

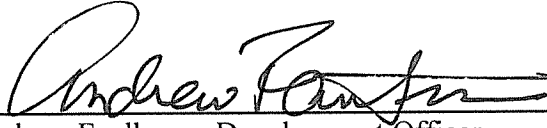


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
April 2, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: April 2, 2007

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 2090 Poplar Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the left side yard setback requirements of the Halifax Peninsula Land Use Bylaw to permit construction of an addition to a Single Unit Dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 2090 Poplar Street in Halifax. The property is zoned R-2, General Residential, in the Halifax Peninsula Land Use Bylaw. A construction permit was applied for in February 2007 to construct an addition to a Single Unit Dwelling. The site plan showed the new construction encroaching into the required 4 foot setback. The permit was refused on this basis. A Variance for a reduction in the required side yard setback was subsequently applied for.

This Variance was refused by the Development Officer on February 13, 2007 and subsequently appealed.

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 lot has a width of 50 feet and a depth of 102 feet for a total area of 5,145 square feet. The proposed lot coverage, including the addition is 23%. The combination of a relatively large city lot and small existing building footprint offers ample expansion opportunities without encroaching into the side yard setback.

Given that the intent of the bylaw in this case is clear, the Development Officer believes that further reduction of the setback 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 difficulty experienced is general to the area. There are many smaller properties in the surrounding area that are Zoned R-2 and meet the setback requirements. The majority of the lots on the opposite side of Poplar Street are the more common 3300 square foot lots (33'x100'). If anything, this property has an advantage over neighboring lots due to its large size. Therefore, the difficulty experienced is general to the area.

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.
2. Council could overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal from Geoff Keddy and Associates

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)



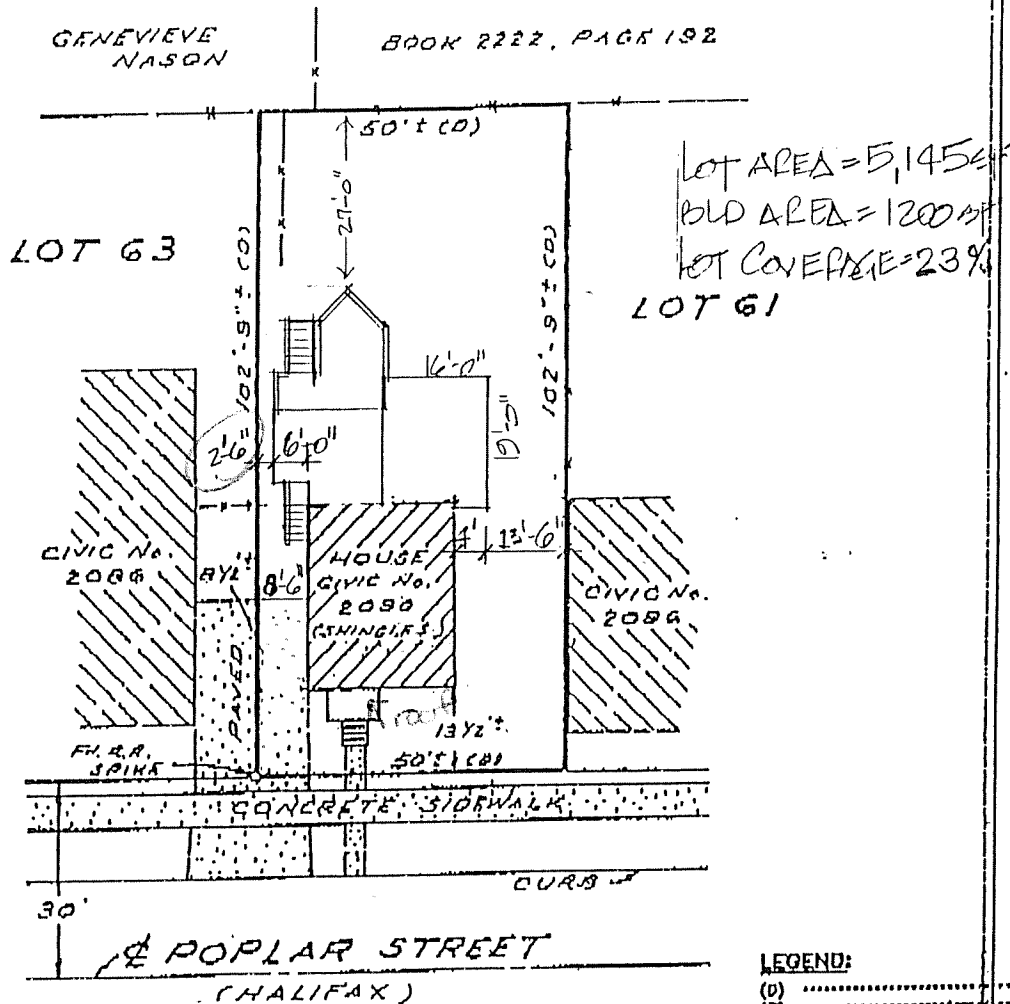
This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative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

SURVEYOR'S LOCATION CERTIFICATE

646
69
304
180

1200

MAGNETIC NORTH



LOT AREA = 5,145 sq ft
BLD AREA = 1200 sq ft
LOT COVERAGE = 23%

WOODILL'S FIELD S/D

LEGEND:
 (D) DEED
 (P) PLAN
 (M) MEASURED
 O.R.M. SURVEY MARKER
 O.I.D. IRON BAR
 F.D. FOUND
 P.D. No. PROPERTY IDENTIFICATION NUMBER
SCALE: 1 INCH = 50 FEET

FIELD SURVEYS WERE CARRIED OUT ON AUGUST 24th, 1993

CERTIFIED TO: MARK AND ERIKA McFARLAND
 C/O CROWE, DILLON, ROBINSON
 BARRISTERS & SOLICITORS, HALIFAX, N.S.

RE: CIVIC No. 2090 POPLAR STREET, HALIFAX, NOVA SCOTIA

I HAVE SUPERVISED AN INSPECTION OF THE SUBJECT LANDS AND HAVE CAUSED SUCH MEASUREMENTS TO BE MADE AS I DEEMED NECESSARY TO CERTIFY THAT:

- (1) THE HOUSE SHOWN HEREON IS LOCATED ENTIRELY WITHIN THE BOUNDARIES OF THE SUBJECT LANDS AS SAID BOUNDARIES ARE DEFINED BY DOCUMENT FILED AT THE REGISTRY OF DEEDS, HALIFAX, IN BOOK 5800, PAGE 516.
- (2) CULTURAL FEATURES SHOWN HEREON ARE LOCATED TO PLOTTING ACCURACY UNLESS SPECIFICALLY DIMENSIONED.
- (3) ALL EASEMENTS REFERRED TO IN THE DOCUMENT RECORDED IN BOOK , PAGE , AT HALIFAX ARE REFLECTED HEREON.

NO FURTHER CERTIFICATION OR ASSURANCE IS IMPLIED BY OR TO BE INFERRED FROM THIS DOCUMENT.

THIS SURVEYOR'S LOCATION CERTIFICATE SHALL NOT TO BE USED FOR BOUNDARY DEFINITION OR AS A SUBSTITUTE FOR THE PREPARATION OF LEGAL DESCRIPTIONS.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

February 13, 2007

Mark McFarland
2090 Poplar Street
Halifax, Nova Scotia B3L 2Y7

Dear Mr. McFarland:

Re: Application for Variance, File No. 13604 - 2090 Poplar St, Halifax, Nova Scotia

This will advise 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:	2090 Poplar Street, Halifax
Project Proposal:	Addition to Single Unit Dwelling
Variance Requested:	Reduce Side Yard Setback from Four (4) feet to Two-Foot and Six Inches (2'-6")

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, therefore your request for a variance has been refused.

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:

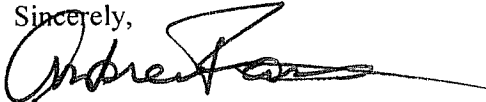
**Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5**

Your appeal must be filed on or before *February 28, 2007*

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February 13, 2007
Mark McFarland

If you have any questions or require additional information, please contact Tom Jangaard, Development Technician at 490-4338.

Sincerely,



Andrew Faulkner
Development Officer

cc

Jan Gibson, Municipal Clerk
Councillor Sheila Fougere

Geoff Keddy and Associates

Architecture Interior Design
5357 Inglis Street
Halifax, N.S. B3H 1J4
(902) 420-9400

February 26, 2007

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

To Whom It May Concern:

Application for Variance, File No. 13604-2090 Poplar St. Halifax, Nova Scotia

Project Proposal: Addition to Single Unit Dwelling
Location: 2090 Poplar Street, Halifax
Variance Requested: Reduce Side Yard Setback from four-feet (4') to two-feet and six-inches (2'-6")

This is an appeal of the decision of the Development officer. We believe we have reasonable grounds for our appeal as it relates to Section 235(3) of the Municipal Government Act:

1. Land use bylaws should not be cast in stone. Bylaws should be periodically reviewed and adjusted to reflect changing circumstances or specific situations.
2. Many properties have reduced side yards in the south end of Halifax
3. In some areas of the "City" of Dartmouth there are no required side yard setbacks. They are governed by the National Building Code requirements.
4. The addition (part of is within the required four foot side yard) is intended to function as a mudroom connected to the kitchen and parking area. The client, having two young children, does not like the idea of a mudroom accessing the kitchen via the dining room. Given the existing location of the kitchen, there would be a greater distance required for carrying groceries as well as a cleaning/maintenance issue.

5. Telephone pole on opposite side of driveway makes moving driveway difficult.

Respectfully yours,

Geoff Keddy, MRAIC, MNSAA