

8.2.2

Variance Appeal - 1648 Edward Street, Halifax
Council Report

- 1 -

November 28, 2008



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
December 8, 2006

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: November 28, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance - **1648 Edward Street, Halifax**

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance from the Lot Coverage requirement of the Halifax Land Use Bylaw.

RECOMMENDATION

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

BACKGROUND

The subject property is located at **1648 Edward Street** in Halifax (Attachment #1). A single unit dwelling with an accessory building (to be demolished) exist on this property which is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use Bylaw. The subject property is 3100 square feet with an existing lot coverage area of 43%. The applicant applied for a variance to increase lot coverage from 43% to 47.3% in September 2008.

Neighbours within 30 metres of the subject property were advised of the approved variance in October 2008 and three appeals were received (Attachment #2).

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?

Section 39 of the Halifax Peninsula Land Use Bylaw states:

Lot Coverage - Maximum lot coverage shall be 35 percent

The existing lot coverage is 43 % and the proposed lot coverage is 47.3%, approximately 4% more. The applicant is proposing to increase an additional 98 square feet of living space to the existing single unit dwelling and to replace the existing garage with a slightly larger (additional 24 sq. ft.) attached garage (Attachment #3). Although the lot coverage on the existing property exceeds the maximum allowed in the Land Use Bylaw, a survey (Attachment #4) of 18 nearby properties (discussed further in the next section) will indicate that many of the existing properties in this neighbourhood exceed the required lot coverage maximum. There are 3 properties that exceed with a difference of between 22% to 27% more than the maximum allowed. The applicant's proposal is only for an additional 4 % which is not an attempt to violate the intent of the land use bylaw.

The additional floor area is shown on the site plan (Attachment #3). The 24 square foot addition to the relocated garage is along the south boundary and consists of a 1 foot by 24 feet long widening of the building. The additional residential living area consists of a 2 foot by 25 foot extension of the house along the south side and a dining area addition of 48 square feet on the north side of the existing residence.

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

The difficulty experienced is not general to the properties in the area. There are properties in the area with similar lot coverage as the proposed (Attachment #4). The 18 properties in the neighbourhood surveyed show a range of lot coverage as follows:

35% or less: 8 properties
36% - 47%: 7 properties
48% or more: 3 properties (57%, 58%, 62%)

The survey shows that 8 of the properties surveyed meet the 35% maximum lot coverage requirement; 10 of the properties surveyed have lot coverages that range from 36% to 47%; and 3 of the properties surveyed have lot coverages at: 57%, 58%, and 62%. These 3 properties exceed the lot coverage maximum with the difference of 22%, 23%, and 27%. Based on the survey, lot coverage of most of the existing 10 out of 18 properties do not meet the Land Use Bylaw requirement.

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. Appeal Letters (3)
3. Site and Elevation Plans
4. Lot Coverage Survey Map

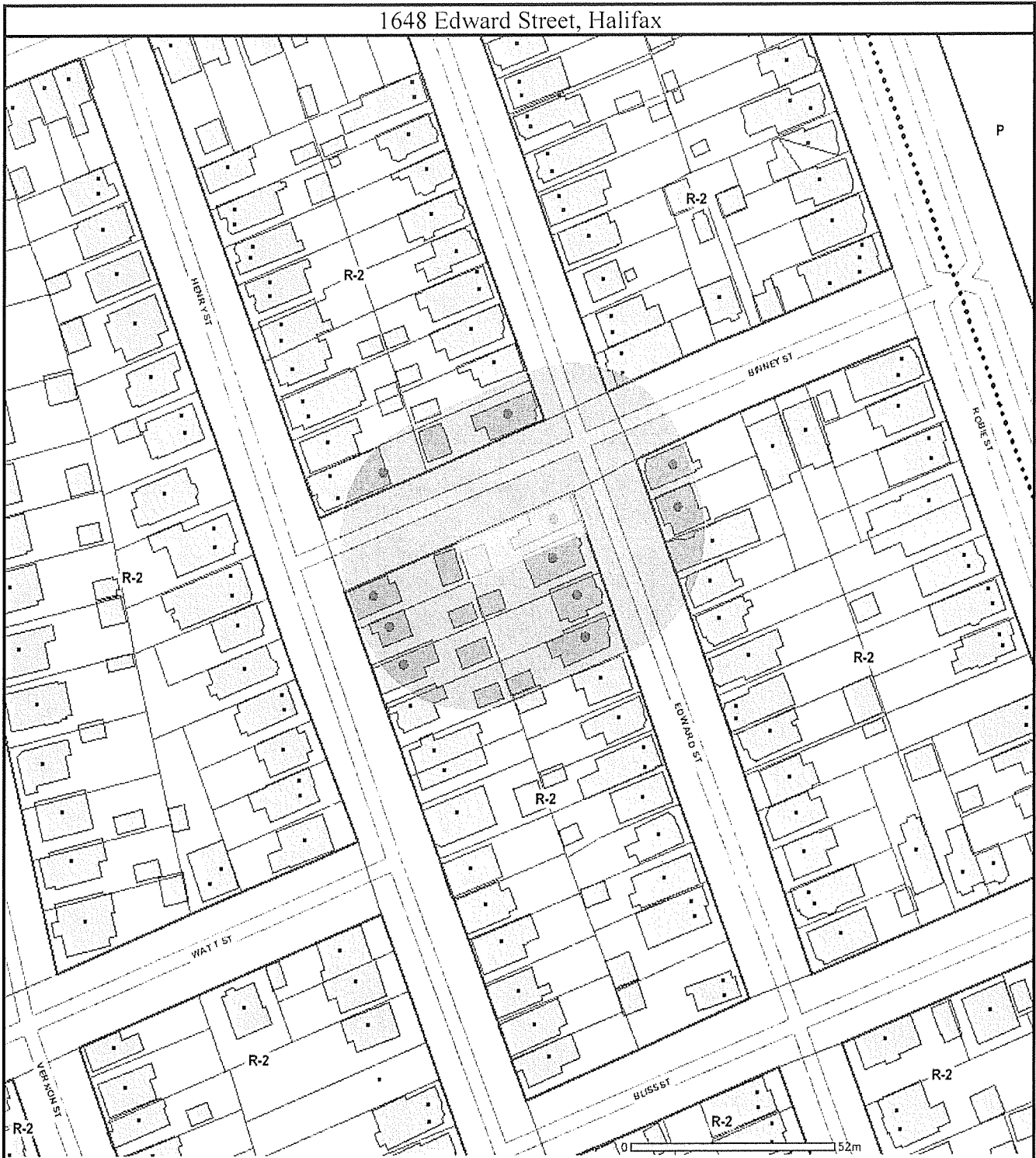
INFORMATION BLOCK

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: Mary Wong - Development Technician (490-6796)

Attachment 1 Location Map

1648 Edward Street, Halifax



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

Attachment 2. Appeal Letters (3)

27 October 2008
Ron Phillipchuk
(Coronado Holdings Inc.)
Home Owner of
1637 Henry Street
Halifax, NS, B3H 1Y3

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

Dear Mr. Faulkner,

Subject: Application for Variance, File No. 14967 - 1648 Edward St. Halifax

As per your 17 October 2008 notification of the subject Application for Variance, I wish to appeal the approval of this variance.

My wife and I have been property owners on Henry St. (directly behind and bordering the subject house) since 1991. We moved from overseas to Halifax and purchased the house because we loved the neighbourhood. We, subsequently, spent a very substantial amount of time, money and energy on restoring our home to its turn of the century character. We eventually, were able to show the home as part of the 2000 YWCA Gardens on Sunday and the 2002 All that Jazz Art Tour. My wife even had her 15 minutes of fame showing the garden on the Live at 5 CTV program.

In 2001 we purchased the small house next door from a local developer who intended to maximize its size and lot coverage and turn it into a student resident building. We subsequently, spent a substantial amount of money to turn it into an attractive single-family rental dwelling.

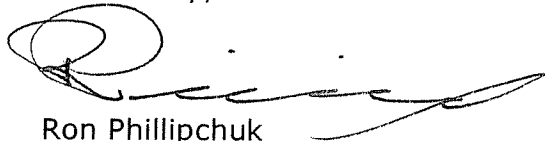
In 2005, we became so frustrated and disinherited with the lack of city support to prevent this very attractive and historic community (the area between Oxford and Robie and Coburg and Jubilee or probably Quinpool) from being turned into a university residential slum that we sold our home. Subsequently, some of our neighbours with the help of a few enlightened councillors, managed to create some area controls that at least slowed the continuous and insidious destruction of this neighbourhood. However, there still seems to be a prevailing attitude at HRM to treat this area and, in reality all of peninsula Halifax, as a piece of real estate instead of the beautiful and vibrant historical community that it is.

We still own the rental house, which touches the subject residence.

In general terms, we look very favourably on any owner that wants to **live** in the neighbourhood and specifically, spend money to increase the general value and improve the liveability of the community. I am sure that the new owner of this home feels the same and will make a valued neighbour. However, we are against the subject variance for the following reasons:

1. **Lot Coverage** – Our greatest concern throughout this neighbourhood is the size and inappropriate lot coverage of any development in this area – house, coffee shop, convenience store, rental property, etc. The proposed variance will increase the lot coverage. The applicant's house presently covers 43% of the lot. This is already 8% in excess of the 35% prescribed in the city guidelines.
2. **Student Housing** – As stated above, this house is already a relatively large building. Increasing its size to 47.3% of lot coverage and, specifically attaching the double garage, could ultimately make it a very attractive building for multiple student rentals. It would take very little to convert the garage into living space.
3. **Appropriate Community Appearance** – The orientation of the garage is probably fairly unique to the neighbourhood. In isolation this may not be a significant issue, however because of the relatively small size and proximity of the lots in this community, this will result in blocking-in his neighbour. If only a couple more of the owners in the immediate area adopt a similar concept of attaching the garage, the applicant's neighbour would see his back yard turned into a courtyard.

Yours truly,



Ron Phillipchuk
(902) 422-4162

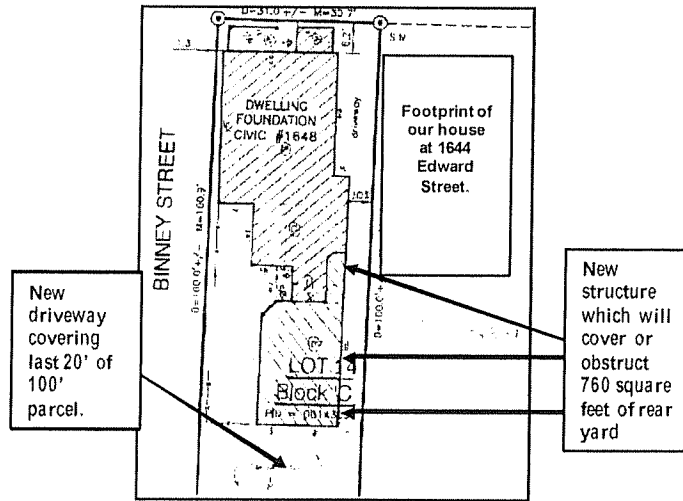
cc. Councillor Sue Uteck – District 13
Julia Horncastle, Acting Municipal Clerk

Patrick Moan
Christine Donnelly-Moan
1644 Edward Street
Halifax, NS B3H 3J1
October 20, 2008

Municipal Clerk
c/o Andrew Faulkner
Planning and Development
P.O. Box 1749
Halifax, NS B3J 3A5

Subject: Response to Variance Approval at 1648 Edward Street

The owner of 1648 Edward Street has been granted a variance to increase the gross floor area of structure and relocate the garage so that it is attached to the rear façade of the house. The planner who approved the variance, Andrew Faulkner, has incorrectly characterized the nature of proposed plans by stating that the lot coverage will increase from 43% to 47%. As shown below, the proposed development would, in fact, **create a single building that would cover approximately 65-70% of the lot**. Furthermore, the new structure will have a side wall that extends 80 feet into the rear yard. The final 20 feet of the parcel is given over to a parking pad. With the exception of a narrow patch of land adjacent to Binney Street, the entire rear yard will be covered by a new structure or paved over in asphalt (i.e. parking pad). This proposal is at odds with the existing scale and character of the neighborhood and contravenes the spirit and intent of the LUB.

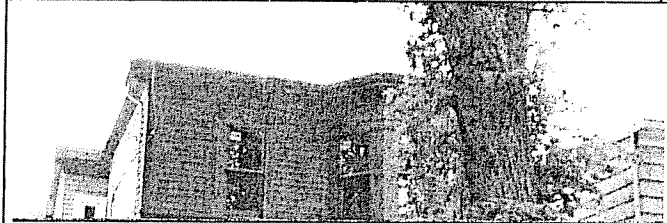


Mr. Faulkner has also failed to correctly apply section 235(3)(b) of the Municipal Government Act, which states: *A variance may not be granted where the difficulty experienced is general to properties in the area.*

In this case, the applicant at 1648 Edward Street is seeking a variance to avoid the **perceived inconvenience** of having a detached garage. There are 2000+ parcels in the immediate neighborhood that either have a detached garage or no garage at all. This is an implicit design standard established by the dominant pattern in the neighborhood. The language of Section 235(3)(b) should convey clearly to Mr. Faulkner that one cannot arbitrarily grant a variance to an applicant who is experiencing the very same 'difficulty' as every other assessed owner in the neighborhood.

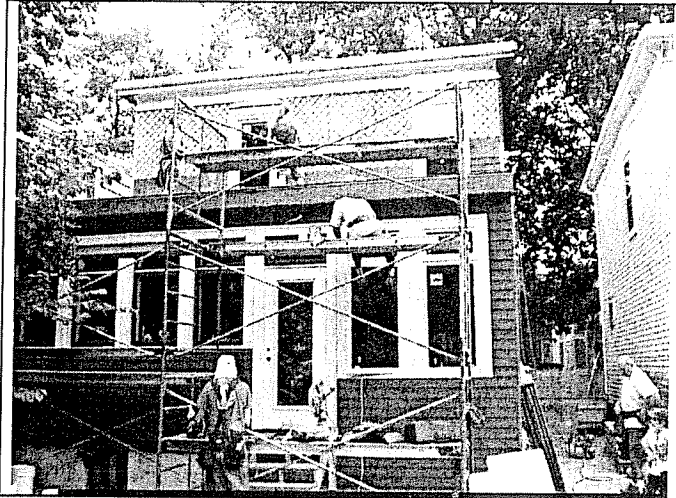
We oppose the proposed development plans approved by Mr. Faulkner for several other reasons specified below (refer to Exhibit 1 through Exhibit 11).

Exhibit-1: 1644 Edward Street (Our House Under Renovation)



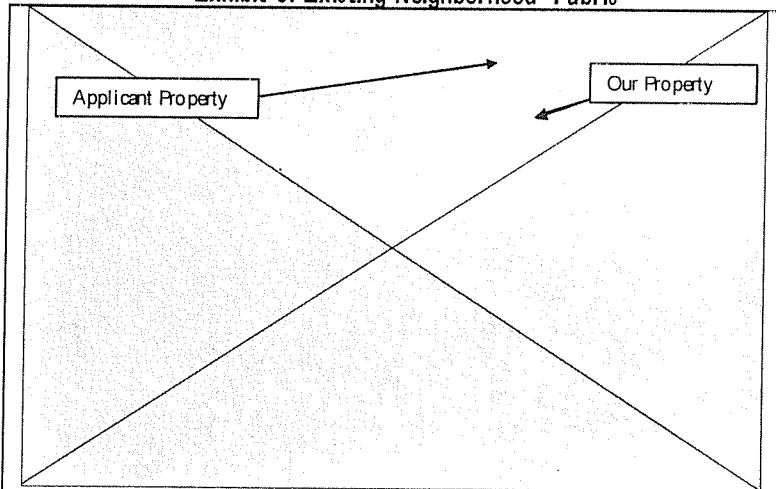
We recently completed a major renovation for our family of five. This house (shown above) is adjacent to the applicant's house (shown on the right) and has approximately 1800 square feet of living space. The renovation is in keeping with the existing character of the neighborhood.

Exhibit-2: Rear of 1644 Edward Street (Our House)



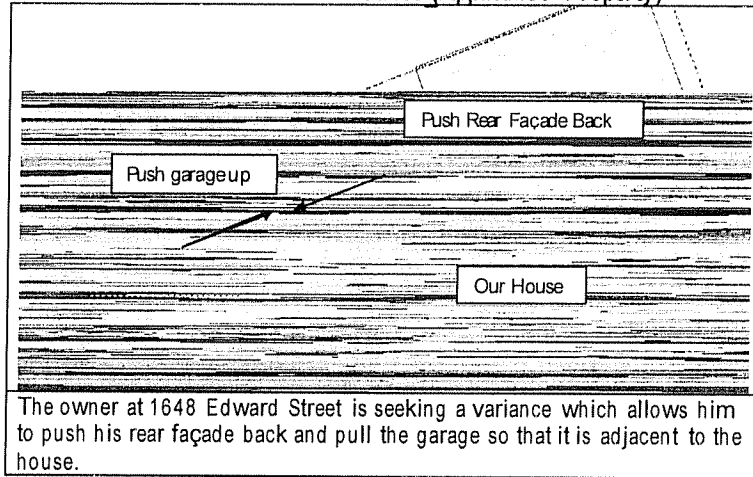
Our renovation complied with all existing bylaws. Had we wanted to live a house with 3000-4000 feet of living space we would have purchased (or built) a house in a different neighborhood.

Exhibit 3: Existing Neighborhood Fabric



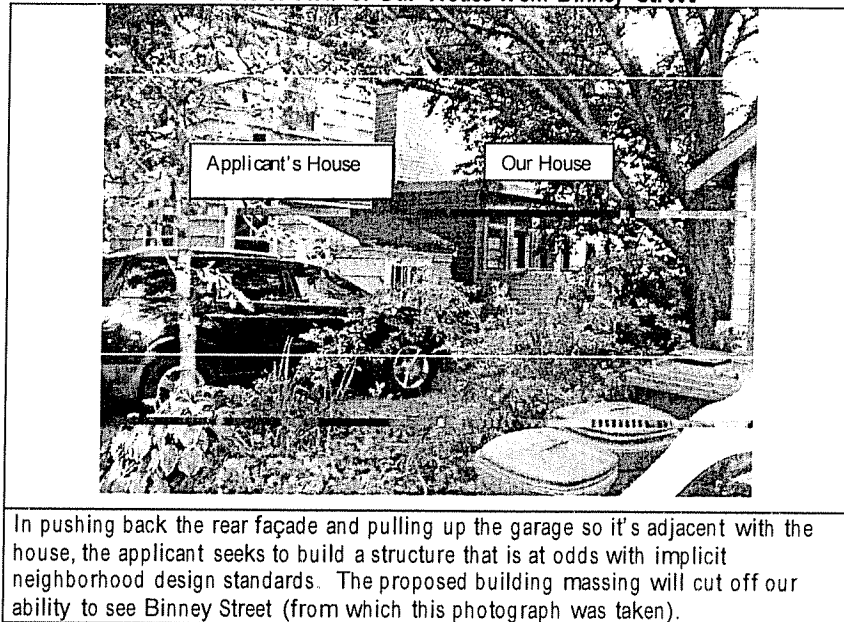
As shown above, this neighborhood has implicit design standards. Building massing is consistent across lots and garages are adjacent to rear lot lines to afford residents with direct access to rear yards and views into adjacent yards.

Exhibit 4: 1648 Edward Street (Applicant's Property)



The owner at 1648 Edward Street is seeking a variance which allows him to push his rear façade back and pull the garage so that it is adjacent to the house.

Exhibit 5. View of Our House from Binney Street



In pushing back the rear façade and pulling up the garage so it's adjacent with the house, the applicant seeks to build a structure that is at odds with implicit neighborhood design standards. The proposed building massing will cut off our ability to see Binney Street (from which this photograph was taken).

Exhibit-6: Edward Street Garage Setbacks in Adjacent Yards

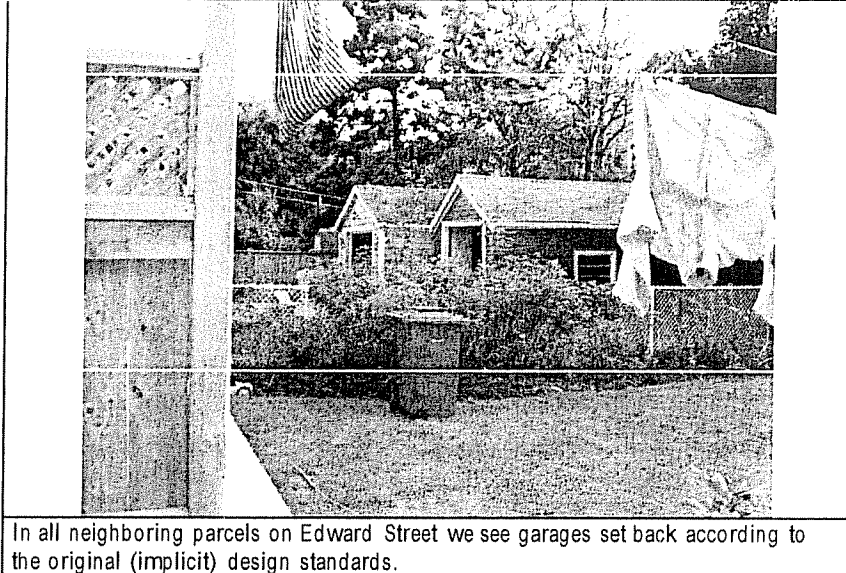


Exhibit-7: Binney Street Property Adjacent to Applicant Property

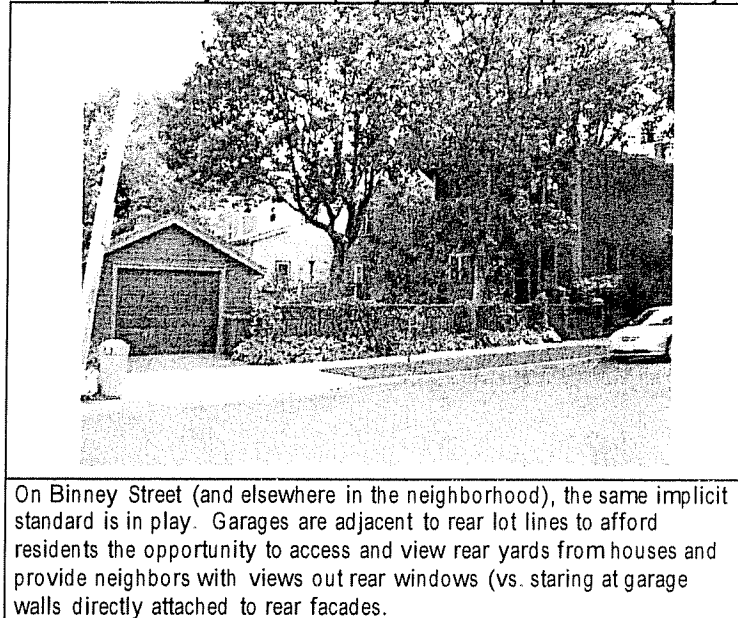
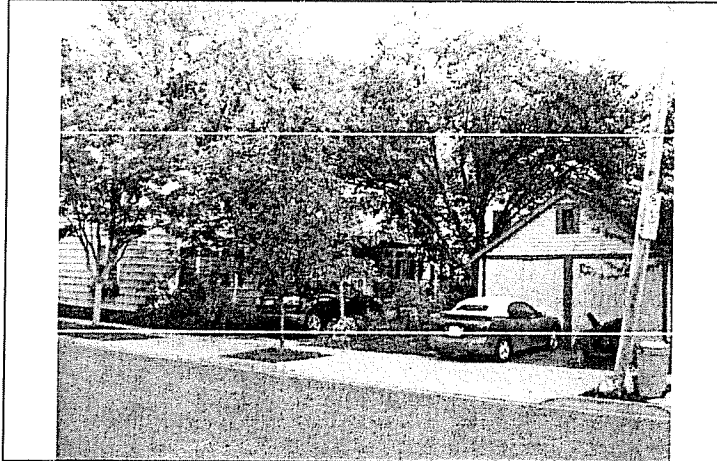


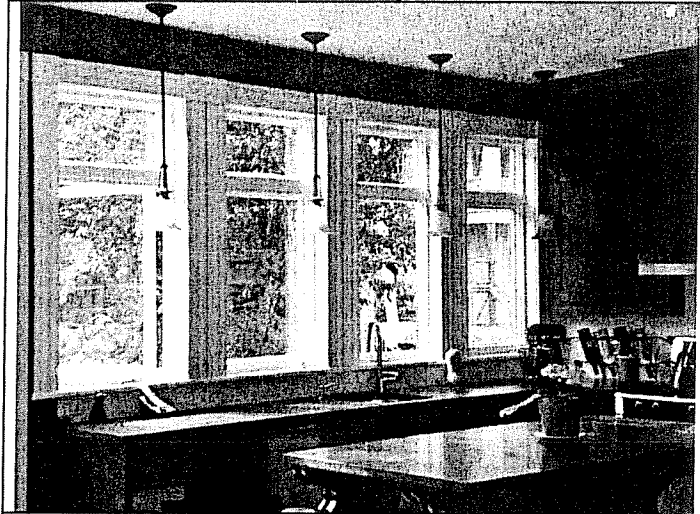
Exhibit-8: Applicant Property Viewed from Binney Street Showing Garage Setback



Above, we see the applicant's property. The garage is separated from the main dwelling as is the case on all other parcels in the neighborhood.

(Please proceed to next page.)

Exhibit 9: Our View of Binney Street from Kitchen



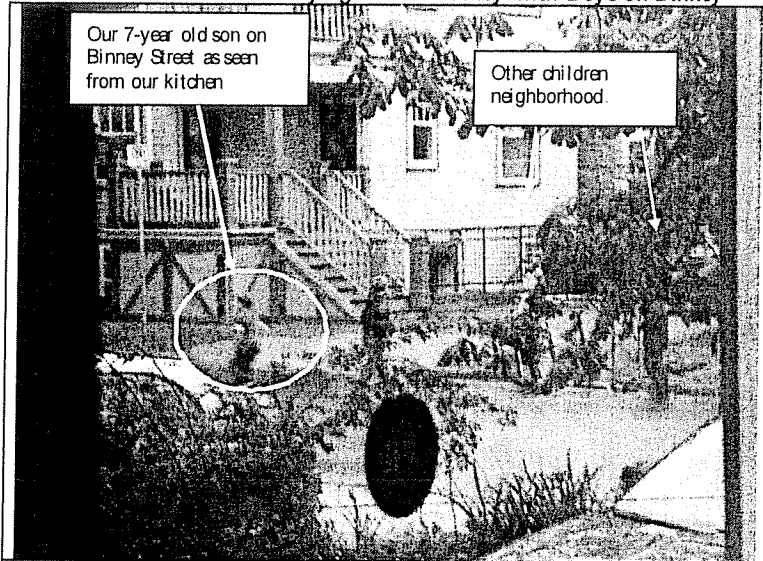
Above is the view across to Binney Street out our kitchen windows. Currently, we enjoy the same right as our neighbors to look our windows and see rear yards and the sky.

Exhibit 10: Blocked View from Kitchen Window



The applicant is requesting a variance to construct a building that will replace our view of Binney Street with a wall as shown above. He recently said the wall would provide us with privacy. We moved into the neighborhood for its sense of community- not privacy.

Exhibit 11: Our Son Playing Street Hockey with Boys on Binney



Binney Street is a short street with virtually no traffic. Children typically occupy the street to play games such as street hockey – among other things. In the photograph above, our 7-year old son can be seen out our kitchen window on the far left. Seeing children engaging in spontaneous play is rare in most neighborhoods today. This is one of many aspects of living in this pedestrian-oriented neighborhood that we find compelling. We derive comfort looking out our rear window and being able to hear and see these children on a regular basis. The applicant's desire to significantly alter the building massing literally obliterates this view and creates a structure (i.e. oversized house with attached garage) that is incompatible with the character of the neighborhood.

The applicant's lot size is 3131 square feet. Section 26D of the LUB (Halifax Peninsula) specifies a FAR for 1648 Edward Street of 0.75. The gross floor area (GFA) therefore is 2194 square feet. One implicit policy goal of Section 26D is to preserve neighborhood character. In this case, a key element of neighborhood character includes the view shown above.

Thank you for your consideration in this matter. Our contact information follows below:

Patrick and Christine Moan
1644 Edward Street
Halifax NS, B3H 3J1
902-482-4630
Pcmoan@eastlink.ca
Christinedm@eastlink.ca

From: Brenda Seymour
To: Andrew Faulkner
Date: 04/11/2008 10:28 am
Subject: Andrew this is Mary's File..Re: Fwd: application for variance, 1648 Edward St. Halifax

CC: Mary Wong

Brenda Seymour
Development Technician
HRM Planning & Development Services
West End Mall
seymoub@halifax.ca
902-490-4046

>>> Andrew Faulkner 03/11/2008 5:30 pm >>>
sigh...

>>> Roy Scott Taylor <roy.scott.taylor@ns.sympatico.ca> 11/3/2008 >>>
Andrew Faulkner
Sue Uteck

We wish to protest the granting of a variance to 1644 Edward Street, allowing an addition to the house. This would mean that we would no longer have the feeling of openness and spaciousness that we get from being able to see right to Binney Street. This is a neighbourhood where we know each other and to a certain degree look out for each other. It is very nice that we can see and hear the children as they play on Binney Street. The vibrancy and longevity of our neighbourhood may be very dependent on this openness. Young families--necessary to any neighbourhood--look to such an environment.

It has been noted that the health of the inner city is an indication of the health of the city. Building walls, blocking views, going against established rules for amount of lot covered--these things are not making our street healthy. We wonder why Halifax appears to be so lax in supporting neighbourhoods in our part of the city.

Yours truly

Scott Taylor
Ellen Taylor

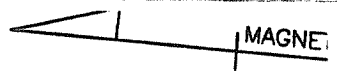
1636 Edward Street
429-1418

Attachment 3. Site and Elevation Plans

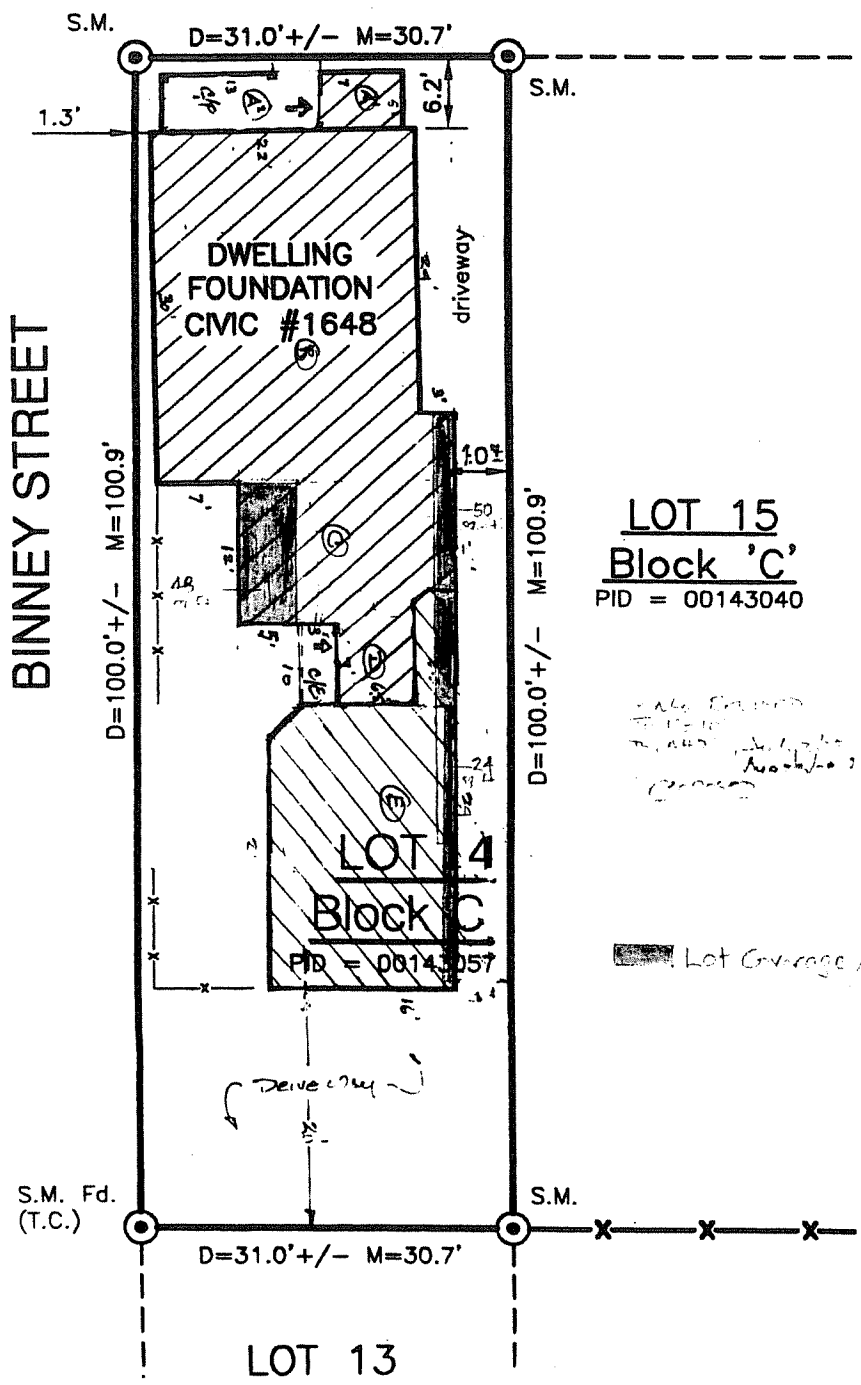
DATE: October 17, 2008 SITE PLAN

SUBJECT: Application for Variance, File No. 14967 - 1648 Edward St, Halifax

Vary lot coverage from Existing 43% to 47.3%




EDWARD STREET



LOT 15
Block 'C'
PID = 00143040

Handwritten notes:
- 1.46' FOUND
- 1.46' FOUND
- 1.46' FOUND
- 1.46' FOUND
- 1.46' FOUND

 Lot Coverage Addition

LOT 13

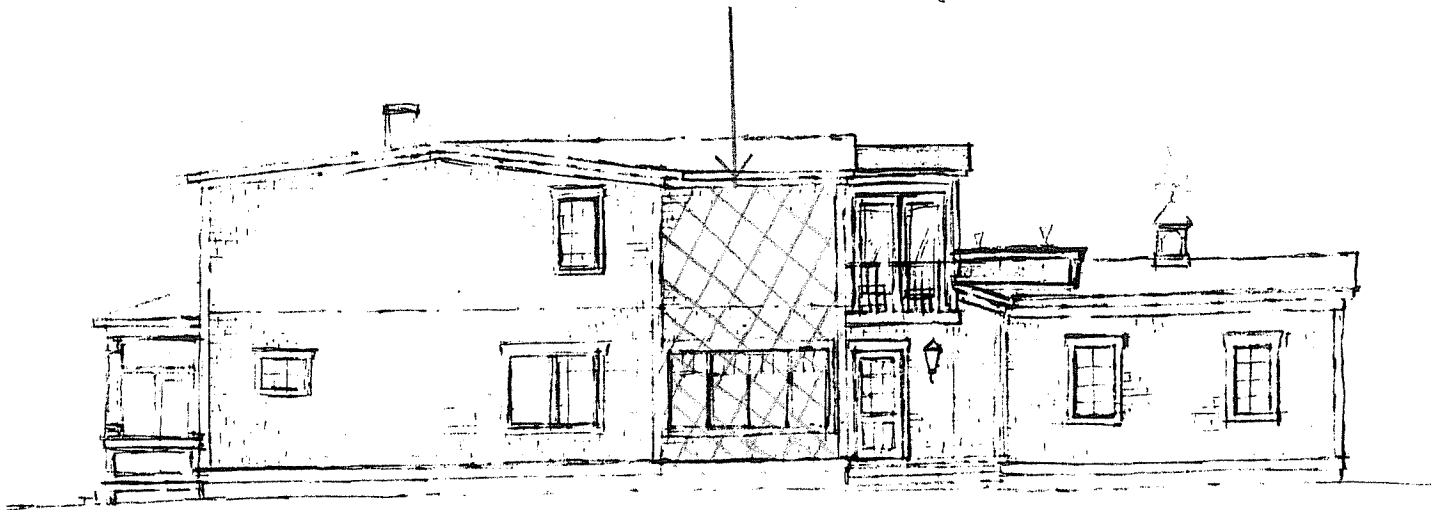
DATE: October 17, 2008 ELEVATION

SUBJECT: Application for Variance, File No. 14967 - 1648 Edward St, Halifax

Vary lot coverage from Existing 43% to 47.3%

Ros Aug 2003

48 sq.ft. increase in living space



*RIGHT ELEV
(BINNEY ST)*

Attachment 4: Lot Coverage Survey

1648 Edward Street



35% or less

36% - 47%

48% or more



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.