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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:

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

Andrew Faulkner - Development Officer

DATE: June 4, 2007

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance - 1405 Edward St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the left side yard, right side yard, and frontage requirements of the Halifax Peninsula Land Use Bylaw to permit a Two Unit Dwelling.

RECOMMENDATION

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

BACKGROUND

In 1992, a minimum standards complaint was reported at 1405 Edward Street. Inspection reports from 1992 indicate that the dwelling was being used as a rooming house. Renovations, including plumbing and electrical work were done without permits. At that time, a kitchen had been added to the attic to create an attic unit. Throughout 1993, inspectors were unable to gain access to the premises for the purposes of conducting inspections. Inspection reports from 1993 and 1994 indicate that the dwelling was being occupied illegally as a rooming house with seven rooms separately rented. Each room had a kitchenette. The authorized use was determined to be a single unit dwelling. Letters from the building inspectors indicated what work had to be done in order to correct the problems.

Currently, we have an enforcement case on this property with our land use compliance division. To rectify this situation, the owner must bring this property into compliance which means converting to a use permitted in the zone. The owner is eligible to convert the building into a two unit; however, he cannot provide the required parking. There is no variance for parking. Therefore, he must meet the requirements for a two unit dwelling under the zone. He does not meet the left side yard, right side yard, and frontage requirements for the R-2 zone. Therefore, he applied for variance to vary these requirements on March 7, 2007. The Development Officer refused the variance on May 9, 2007. The owner subsequently appealed that decision on May 18, 2007.

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 ?

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 character of this neighbourhood is primarily Single Unit Dwellings.

Throughout the Land Use Bylaw, density is directly or indirectly controlled by lot area requirements. Staff

believes the intent of the regulations is to require 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 increases, 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.

The Development Officer believes that further reduction to allow additional units would 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 properties in the area. Most dwellings in the neighbourhood have similar setbacks and frontage as this property.

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

The present application is to resolve an old violation and 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 refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and grant the variance.

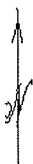
ATTACHMENTS

1. Location Map
2. Appeal letter
3. Site Plan

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.

May 18, 2007

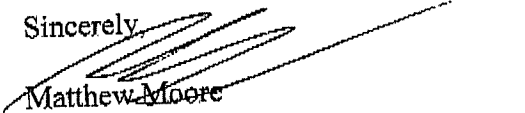
Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services- Western Region
PO Box 1749
Halifax, NS B3J 3A5

To Whom it may concern:

I hereby appeal the decision made for my application for variance, Case Number 13673, 1405 Edward Street, Halifax on the grounds that:

- This building has been used as a rooming house since 1962.
- There are several other 2 unit buildings in the area that legally permit 2 units while having less of a left and right yard set back and less lot frontage than this building i.e. 1378/ 80 Edward Street.

Sincerely,


Matthew Moore

DATE: May 31, 2007

SUBJECT: Development Officer's decision to refuse an application for a variance -
1405 Edward Street

SITE PLAN

