



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:

A handwritten signature in black ink that reads "Andrew Faulkner". The signature is written in a cursive style and is positioned above a horizontal line.

Andrew Faulkner - Development Officer

DATE: October 9, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance #14922 - 1598 Larch Street,

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the requirements for setbacks, lot area and lot frontage of the Halifax Peninsula Land Use Bylaw to permit a third unit.

RECOMMENDATION

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

BACKGROUND

The above noted application proposes **the creation of a third unit**. This property is regulated under the *Halifax Peninsula Land Use By-Law* and is currently zoned R-2 (General Residential Zone). The following sections of the *Land Use Bylaw* pertains to this application.

The R-2 Zone in the "**Peninsula Centre Area**" requires a lot frontage minimum of 45 feet; lot size minimum of 5,000 square feet; and side yards of 6 feet. The subject lot has an area of 3,750 square feet, a frontage of 33 feet and existing side yard setbacks of 2 feet.

A variance application was received July 25, 2008 and was refused September 9, 2008 and subsequently the applicant appealed the refusal. An appeal of the refusal was received on September 9.

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 example, the standard R-2 guidelines for this particular area require a lot area of 3,300 square feet for a duplex building, and 5000 sq ft. for semi detached and 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 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 to allow additional units would violate the intent of the bylaw.

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

The majority of properties in the buffer area are evenly split between *single unit dwellings and two unit dwellings*. Based on our property mapping, (see copy attached) the majority of lots in the notification area are not large enough to construct 3 unit dwellings. 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 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.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to deny the variance.
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

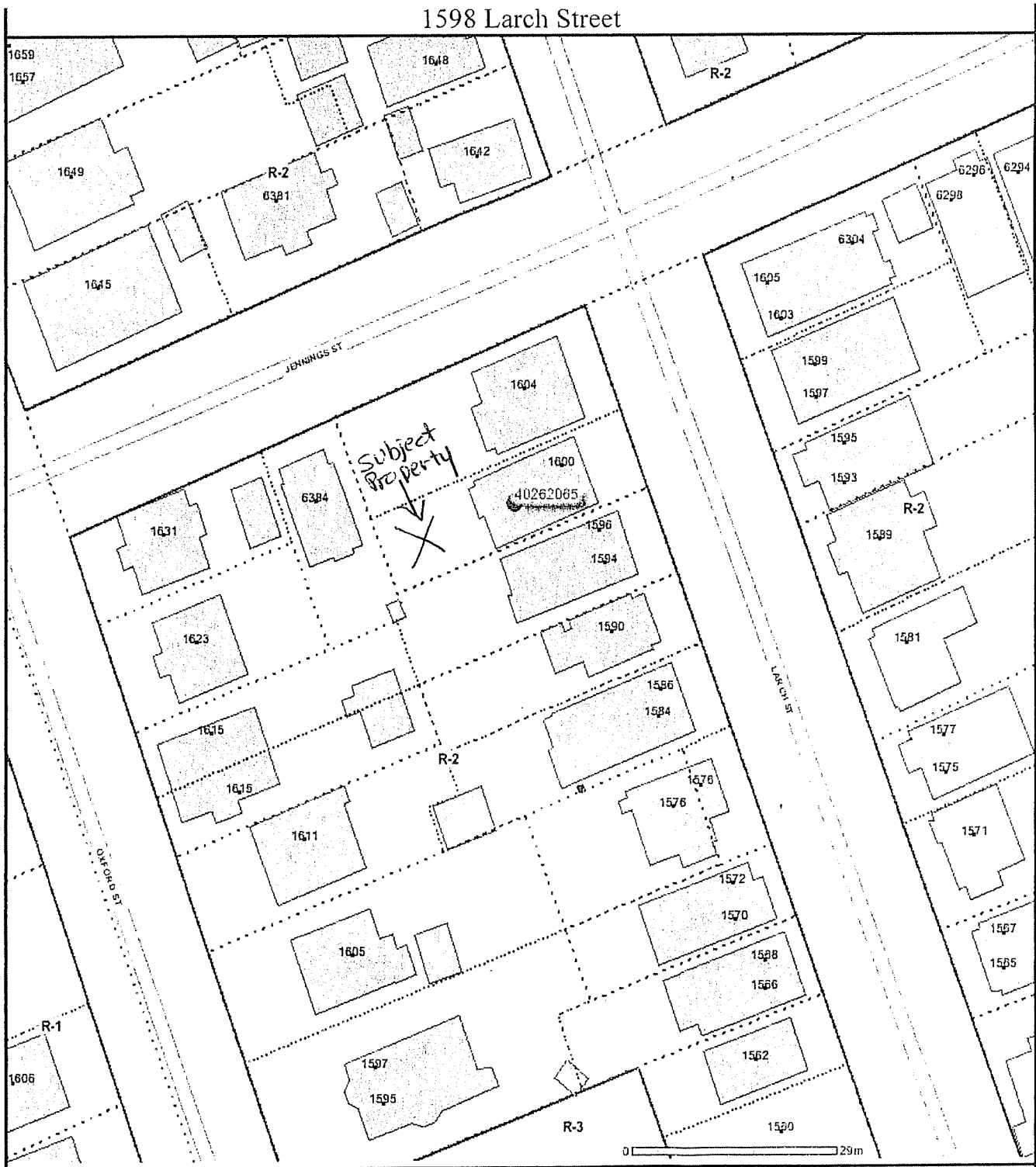
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.
Report Prepared by: Connie Sexton - Development Technician (490-4338)

DATE: September 24, 2008

SUBJECT: Variance Application #14922
1598 Larch Street

SITE PLAN

To vary: lot area from 5000 sq ft. to 3750 sq ft.
lot frontage from 45 ft to 33 ft.
right side yard from 6 ft to 2 ft
left side yard from 6 ft to 2 ft
rear side yard from 20 ft to 8 ft
Gross Floor Area from 2800 sq ft to 5704 sq ft.
lot coverage from 35% to 37 % coverage



September 23, 2008

Dear Assessed Owner:

Re: Variance Application No. 14922 -1598 Larch Street

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.

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

Location:	1598 LarchSt, Halifax
Project Proposal:	Converting from two unit dwelling to a three unit dwelling
Variance Requested:	Vary lot area from 5000 sq ft. to 3750 sq ft. Vary lot frontage from 45 ft to 33 ft. Vary right side yard from 6 ft to 2 ft Vary left side yard from 6 ft to 2 ft Vary rear side yard from 20 ft to 8 ft Vary the Gross Floor Area from 2800 sq ft to 5704 sq ft. Vary lot coverage from 35% to 37 % coverage

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.**

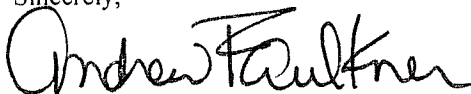
It is the opinion of the Development Officer that (a) the variance violates the intent of the Land Use Bylaw and (b) the difficulty experienced is general to properties in the area.

The applicant has appealed the Development Officer's refusal of the application for variance.

The appeal will be heard by the Peninsula Community Council the Council Chambers October 20 2008, 3rd floor at City Hall, 1841 Argyle Street at 7:00 p.m.

If you have any questions or require additional information, please contact Connie Sexton, Development Technician at 490-4338.

Sincerely,

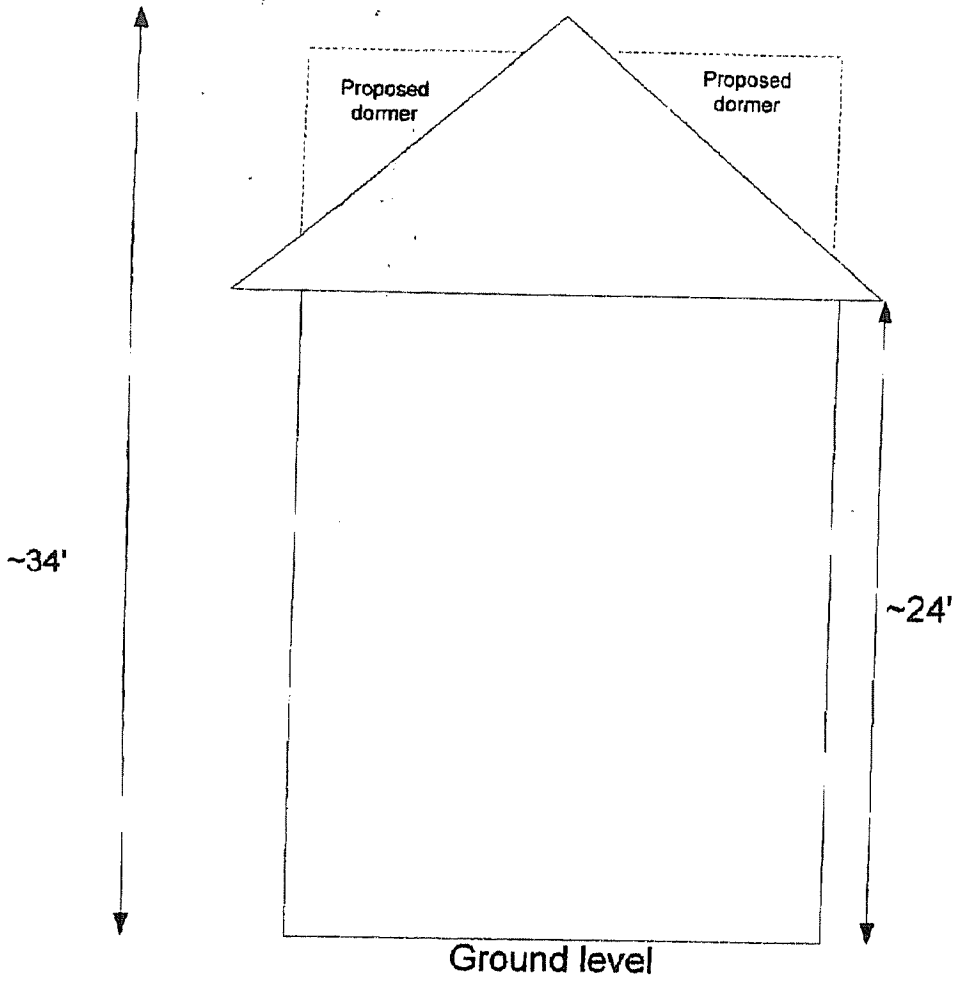


Andrew Faulkner

Development Officer

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

1598 Larch Street
Proposed Addition



John O'Brien
635 Basinview Drive
Bedford, NS
B4A 3E8

To Andrew Faulkner, Manager, Community Planning and Development

Date August 27, 2008

Subject 1598-1600 Larch Street, Halifax—Application for Minor Variance

Andrew,

Thanks so much for getting back to me today. Attached is info re above, including the surveyors certificate for the lot. As I mentioned, our intention is to eliminate the four-bedroom rental on the main level and make it our principal residence. In addition, we would like to finish the attic area and make a two-bedroom rental unit. In total, there would still be only eight bedrooms on the property. This would involve constructing a dormer, which would not exceed above the present roofline.

Should you require any additional information, please do not hesitate to contact me at 835-7151 (h) or 476-3802 ©

Thanks

John



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

September 9, 2008

Mr. John O'Brien
635 Basinview Drive
Bedford, NS
B4A 3E8

Dear Mr. O'Brien:

RE: Application for Variance No. 14922 - 1598 Larch 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. The bylaw is intended to not allow three unit dwellings on smaller lots that do not meet the minimum lot frontage, lot area, and setbacks from other dwellings. If these requirements are not met this changes 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 19, 2008*

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

Sincerely,

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

Andrew Faulkner
Development Officer

cc.

Municipal Clerk