable.

Further, the intent of the bylaw is to allow Single Unit Dwellings but restrict the potential of rooming houses through Gross Floor Area. Although the required FAR is 0.45 for this property, most properties in the area have a required FAR between 0.65 and 0.75. Most properties have existing FARs that exceed what is permitted. On Waterloo Street itself, none of the houses meet their FAR.

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 intent is to prevent houses that are out of scale with the neighbourhood. This proposed house is similar in size as the existing house. The houses in this neighbourhood vary in size and there are some houses with a higher FAR than this one. (See attachment with FAR calculations of the neighbourhood. Commercial properties and Apartment buildings were excluded from the calculations as Gross Floor Area does not apply).

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

The difficulty experienced is not general to properties in the area. This property is the exception in the area. All dwellings in the buffer area with the exception of four properties exceeds the FAR. In order to achieve what other property owners already have, a variance is the only option.

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

There is no intentional disregard in this case. The applicant applied for a permit and variance and have not started construction of the dwelling.

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

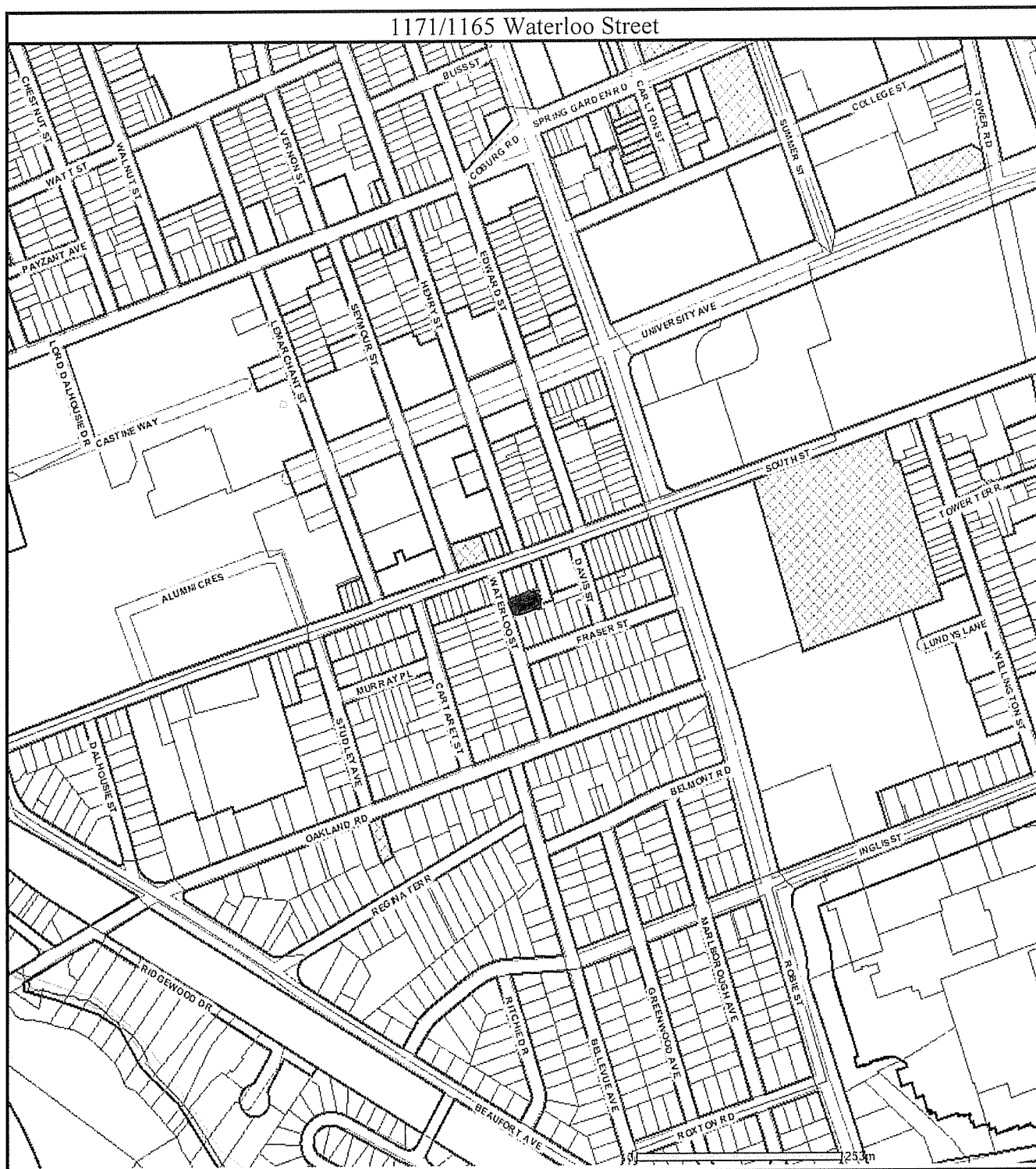
ATTACHMENTS

1. Location Map
2. Site Plan
3. Gross Floor Area/Floor Area Ratio calculations
3. Approval Letter
4. Appeal letters

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)

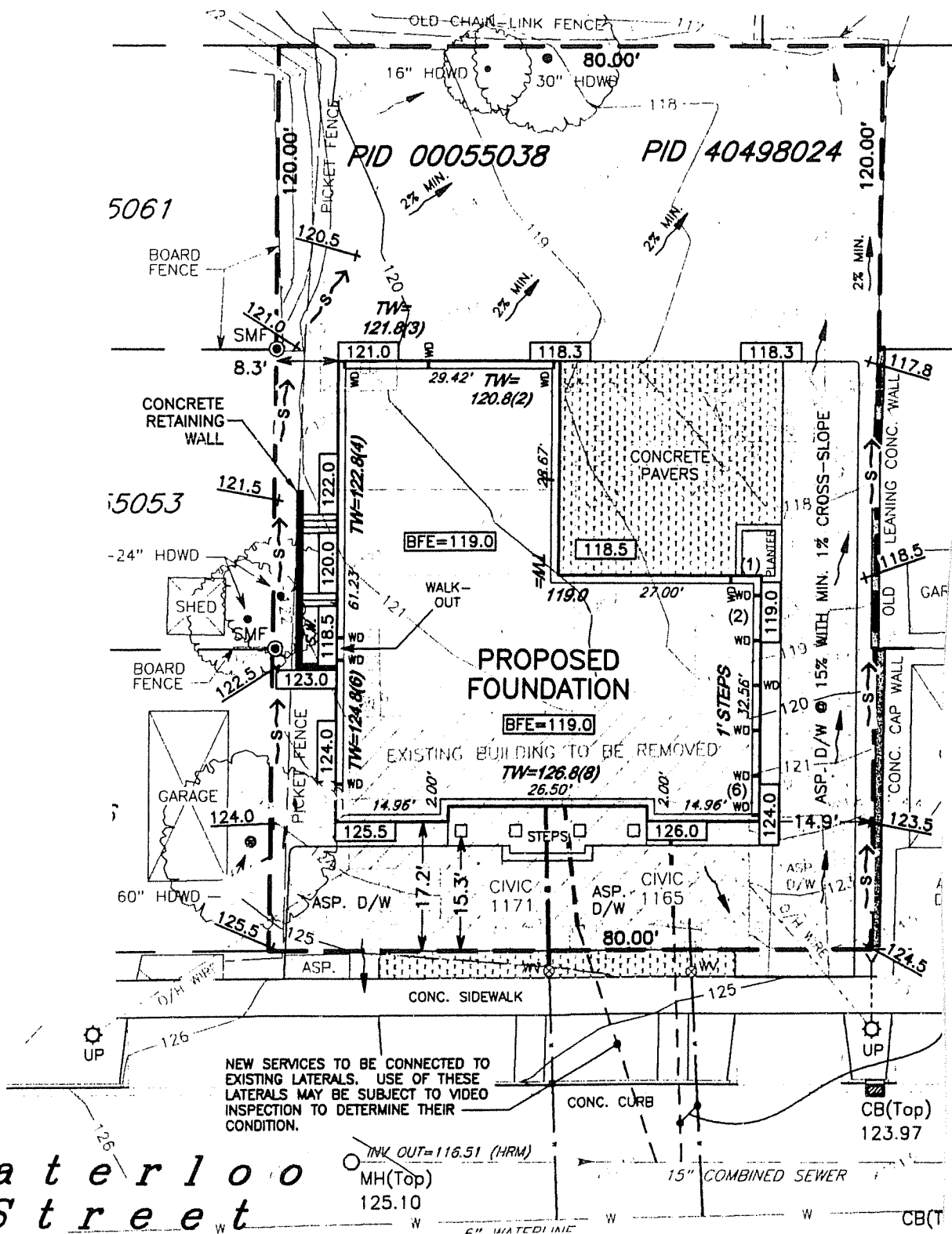


This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative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

DATE: April 13, 2007

SUBJECT: Development Officer's decision to approve an application for a variance - 1165/1171 Waterloo Street

SITE PLAN



Waterloo Street

NEW SERVICES TO BE CONNECTED TO EXISTING LATERALS. USE OF THESE LATERALS MAY BE SUBJECT TO VIDEO INSPECTION TO DETERMINE THEIR CONDITION.

INVT OUT=116.51 (HRM)
MH(Top)
125.10

CONC. CURB

15" COMBINED SEWER

CB(Top)
123.97

CB(T

GROSS FLOOR AREA AND FLOOR AREA RATIOS

Street	Footprint	Lot Area	GFA	FAR (permitted)	FAR (existing)
South					
6088	1496	4000	4488	0.65	1.12
6080	1001	4120	3003	0.65	0.73
9076	1302	4160	3906	0.65	0.94
6074	1873 (comm)	7520			
6066	958	2800	2874	0.75	1.03
6060/6056	5436 (apt)	15000			
6102	678	2021	2034	0.75	0.45
6108	2303 (apt)	6600		0.35	
Waterloo					
1165/1171	2584	9600	6767	0.45	0.70
1172	990	4556	2970	0.60	0.65
1168/1166	1593	4556	4779	0.60	1.05
1162	1076	4556	3228	0.60	0.71
00054114	1195	4556	3585	0.60	0.79
00054122	1033	4556	3099	0.60	0.68
Fraser					
6089	958	4800	2874	0.60	0.60
6087	1152	4800	3456	0.60	0.72
6077	947	4800	2841	0.60	0.59
6073	700	6300	2100	0.55	0.33
6067	2304	6000	6912	0.55	1.152
6061	1141	4900	3423	0.60	0.70



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

file copy
COMMUNITY DEVELOPMENT

April 13, 2007

Mendel and Basya Feldman
#201 1545 South Park Street
Halifax, NS B3J 4B3

Dear Sir/Madam:

RE: Variance Application #13643, 1165/1171 Waterloo Street, Halifax, N.S.

This will advise you as the Development Officer for the Halifax Regional Municipality, I approved your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 1165/1171 Waterloo Street
Project Proposal: Single Unit Dwelling
Required Floor Area Ratio: 0.45
Approved Variance for Floor Area Ratio: 0.70

In accordance with Section 236 of the **Municipal Government Act**, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development officer to the Municipal Council. An appeal must be filed on or before **May 3, 2007**.

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Shilo Gempton at **490-6796**.

Sincerely,

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

Andrew Faulkner
Development Officer

cc. Municipal Clerk J. Gibson
Councillor Sue Uteck - District 13

6088 South Street
Halifax, NS
B3H 1T1

May 3, 2007

Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services – Western Region
PO Box 1749
Halifax, NS B3J 3A5
Fax (902) 490-4645

Dear Mr. Faulkner:

Re: Case No. 13743, 1165/1171 Waterloo Street

I would like to advise you that I would like to appeal the decision that you have made regarding this property. From what I can understand, it would appear that the current proposed foundation will cover seventy percent of this property, whereas the zoning allows only 45 percent coverage in this region. As a resident living immediately next to this property, I do not agree that this variance should be allowed without a better explanation than what has been provided in this notice.

I remain yours sincerely,



Robert P.-C. Chen
On behalf of Mrs. Amy Chen

RPC/sb

Arianne Pollet-Brannen
6080 South Street
Halifax, Nova Scotia
B3H 1T1

RECEIVED MAY 09 2007

01 May 2007

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

Dear Mr. Faulkner:

Re: Case No 13743, 1165/1171 Waterloo Street, notice of appeal

Having been identified as a property owner within 30 meters of the above-noted address I am exercising my right to appeal the requested variance for Floor Area Ratio. There are a number of reasons for my appeal and they are outlined in this correspondence.

My Registered Heritage Property at 6080 South Street abuts the north side of the applicant's lot. At this time, and since I have resided at 6080 South Street, I have enjoyed an unobstructed southern view, across the applicant's lot, toward the rear of various lots which front on Fraser Street. The present residence building at 1165/1171 Waterloo Street is set close to the east sidewalk of Waterloo and as a result is situated well away from the southern border of my property. In order to maintain the integrity of the ca 1816 street-side portion of my residence, living spaces are oriented toward the rear of the house which affords the previously described view.

see page 2

2/Pollet-Brannen, Municipal Clerk/01May07

I wish to appeal the approved variance for 1165/1171 Waterloo Street for the following reasons, all relating to Floor Area Ratio proposed to increase quite dramatically from 0.45 to 0.70:


01. The very large size of the structure proposed by the applicant is totally out of character with the relatively modest size of houses in this neighbourhood.
02. The set-back of the proposed structure is in total conflict with the average set back in the area of 1165/1171 Waterloo Street (on both sides of the street). The streetscape would be visually damaged if the deep set-back of this oversize building is allowed.
03. The proposed set-back and large size increase would situate the proposed structure at the foot of my property just eight feet from the property line. The proposed structure would create a massive wall which would reduce sunlight significantly and afford numerous window views into private interior and exterior areas of my property.
04. The placement of a massive modern structure so close to my Registered Heritage Property would diminish its heritage value. There is little probability that compatible design, materials or colour would be considered in the building of the proposed structure. (This correspondence is copied to the HRM Heritage Planner for her information.)
05. The location, size and overbearing nature of the proposed structure would negatively effect the value of my property.

see page 3

3/Pollet-Brannen, Municipal Clerk/01May07

06. Although described as a “single unit dwelling” it is probable that the applicant will, in the context of such massive interior space, create numerous bedrooms and bathrooms as well as multiple kitchens and other facilities. In the case of future sale or transfer of ownership the next owner would, by right, be able to use the building as a rooming house or some other type of residence which cannot be built, as such, at this time. **Neighbours should be provided with information concerning the use of the proposed structure as it does not equate with the proportions of the average house in our neighbourhood.**
07. The out of character nature of this proposed structure cannot be adequately described by the presentation of a simple foundation plan. **Neighbours should be provided with a full exterior building plan in order to properly assess the impact of such a huge structure on their own properties.**

In addition to my reasons for appeal I would like to note that at least one “property owner within 30 meters” did not receive the notice of 13 April 2007 and that no one I have spoken to received the notice in the mail until 19 April 2007. This is clearly not fair to the uninformed party but also not fair to the rest of us in consideration of the rather tight time-frame offered for consideration and response.


Arianne Pollet-Brannen and Wallace Brannen

cc.: M. Holms, HRM Heritage Planner
Sue Uteck, HRM Councillor, District 13
Patrick Murphy, HRM Councillor, District 11
Dawn M. Sloan, HRM Councillor, District 12
Sheila K. Fougère, HRM Councillor, District 14

RECEIVED MAY 03 2007

May 3, 2007

Municipal Clerk
C/O Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services-Western Region
Halifax, N.S. B3M 3A5

HALIFAX REGIONAL
MUNICIPALITY
MAY 03 2007
MUNICIPAL CLERK

By Hand

RE: Case # 13743, 1165/1171 Waterloo Street

We, the undersigned, are exercising our right as property owners within 100 feet of the address named above, to appeal the decision of the Development Officer to the Municipal Council.

The approval granting the variance of the Land Use Bylaw allows an increase of Required Floor Area Ratio from 0.45 to 0.70 for the particular project proposal: Single Unit Dwelling.

We wish to appeal this approval, based on the following reasons:

- 1) The massive size of the proposed building would overwhelm the other more modest homes on this short, narrow street. The oversize building with its front and side yard driveways would not be in keeping with the character of the street.
- 2) The fact that there are other huge, oversize homes on small lots in the South End can not be a justification for this variance approval. Allowing this to be a precedent would render any By-Law Regulation, present or future, toothless.
- 3) Not all property owners within 30 metres of this property received notice of the variance.
- 4) The time-line between the delivery of this notice which is dated April 13 and the appeal deadline, May 3, is too short. Notices were not received until 6 to 10 days after April 13.
- 5) Information given to neighbours is inadequate. An exterior building plan ought to be included with the foundation site plan.
- 6) The stated intention to build a single unit dwelling of such massive proportions and enormous costs should raise questions of usage. Previous abuse of Land Use By-Laws by builders of new or renovated large homes in South End Halifax ought to prompt further discussion of this project.

We respectfully submit our appeal of the variance granted for 1165/1171 Waterloo and ask that you consider our reasons for this appeal.

Amy Chen
6088 South Street
Halifax

Melanie Macey
1166 Waterloo Street
Halifax

cc: Sue Uteck, HRM Councillor, District 13
Patrick Murphy, HRM Councillor, District 11
Shelia K. Fougere, HRM Councillor, District 14
Dawn M. Sloan, HRM Councillor, District 12