

Variance Appeal - 14850 - 1375 Edward Street, Halifax
Council Report - 1 -

September 10, 2008



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
September 16, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

Andrew Faulkner - Development Officer

DATE: September 10, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance - 14850 - 1375 Edward Street, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the Gross Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 1375 Edward Street, Halifax in Halifax. The property is zoned R-2 (General Residential Zone) under the Peninsula Centre Secondary Planning Area of the Halifax Peninsula Land Use Bylaw. The subject property is a 3,720 ft² lot which would permit a maximum Gross Floor Area Ratio of 0.75 (equal to a floor area of 2,604 ft²). This structure has an existing GFAR of 4,420 ft² or a FAR of 1.18. The proposal would further increase the GFAR to 4,936 ft² or a FAR of 1.33

On April 11, 2008 the applicant made an application to convert from a two unit dwelling to a three unit dwelling. A variance was required to vary lot area, lot frontage, left side yard and right side yard. This application was refused by the Development Officer on April 23, 2008. On July 30, 2008 we

received a letter from Mr Stone, stating he was no longer requesting the Development Permit and subsequent Variance to add the 3rd unit.

On July 21, 2007 the applicant made an application (Permit 94379) to construct an addition to the top floor level of 2 unit dwelling-increasing & developing space in attic The application also included interior renovations to the basement level of 1st unit and renovation to main floor area of 2nd unit as well as new construction of bedrooms in the attic.

To clarify a couple of points made in the applicants appeal letter:

- 1) Removal of the back porch and “unusable space” in the basement would not reduce the gross floor area enough that the proposal would then meet the land use by-law requirement, therefore, a variance was still warranted. However, in order to prevent delaying the full project, staff suggested that the applicant remove the portion of the construction that did not meet the land use bylaw so that he could proceed with the remaining renovations. The applicant proceeded to apply for the variance on the remaining portion not meeting the land use bylaw requirements..
- 2) In order to vary a requirement of the land use bylaw, the Municipal Government Act allows a property owner to apply for a variance. As per Mr Stone’s request to “skip” the variance application, the Municipal Government Act sets out guidelines that must be met.
- 3) It can take four to six weeks to have an appealed variance heard by council depending on the complexity of the application. Although staff was able to let the applicant know that the GFAR could not be met and a variance was required, a more thorough examination of the application was necessary.

This Variance was refused by the Development Officer on August 25, 2008. Subsequently the appeal was received on September 2, 2008.

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?

In many cases, the intent of a specific regulation in a land use bylaw can be quite general in nature

and determining the intent sometimes requires subjective judgement. However, in this case, due to the recent review and subsequent adoption of the affecting GFAR requirements staff believe the intent is clear.

The GFAR requirements were adopted to achieve two objectives. Firstly, to limit the size of dwellings which could be converted to create an excessive number of bedrooms. This two unit dwelling proposes seven bedrooms.

Secondly, to allow Single Unit Dwellings but restrict the potential of rooming houses through Gross Floor Area.

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 intent is to prevent houses that are out of scale within the neighbourhood. Attached are photos taken September 11, 2008 of 1375 Edward St and the immediate surrounding area. The proposed addition appears to be out of character of the surrounding properties which consist of two storey dwellings and two storey with a front dormer only. Few, if any have three full levels.

As this two unit dwelling already exceeds the requirements for Gross Floor Area, staff believe that the proposed variance does not meet the intent of the LUB.

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

According to our mapping, lot size in the surrounding area appear to be generally the same, and a recent site visit concluded that the dwellings also appear to be general in size, therefore, the difficulty experienced would be general to the properties in area.

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

There has been no intentional disregard for the requirements of the Land Use Bylaw. The applicant applied for a permit, which was denied as it did not meet the GFAR 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. Appeal Letter
2. Refusal Letters with Site and Elevation Plans.
3. Letter from neighbouring properties (1)
4. Photos

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)



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

COMMUNITY DEVELOPMENT

September 9, 2008

Derek Stone
3841 Rockhead Court
Halifax, Nova Scotia
B3K 6B5

Dear Mr. Stone:

Re: Application for Variance, File No. 14850 - 1375 Edward Street, 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 Tuesday, September 16th at 11:00 a.m in the Trophy Room, Main Level, 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". The signature is written in a cursive, flowing style.

Andrew Faulkner,
Development Officer

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

COMMUNITY DEVELOPMENT

September 9, 2008

Dear Sir or Madam:

Re: Application for Variance, File No. 14850 - 1375 Edward Street, 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:	1375 Edward Street, Halifax
Project Proposal:	Addition to a Two Unit Dwelling
Variance Requested:	Vary Gross Floor Area requirements from 2790 sq ft to 4995 sq ft

The applicant has appealed my refusal and the objection will be presented to the Peninsula Community Council on Tuesday, September 16th at 11:00 a.m in the Trophy Room, Main Level, 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,



Andrew Faulkner, Development Officer
Halifax Regional Municipality

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

Elevation Plan

DATE: September 9, 2008

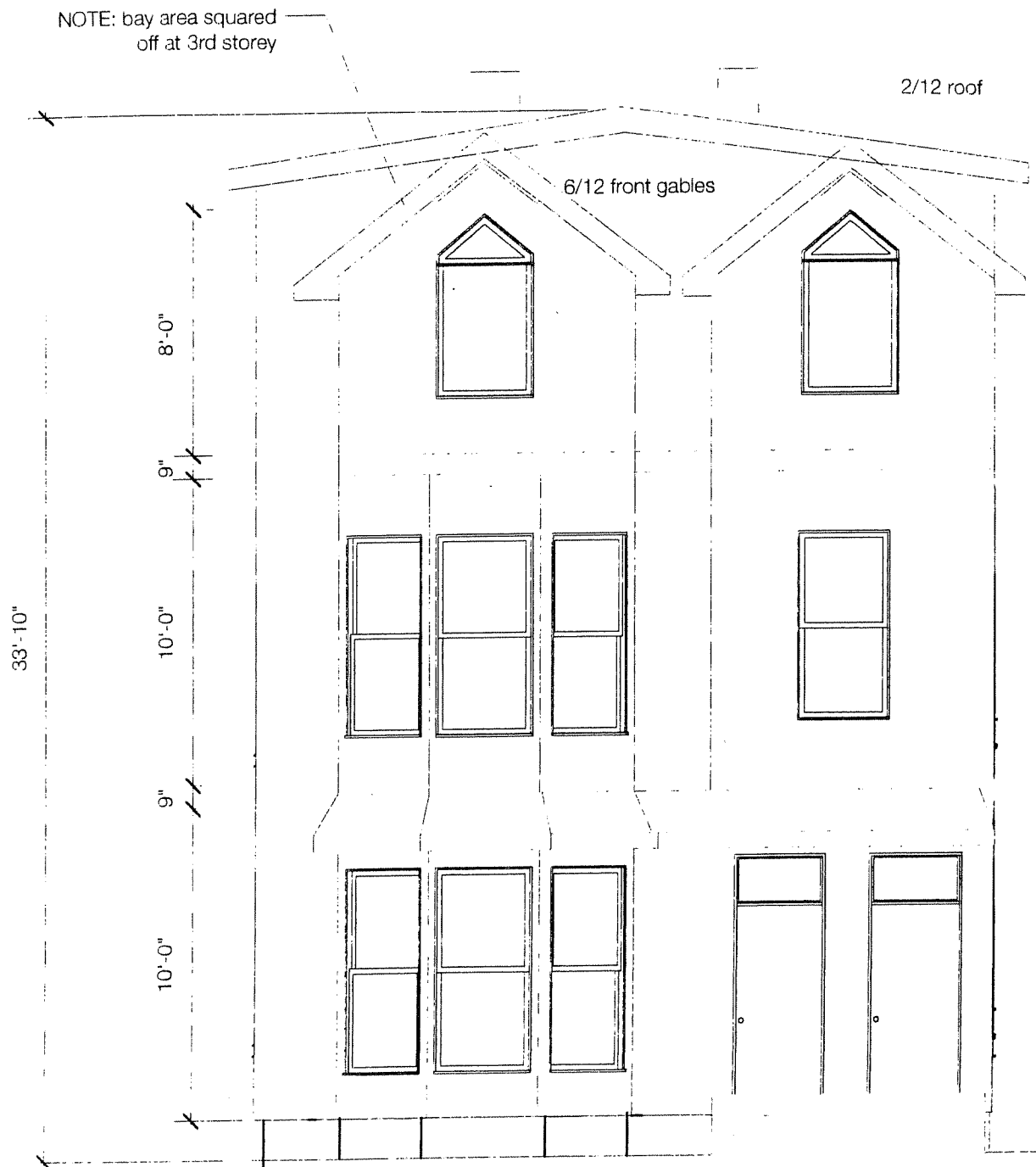
SUBJECT: Variance, File No. 14850 - 1375 Edward Street, Halifax

Proposal

Addition to a Two Unit Dwelling

Variance Requested:

Vary Gross Floor Area requirements from 2790 sq ft to 4995 sq ft



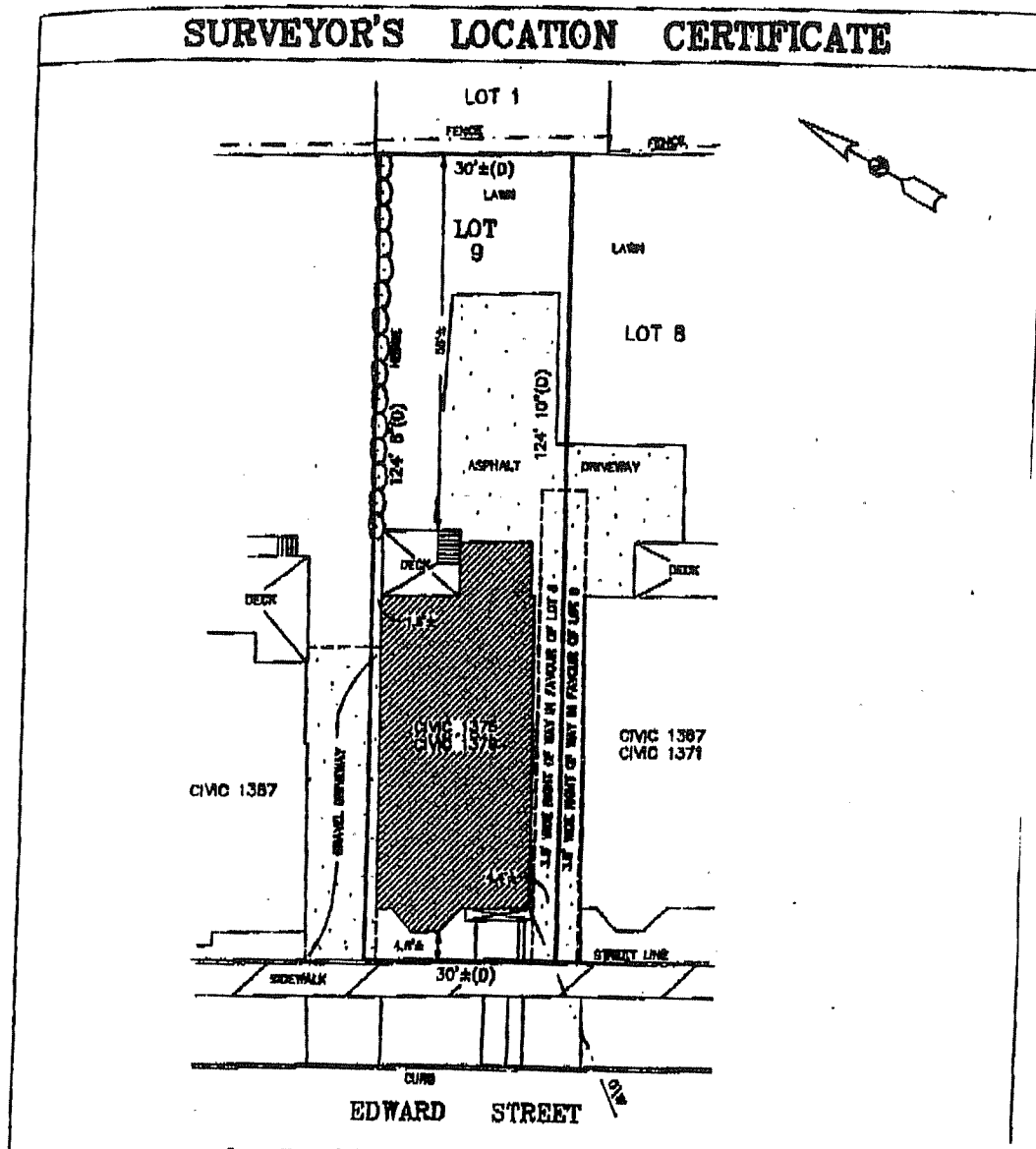
Edward Street Elevation

Site Plan

DATE: September 9, 2008

SUBJECT: Variance, File No. 14850 - 1375 Edward Street, Halifax

Proposal	Addition to a Two Unit Dwelling
Variance Requested:	Vary Gross Floor Area requirements from 2790 sq ft to 4995 sq ft



490 4648

Andrew Faulkner
Development Officer
HRM - Development Services - Western Region
PO BOX 1749
Halifax, NS B3J 3A5

September 2 2008

Re: Variance File # 14850

Dear Andrew,

Please accept this e-mail as officially requesting to appeal the decision made by Planning & Development Services in regards to my application to change the pitch of my roof.

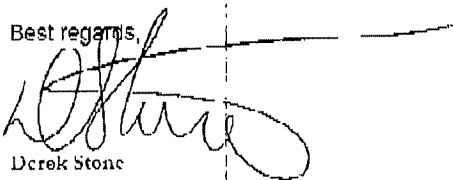
Properties located on Edward Street all have similar lot sizes and most are all ready over the Gross Floor Area requirements of 2700sqft when you add in the basement level because most have sufficient head room. A Gross Floor Area measurement that is below what most houses all ready fail to gain validity. My house all ready has stairs to the attic meaning that the majority of the attic all ready exists. We are renovating the property to a net zero property meaning that it will save as much energy as it produces. Part of these renovations is the addition of solar panels on the roof which can be maximized by gaining longer exposure to the sun. By changing the pitch of the roof we can gain this exposure and enable us to have more usable space to fit our growing family

We have gone through great lengths to ensure that the house remains true to its period of original construction. By changing the pitch of the roof we will be gaining only an extra 4ft of space on each side of the house. During the application I even offered to remove a back covered porch and some unusable space where the furnace and mechanical rooms are to give the space back and this was not even considered.

I know this might be difficult but I request that I somehow get on the September 8 council meeting. I originally requested to skip the variance application as Brenda had told me that it would not be approved. Having to wait 2 weeks for her to look at it then mail me the letter has all ready delayed my project 3 weeks. I am greatly displeased with the turn around time as Brenda originally worked on my permit application and it was her to suggested I remove the roof pitch from the original permit application to speed up that process. She had all ready reviewed what the pitch change would do and it did not need to be delayed when we could have gone right to council a month ago.

You can contact me or my wife Cynthia at 480-5830 or at work at 421 4661 if you have any questions.

Best regards,


Derek Stone

1375 Edwards St



