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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
October 20, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: October 8, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance 14816 -6366 London St, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance to vary lot area and lot frontage requirements of the Halifax Peninsula Land Use Bylaw to convert from a single unit dwelling to a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The above noted application proposes **the creation of a second unit**. This property is regulated under the *Halifax Peninsula Land Use By-Law* and is currently zoned R-2 (General Residential Zone). The use is permitted in the zone with the following conditions.

Section 43E(a) of the R-2 zone requirements state:

"buildings erected, altered or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:

	<u>Lot Frontage</u> <u>(Ft.)</u>	<u>Lot Area</u> <u>(Ft.)</u>	<u>Side Yard</u> <u>(Ft.)</u>
<i>R-1 Uses</i>	<i>40</i>	<i>4000</i>	<i>4</i>
<i>duplex</i>	<i>50</i>	<i>5000</i>	<i>5</i>

The proposal does not meet the following requirements:

- minimum frontage requirement of 50 feet; **existing 40 feet**
- minimum lot area requirement of 5000 sq ft; **existing is 4000 sq feet**

A variance application was received July 22, 2008, and was refused August 19, 2008 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 to require larger lots for developments containing larger numbers of dwelling units. 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 violate the intent of the bylaw.

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

The zone permits up to four units, dependent on the frontage, lot area and side yard setbacks. The lot area and lot frontage found on this property do not meet the requirements for a two unit dwelling. The majority of properties on either side of the road are single unit dwellings. Based on our property mapping, none of the surrounding lots would meet lot area and lot frontage requirements for a two unit dwelling. 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?

The applicant did apply for a zoning confirmation letter to confirm legal use. At that time it was discovered that the legal use was for a single unit dwelling only. The applicant then proceeded to apply for a Development Permit # 91532 at which time it was determined that it did not meet the Land Use By Law requirements. The applicant proceeded to apply for a variance.

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

August 19, 2008

Andrea Doukas
6366 London St
Halifax, NS B3L 1X3

Dear Ms Doukas:

**Re: Variance Application No. 14816
Property at 6366 London St, Halifax**

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: 6366 London St, Halifax
Project Proposal: Converting from Single Unit Dwelling to a Two Unit Dwelling
Variance Requested: Vary lot area from 5000 sq ft to 4000 sq ft
Vary Lot frontage from 50 ft to 40 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; and (b) the difficulty experienced is general to properties in the area, 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 *September 3, 2008*

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August 19, 2008
Andrea Doukas

If you have any questions or require additional information, please contact Brenda Seymour,
Development Technician at **490-4046**.

Sincerely,



Andrew Faulkner
Development Officer

cc

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



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

COMMUNITY DEVELOPMENT

October 7, 2008

Dear Sir or Madam:

**Re: Variance Application No. 14816
Property at 6366 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.

As the Development Officer for the Halifax Regional Municipality, I have refused a request for a variance from the requirement(s) of the Land Use Bylaw for Halifax Peninsula Plan Area as follows:

Location:	6366 London St, Halifax
Project Proposal:	Converting from Single Unit Dwelling to a Two Unit Dwelling
Variance Requested:	Vary lot area from 5000 sq ft to 4000 sq ft Vary Lot frontage from 50 ft to 40 ft

The applicant has appealed my refusal and the objection will be presented to the Peninsula Community Council on Monday, October 20th at 7:00 pm Council Chambers, City Hall, 1841 Argyle St, Halifax.

If you have any questions or require clarification of any of the above, please call Brenda Seymour at 490-4046.

Yours truly,

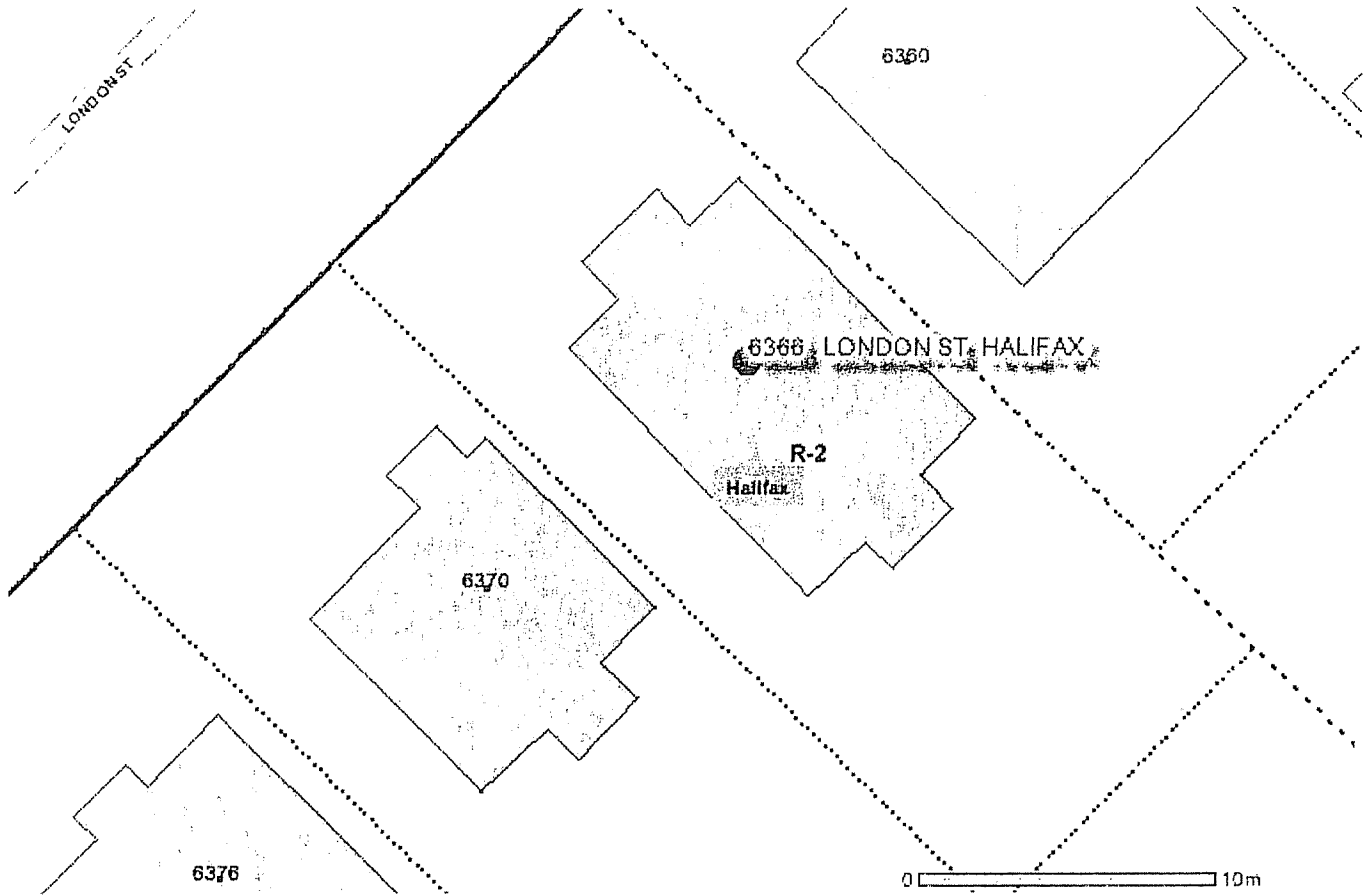
A handwritten signature in black ink that reads "Andrew Faulkner".

Andrew Faulkner, Development Officer
Halifax Regional Municipality

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

DATE: October 7, 2008

SUBJECT: Variance at 6366 London St., Halifax
Location of property.





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

COMMUNITY DEVELOPMENT

September 11, 2008

Andrea Doukas
6366 London St
Halifax, NS B3L 1X3

Dear Ms Doukas:

**Re: Variance Application No. 14816
Property at 6366 London St, Halifax**

This is to confirm that your appeal of the above variance application has been received by this office.

Your objection may be presented to the Peninsula Community Council on Monday, October 20th at 7:00p.m. at Council Chambers, City Hall, 1841 Argyle St, Halifax.

If you have any questions or require clarification of any of the above, please call Brenda Seymour at 490-4046.

Sincerely,

A handwritten signature in black ink that reads "Andrew Faulkner".

Andrew Faulkner,
Development Officer

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

Andrew Faulkner
Halifax Regional Municipality
Development Services

8 September 2008

Dear Andrew,

I am writing to appeal the decision to deny me a variance that would allow me to rent the apartment in my house at 6366 London St as a legal unit. I enquired into this situation because when I bought the house, I was told that the apartment was legal, and I wanted to begin to upgrade the apartment and obtain a second address for it. In your letter refusing the variance, you state two reasons.

1) *The variance violates the intent of the Land Use Bylaw.* This is a little difficult for me to understand as my neighbourhood is zoned R2, which indicates to me that the intention for use of this land is two residences. In terms of the square footage of the lot, which has only 40 feet of frontage, I understand that this is a more recent zoning rule, and was not included in the original intention for this neighbourhood, created around 1950. Many residences in Halifax are legally duplexed on much smaller lots, so it seems strange to view this as a violation of intention.

Also, because it is impossible for me to date this apartment, it may well have been created before this rule was the case. My next door neighbour, whose house is a side by side duplex, has told me that the apartment has been rented ever since she moved into her house in 1992. So I am not requesting a change in the character of the neighbourhood, or the creation of more housing in the area; I am only requesting to have a previously existing situation acknowledged.

I don't see how it can possibly be the intention of the land use act that ordinary working people should have to tear our previously existing apartments, while high-rise apartment buildings are springing up all over the city. It would seem to make much more sense to me that the city charge a reasonable amount for people to obtain permits to legitimize these previously existing situations, bring them up to current codes so they are safe, and pay the city the property and income taxes that go with being a landlord.

As the situation exists currently, people are rewarded for hiding the existence of these apartments, which we all know are abundant in Halifax, and penalized for trying to proceed in a legal manner. This seems to be unfortunate for everyone concerned.

2) *This difficulty experienced is general to properties in the area.* I think I would have to disagree with this assessment of my situation as well. I know of no other houses in the neighbourhood with an apartment that has been in existence for sixteen years. It may be that the lot size is similar in the area, but many other homes seem to have somehow managed to legally subdivide, and several apartment buildings also exist within a few blocks of my house.

Also, in my case, the property tax statement on my house has said "two units" since I purchased the property, which is one of the reasons I believed the apartment to be legal I don't believe this is the case with any of my single residence neighbours either.

I can understand your not wanting to approve construction of new apartments in this neighbourhood, but I think this is a different situation, where a rental unit has been in place for so long. With the prices of housing rising constantly and the cost of heating oil, electricity and other basic expenses rising steadily as well, many people need help meeting the expenses involved with home ownership. It only makes sense to help people by allowing them to legitimately rent apartments that are already in existence, rather than create a culture of cynicism and dishonesty where the rules are generally disregarded by many, and even those who wish to do things properly are forced into deception.

I would love to see the city proclaim an amnesty period for owners of the many apartments in Halifax that fall outside the current zoning laws, and acknowledge the present situation as it is, allowing the many homeowners who already rent space to do so legitimately – and also allowing the city to collect the appropriate taxes for this practice.

In any case, I hope you will reconsider your decision, and allow me to continue to rent this apartment, which has been very helpful to me the last couple years, and has made home ownership possible for me as a single mother.

Yours sincerely,



Andrea Doukas
6366 London St
Halifax, NS B3L 1X3
Application # 14816

cc Sheila Fougere



HALIFAX SHAMBHALA CENTRE

FACSIMILE TRANSMITTAL SHEET

TO: ANDREW FAULKNER FROM: ANDREA DOUKAS
 COMPANY: HRM DEVELOPMENT SERVICES DATE: 8 Sept. 2008
 FAX NUMBER: 490-4645 TOTAL NO. OF PAGES INCLUDING COVER: 3
 PHONE NUMBER: 490-4402 SENDER'S REFERENCE NUMBER:
 RE: VARIANCE APPEAL 14916 YOUR REFERENCE NUMBER:

- URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE