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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 9, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a **Variance**
#14786 - 6340 Cornwall Street,

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the requirements of the Halifax Peninsula Land Use Bylaw to convert a two unit dwelling to a three unit dwelling.

RECOMMENDATION

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

BACKGROUND

The above noted application proposes **legalization of a third unit**. This property is regulated under the *Halifax Peninsula Land Use By-Law* in the Peninsula Centre Secondary Plan area and is currently zoned R-2 (General Residential Zone).

In September 1990 a building permit was issued to construct dormers to create headroom in a 2 unit dwelling, in October 1990 a building permit was issued for interior renovations to existing attic area to create bath, bedroom, and library in existing 2-unit dwelling with "no additional units permitted"; in December 1990 an occupancy permit was issued to occupy renovated attic space. Section 34 E states "*Any residential building which was in existence on 14 October 1982 within the "South End" and "Peninsula Centre Areas", with the exception of the "North West Arm Sub Area", may be permitted to convert to a maximum of 3 units, provided that: (A) there is no increase in height or volume and that the external dimension of the building have not changed since 14 October 1982.*" It is clear that the volume and height of the attic was increased after October 14, 1982.

As well, the R-2 Zone in the "**Halifax Peninsula, Centre**" requires a minimum lot frontage of 45 feet; a minimum lot size of 5000 square feet; and side yards of 6 feet for three unit dwellings.

The maximum permitted Gross Floor Area for lots between 4,000 sq. feet and 4,500 sq. feet is 2,800 sq ft. the proposed building has a Gross floor area of 5704 square feet.

The proposal does not meet the following requirements:

- minimum lot size requirement of 5,000 feet; **existing 4100 feet**
- minimum lot frontage of 45 ft; **existing 41 ft.**
- minimum left side yard 6 ft; **existing 2 ft.**

A variance application was received July 21, 2008 and was refused September 8, 2008 and subsequently the applicant appealed the refusal.

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 for the Halifax Peninsula, Peninsula Centre Secondary Plan Area requires lot area of 3,300 square feet for a duplex, 5000 sq ft for semi detached dwellings and three unit buildings. 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.

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 Development Officer believes that further reduction of requirements 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 the requirements of the particular zone. The lot area, lot frontage, left side yard setback, Gross floor area, and lot coverage found on this property do not meet the requirements for a three unit dwelling in the Halifax Peninsula, Peninsula Centre area. The majority of properties in the buffer area are Single unit dwellings. Of the 14 units in the buffer, 10 are single unit dwellings while there are 3 two unit dwellings and 1 institutional building. Based on property mapping, (see copy attached) out of the 14 properties in the buffer area 13 have difficulty meeting lot size. *Therefore, the difficulty experienced is general to the properties in the area.*

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

There was a permit issued in 1990 clearly stating that this was only for interior renovations to attic area to create bath, bedroom, rec-room and library in the existing two unit dwelling. This permit stated "No additional units permitted." The present owner inherited this violation when they purchased eight years ago. There has been no intentional disregard for the requirements of the land use by-law by this owner.

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. Location Plan
2. Notification Letter
3. Site and Elevation 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.

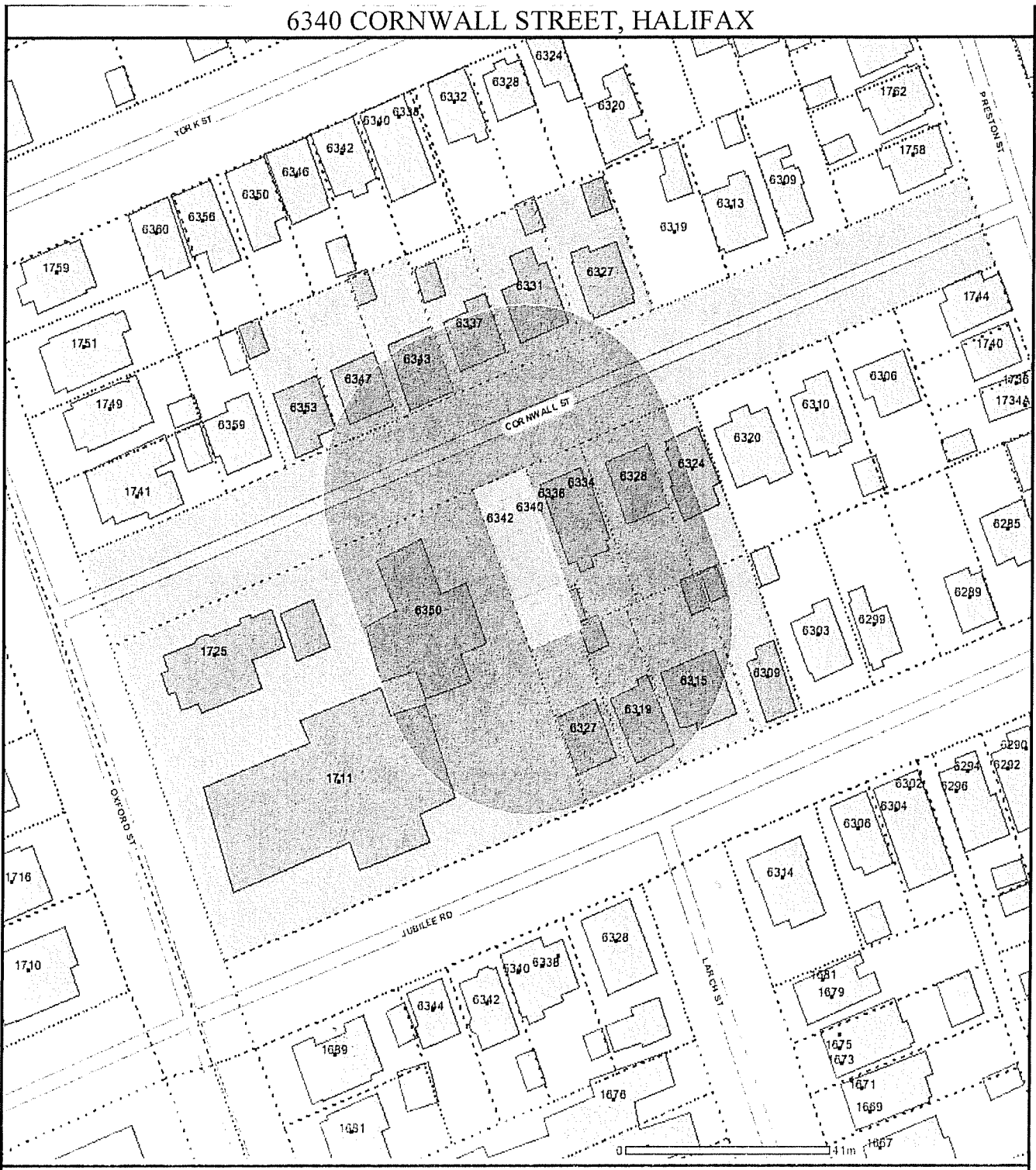
Report Prepared by: Connie Sexton - Development Technician (490-4338)

DATE: October 20, 2008

SUBJECT: Variance Application #14786
6340 Cornwall

SITE PLAN

Vary lot area from 5000 sq ft. to 4100 sq ft.
Vary Gross Floor Area from 2800 sq ft to 5704 sq ft.
Vary lot frontage from 45 ft to 41 ft
Vary side yards from 6 ft to 2 ft





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

Community Development
Western Region Office - West End Mall
6960 Mumford Rd., Halifax, NS B3L 4P1

Sent out
Sept 8/08

September 8, 2008

Mr. Michael Nowlan
6340 Cornwall St.
Halifax, NS B3H 2J1

Dear Mr. Nowlan:

RE: Application for Variance No. 14823 - 6340 Cornwall Street

This letter is to advise you that your application for a variance to change a two unit dwelling to a three unit dwelling has been **refused**.

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.**

The intent of the bylaw in the Halifax Peninsula, Peninsula Centre secondary planning area is to keep three unit residential uses on larger lots than units used for single family dwellings. The bylaw is intended to not allow three unit dwellings on smaller lots that do not meet the requirements such as minimum lot area, minimum lot frontage, maximum lot coverage, left side yard set back and Gross Floor Area these types of changes in a building does change the character and stability of the neighbourhood.

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

Your appeal must be filed on or before *September 23, 2008*

If you have any questions or require additional information, please contact this office at (902) 490- 4338

Sincerely,

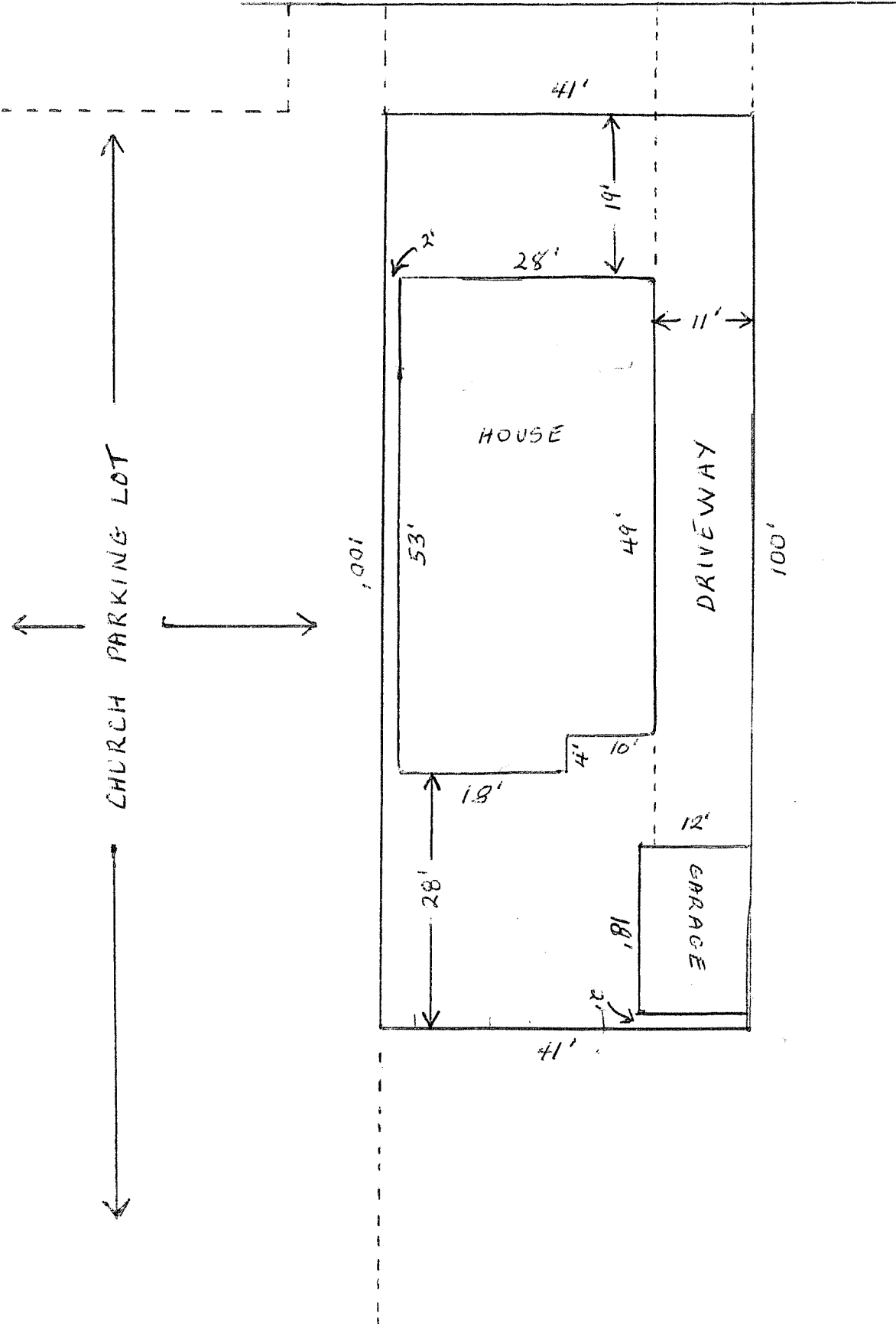
Andrew Faulkner
Development Officer

cc.

Municipal Clerk
Sue Uteck, Councillor District 13

"PLOT PLAN"

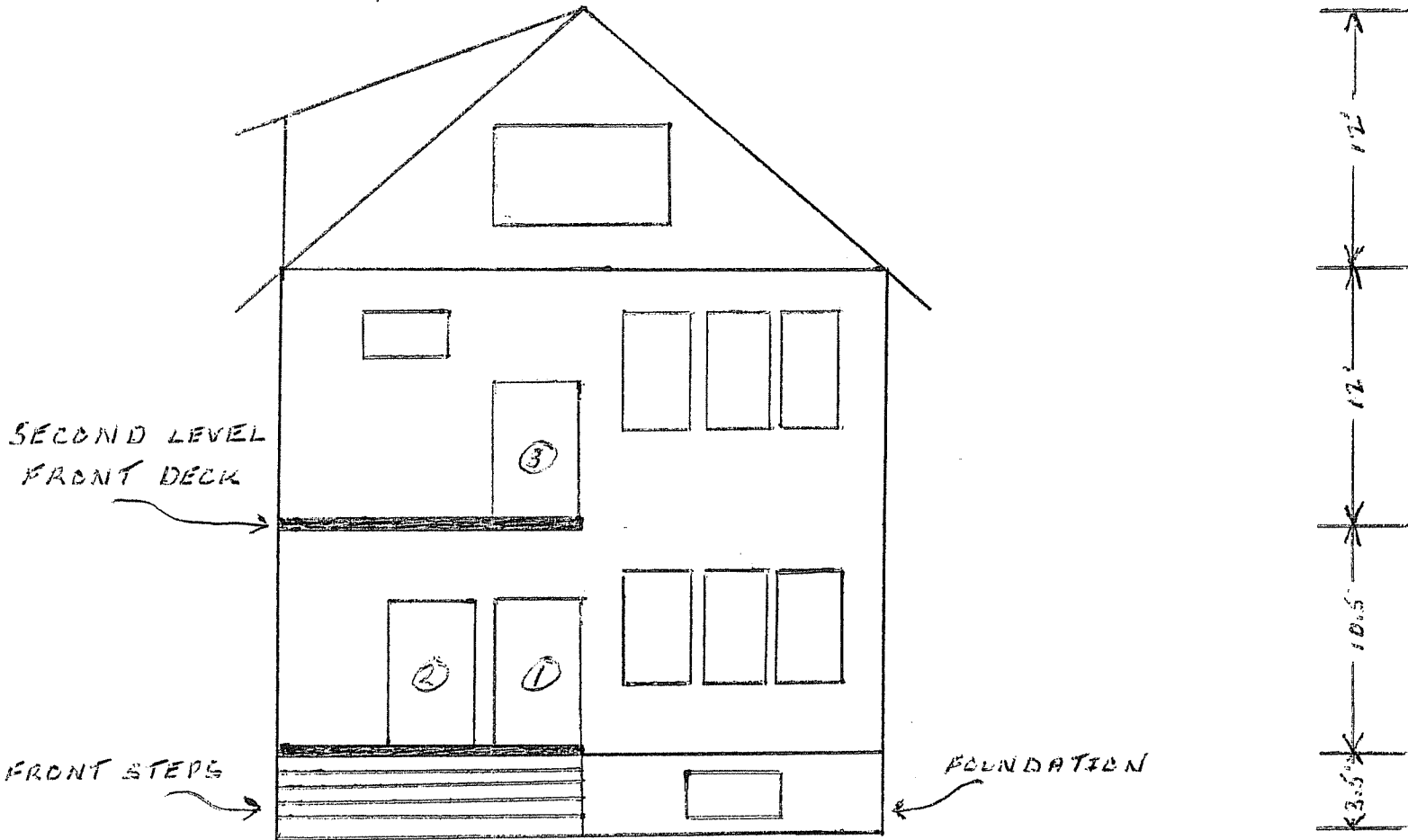
CORNWALL ST.



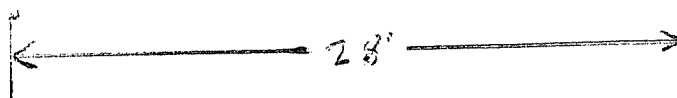
1 SQUARE = 4'

"FRONT ELEVATION
FROM CORNWALL STREET"

NORTH



- ① FRONT DOOR TO FIRST LEVEL
- ② FRONT DOOR TO SECOND AND THIRD LEVEL
- ③ DOOR TO SECOND LEVEL FRONT DECK



1 SQUARE = 2'

September 19, 2008

Andrew Faulkner, Development Officer C/O Municipal Clerk
Halifax Regional Municipality
Development Services – Western Region
P.O. Box 1749
Halifax, NS B3J 3A5

Re: Appeal of “Application for Variance No. 14823 – 6340 Cornwall St.”

Dear Mr. Faulkner,

As per instructions received today at your office I am faxing my appeal with reason for appeal.

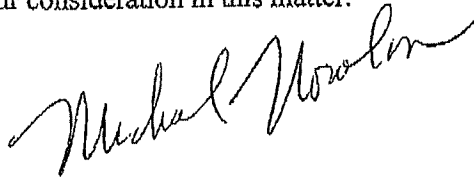
I wish to proceed with an appeal of my Application for Variance No. 14823 as per your letter dated September 8, 2008 (attached).

My lawyer and I have researched and reviewed several similar Applications for Variances that HRM city council has ruled on over the past several years. Many of the council’s decisions have been in favor of the applicant application. Our review would indicate that several of these favorable decisions were for applications whose deviation from acceptable standards as per Section 235(3) of the Municipal Government Act were greater than those identified in my application.

Thank you for your consideration in this matter.

Best Regards,

Michael Nowlan
6342 Cornwall St.
Halifax, NS B3H 3R7



cc.

Mr. Gregory Auld
Auld Allan & Associates