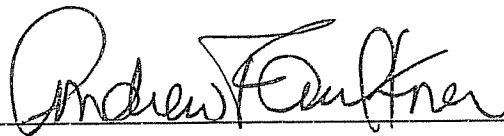


8.2.4

**HALIFAX** PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada  
REGIONAL MUNICIPALITY

Peninsula Community Council  
October 20, 2008

**TO:** Members of Peninsula Community Council

**SUBMITTED BY:**   
Andrew Faulkner, Development Officer

**DATE:** October 9, 2008

**SUBJECT: Appeal of the Development Officer's refusal of a Variance #14799 - 1670 Robie St.**

**ORIGIN**

This is an appeal of the Development Officer's decision to refuse an application for a variance of the Gross Floor Area Requirements of the Halifax Peninsula Land Use By-law.

**RECOMMENDATION**

It is recommended that Council uphold the decision of the Development Officer to refuse the request for variance.

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**BACKGROUND**

The subject property is located on the west side of Robie between Binney St and Jubilee Road (refer to attachment 1) R-2 (General Residential) in the Peninsula North Secondary Plan, Area 3, Halifax Peninsula Land Use Bylaw. The lot is approximately 4,000 square feet, which would be considered an average lot size for the immediate neighbourhood. The neighbourhood consists of properties on Robie Street, Binney Street, Jubilee Road and Edward Street.

An application for an addition to a Single Unit Dwelling was received on September 12, 2007. The application was initially denied as the square footage was over the permitted Gross Floor Area Requirement. The applicant was advised of the variance process and he decided to amend his plans to comply with the by-law and proceed with construction to avoid construction delay. The applicant revised his application so that it met the outstanding requirements and a permit was issued.

During routine inspection, a stop work order was issued upon discovery that the owner had proceeded with construction in accordance with his original, refused, construction plans.

Subsequently, the owner made application for a variance of GFAR on July 14, 2008. The applicant was notified in a letter dated September 23, 2008 that the variance was refused. An e-mail from the applicant appealing the Development Officer's decision to refuse was received October 1, 2008. (refer to attachment 2).

As there was a possibility that the owner would lose his contractors if there were substantial delays. The Stop Work order was lifted for the main and second floors while this variance is resolved.

**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:

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*"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:

*(a) variance violates the intent of the land use bylaw;*

The intent of the Gross Floor Area requirements is to ensure the compatibility of dwelling size within neighbourhoods and to prevent houses that are out of scale with the neighbourhood. The

**Community Council Report**  
**Appeal of Refusal of Variance #14799**

proposal is larger than existing GFAR's for dwellings in the neighbourhood, and is in the top end of the scale for the FAR of existing dwellings. To permit the variance would not be consistent with the intent of the land use bylaw.

The Gross Floor Area requirements of the Land Use Bylaw vary depending on lot size. The subject property's required GFAR is 2,625 sq ft or a Floor Area Ratio (FAR) of 0.70, whichever is greater. FAR is the relationship between the gross floor area of a dwelling and the lot size.

The GFAR of the proposal is 4316 sq ft, while the proposed FAR is 1.09. The applicant is proposing a larger GFAR than the average for the neighbourhood (average GFAR 3956 sq ft), as well as a FAR near the upper limit of the neighbourhood (average FAR 1.12). It should be noted that although every dwelling in the study area is over in both required GFAR and FAR, the extent to how the proposal compares to the existing character should be examined. In comparing lots of similar size (3500-4000 sq ft), the average GFAR is 3813 sq ft, and FAR is 0.87. The proposal of 4316 sq ft GFAR and 1.09 FAR far exceeds the established fabric of similar lot sizes.

Neighbouring uses include several two unit dwellings, and single unit dwellings.

*(b) difficulty experienced is general to the properties in the area;*

The area is comprised of a mix of single and two unit dwellings. All dwellings in the study area exceed GFAR and FAR requirements and those owner's would have similar difficulties to develop at a FAR of 1.09. The difficulty experienced is general to properties in the area.

*(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw. "*

As the applicant has proceeded with construction without a permit, the difficulty experienced does result from an intentional disregard.

**BUDGET IMPLICATIONS**

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None

**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.

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**ALTERNATIVES**

1. Uphold the decision of the Development Officer to refuse the application for variance.
2. Overturn the decision of the Development Officer, thereby approving the variance.

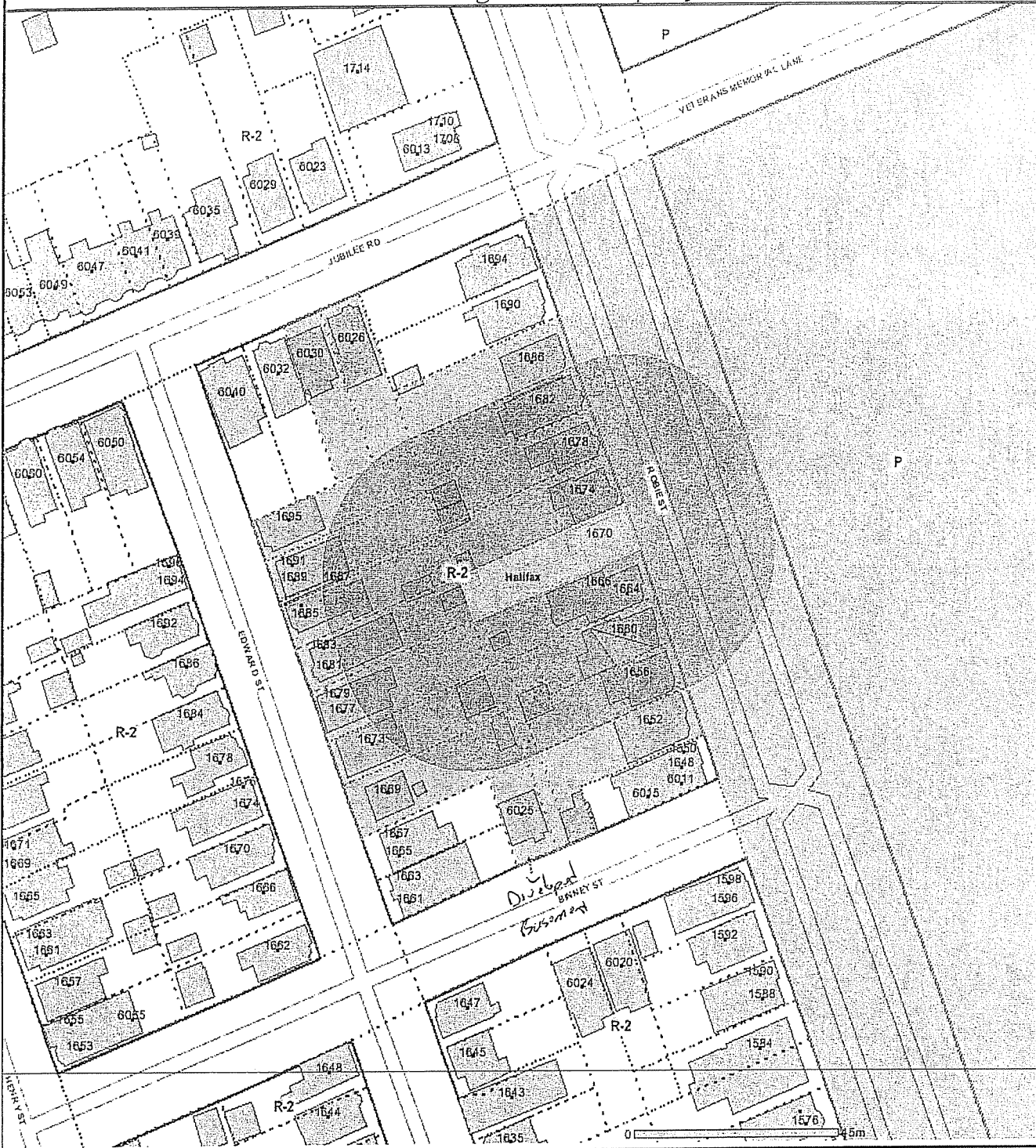
**ATTACHMENTS**

1. Location map
2. Refusal Letter
3. Appeal Letter

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, 490-4402.

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# Halifax Regional Municipality



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 [civcadd@halifax.ca](mailto:civcadd@halifax.ca) Date of map is not indicative of the date of data creation

Fred Abi Daoud  
6185 Jubilee Rd  
Halifax, NS B3H 2E9

September 23, 2008

Dear Mr. Abi Daoud:

**RE: Variance #14799 - 1670 Robie St, Halifax**

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This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for variance from the requirements of the Land Use Bylaw for **Halifax Peninsula** as follows:

**Location: 1670 Robie St**

**Project Proposal: Convert Basement and Attic areas to Habitable Space**

**Variance Requested:**

**Floor Area Ratio Required: 0.70**

**Proposed Variance: 1.09**

It is the opinion of the Development Officer that the variance cannot be given because the proposal violates the intent of the Land Use Bylaw and the difficulty experienced results from intentional disregard of the requirements of the Land Use Bylaw.

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**

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**Your appeal must be filed on or before October 3, 2008.**

If you have any questions or require additional information, please contact this office at 490-7455.

Sincerely,



**Andrew Faulkner**  
Development Officer

cc. Julia Horncastle, Acting Municipal Clerk  
Councillor Sue Uteck

**Jayne Anderson - FW: Appeal variance decision for 1670 Robie St.**

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**From:** Fouad Abi Daoud  
**To:**  
**Date:** 03/10/2008 3:52 PM  
**Subject:** FW: Appeal variance decision for 1670 Robie St.

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From: mdabi\_2000@hotmail.com  
To: faulkna@halifax.ca  
Subject: FW: Appeal variance decision for 1670 Robie St.  
Date: Fri, 3 Oct 2008 15:28:29 -0300

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From: mdabi\_2000@hotmail.com  
To: faulkna@halifax.ca; johnsalah@eastlink.ca; cowperm@halifax.ca; geoffkeddy@eastlink.ca;  
lrobbins@qtrlaw.com  
Subject: Appeal variance decision for 1670 Robie St.  
Date: Wed, 1 Oct 2008 07:58:31 -0300

Accept this email as a formal appeal for HRM staff's decision not to recommend the variance to GFAR with respect to 1670 Robie St.

It is my understanding from a telephone conversation with Mike Cowper that the reasons for not supporting the variance application were:

- 1) Large amount of liveable square footage being asked for over the GFAR bylaw, and
- 2) Applicant acted in negligently with respect to application granted to him.

With respect to the second point, I would ask - under the principles of natural justice - that all the information HRM has with respect to the second point be forwarded to my Lawyer so that this can be properly argued in front of council on the date granted to me.

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Please confirm receipt by return email.

Sincerely:

Fouad Abi Daoud

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