

8.2.1



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 11, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

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

Andrew Faulkner - Development Officer

DATE: January 28, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance 14257 - 6455 London St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance for lot area, lot frontage and the side yard setback requirements of the Halifax Peninsula Land Use Bylaw to convert from a two unit dwelling to a three 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 6455 London St in Halifax. The property is zoned R-2 under the Halifax Peninsula Plan Area which permits up to four units if all requirements of the land use bylaw are met.

The property in question currently contains three residential units. The legal authorized use according to a permit issued October 15, 1968 is two residential units. A subsequent permit was issued June 1, 1982 for renovations to a two unit dwelling. In order to comply, the new property owner is now requesting a variance of the lot area from the required 8000 sq ft to 3200 sq ft, required lot frontage of 80 ft to 32 ft and left side yard setback from the required 6 ft to 1 ft to legalize the third unit.

A variance application was received November 5th, 2007, and was refused December 5th, 2007 and subsequently an appeal was received.

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 square feet for duplexes and 8000 square feet for three and four unit dwellings. 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 lines.

The Development Officer has determined that further reduction to allow additional units would clearly violate the intent of the bylaw.

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

The majority of properties in the surrounding area are single unit dwellings and would not meet the lot area or lot frontage requirements to convert to a three unit dwelling as most of the lots are 3100 to 3300 sq ft. Therefore the difficulty experienced is general to the properties in the area.

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

Mr Comeau has advised that he was aware of the illegal unit when purchasing the property. There are no records of an application being made to convert from a two unit dwelling to a three unit.

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

ATTACHMENTS

- 1 Notification Letter
- 2 Site 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 (490-4046)

PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

January 15, 2008

Dear Assessed Owner:

RE: Application for Variance, File No. 14257, 6455 London St, Halifax

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variance as per requirements of the Municipal Government Act, Section 236.

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 Mainland* as follows:

Location:	6455 London St, Halifax
Project Proposal:	Convert from a 2 unit dwelling to 3 units
Variance Requested:	Vary Lot Area requirements from 8000 sq. ft to 3200 sq. ft
	Vary Lot Frontage from 80 ft to 32 ft
	Vary Side Yard Setback from 6 ft to 1 ft

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.**

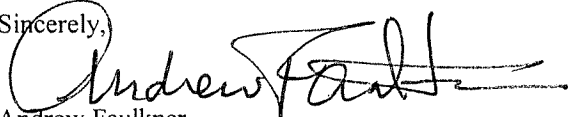
It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use Bylaw, (b) the difficulty experienced is general to properties in the area; or (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw, therefore 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 Monday, February 11, 2008 at 7:00 p.m. 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 Brenda Seymour at 490-4046.

Sincerely,



Andrew Faulkner
Development Officer

cc.

Julia Horncastle, Acting Municipal Clerk
Councillor Sheila Fougere (District 14)

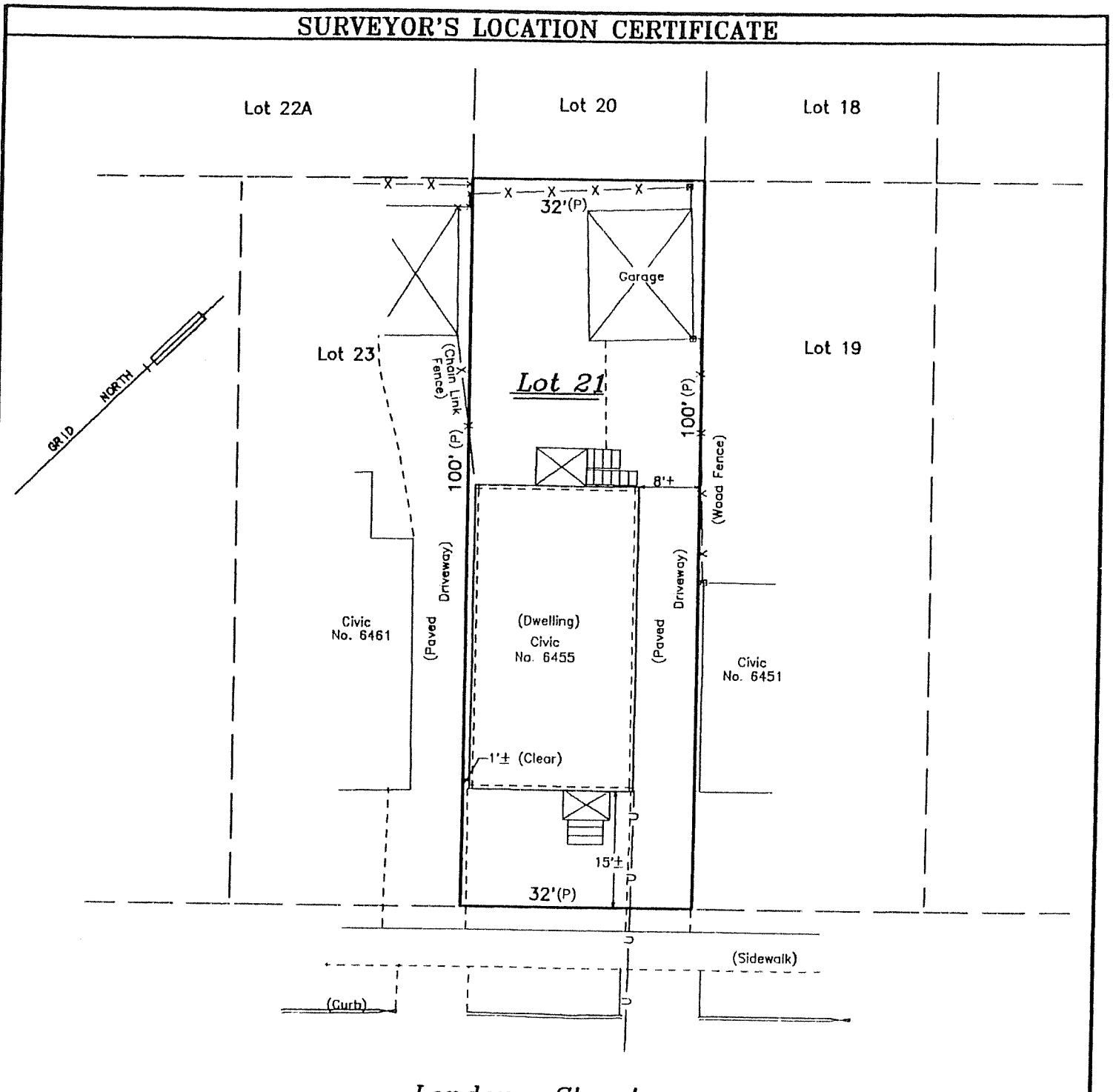
Case Number: 14257

DATE: January 15, 2008

Address: 6455 London St, Halifax

Variance Requested: Convert from two unit to three unit dwelling

SITE PLAN



WALKER'S LAW OFFICE INC.

Barristers and Solicitors

6221 JUBILEE ROAD
HALIFAX, NOVA SCOTIA B3H 2G3
PHONE (902) 425-5297
FAX (902) 425-5095

FACSIMILE

DATE: December 19, 2007
TO: Andrew Faulkner, Development Officer
FAX NO.: 490-4645
FROM: Catherine S. Walker, Q.C.
RE: Application for Variance - File Number 14257-6455 London Street,
Halifax
PAGES: 5 , including this cover sheet

ORIGINAL WILL BE KEPT IN FILE

If there is a problem with transmission or if all pages are not received,
please call (902) 425-5297.

NOTES:

The information contained in this facsimile message may be subject to solicitor/client confidentiality, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (calling collect if necessary) and return the original message to us at the above address via regular mail. Thank you.

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

VIA EMAIL: faulkna@halifax.ca

NOTICE OF APPEAL

RE: Application for Variance - File number 14257-6455 London Street, Halifax

This is Notice of an Appeal filed to the decision of the Development Officer pursuant to an application to have Halifax Regional Municipality authorize the continued use of 6455 London Street as a three (3) unit dwelling. The process for requesting the continued use of this property as a three (3) unit was described by Halifax Regional Municipality to be an application for a variance pursuant to the provisions of the *Municipal Government Act* and accordingly, the owners of the property filed an application. It was this application which was the subject of a decision by the Development Officer, notice of which was provided to the owner December 5, 2007. It was the opinion of the Development Officer that "the variance application (a) violated the intent of the Land Use Bylaw (b) the difficulty to experienced is general to properties in the area; (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw therefore your request for a variance has been refused".

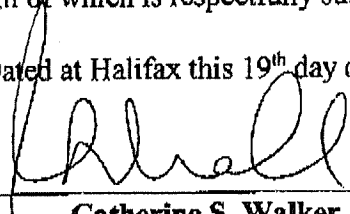
Pursuant to the provisions of the *Municipal Government Act*, I hereby give Notice of the Appeal of the decision of the Development Officer to Municipal Council. Grounds for Appeal are as follows:

1. That historically this property has been used as a three (3) unit dwelling since a time frame of between 1954 and 1968 as described in a sworn statement by Marjorie Burton, copy of which is attached to this Appeal;
2. That the use of the property as a three (3) unit has been consistent since the date the third (3rd) unit was first created some forty (40) years ago;
3. That the use of this property as a three (3) unit has constituted part of the fabric of the neighbourhood for over forty (40) years;
4. That the use of 6455 London Street as a three (3) unit is not inconsistent with the fabric in the neighbourhood;
5. That there is no evidence that any owner intentionally disregarded the requirements of the Land Use Bylaw in the use of this property as a three (3) unit dwelling;

6. That the owners of the property at 6455 London Street have every desire to be part of the neighbourhood community and to carry out any improvements that may be necessary or required or desired by the neighbourhood to ensure the property is and continues to be harmonious with the surrounding properties; and
7. That the length of time that this property has existed as a three (3) unit pursuant to Rules of Equity and Fairness demand due consideration of continued use; and the current requirements of the Bylaw were not either in whole or in part in existence at the time the third (3rd) unit was created.

All of which is respectfully submitted.

Dated at Halifax this 19th day of December, 2007.



Catherine S. Walker, Q.C.

on behalf of Jonathan Comeau, and Francene Sampson, Applicants

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

IN THE MATTER OF: The Canada Evidence Act

- and -

IN THE MATTER OF: Property formerly of the Estate of Theodore K.
Burton, 6455 London Street, Halifax Nova Scotia
(the "Property") under conveyance to Victoria H.
M. Burdette-Coutts and Michael Earle

STATUTORY DECLARATION

I, Marjorie Burton, of Halifax, in the County of Halifax, Province of Nova Scotia do solemnly declare:

1. THAT I have personal knowledge of the matters herein deposed to except where stated to be on information and belief;
2. THAT I am the sister of Theodore K. Burton, deceased;
3. THAT my brother, Theodore K. Burton, also known as Ted Burton, acquired the Property in 1944, and Butler Brothers built a single family home at that time on the Property ;
4. THAT in 1949 our mother and father and myself came over from Newfoundland, and resided with my brother and his wife Marion at the London Street property;
5. THAT approximately in 1954 or 1955 my father built on the main level, and put a basement into the new section that was added on to the Property. From that time forward, the property was fully separated into two full family units;
6. THAT sometime between 1954 and 1968 my father built in a bachelor unit into the new basement of the Property and began to rent it out as well;
7. THAT when Ted and Marion Burton moved out in 1968 when Ted became a minister, I continued to rent out the second family unit, as well as the basement apartment. It was only in the past two to three years that I stopped renting the basement unit out;
8. THAT I have never been challenged by anyone with regard to the existence of these rental units, nor has any representative or official from the City of Halifax ever indicated any concern

with regard to the existence of these units.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED BEFORE ME at East Jeddore)
in the County of Halifax, and)
Province of Nova Scotia, this)
14th day of July, 2003)
before me:)

John Arnold
A BARRISTER OF THE SUPREME)
COURT OF NOVA SCOTIA)

John Arnold

Marjorie Burton
MARJORIE BURTON)