



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

Peninsula Community Council  
September 8, 2008

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**

  
Andrew Faulkner - Development Officer

**DATE:** August 28, 2008

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application  
for a variance - 3121 Agricola Street, Halifax

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#### **ORIGIN**

Pursuant to Section 236(4) of the Municipal Government Act any person served notice of a refusal of a variance may appeal the decision of the Development Officer to the Municipal Council.

This report deals with an appeal of the Development Officer's decision to refuse an application for a variance from the requirements of the land use bylaw for property at 3121 Agricola Street, Halifax

#### **RECOMMENDATION**

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

#### **BACKGROUND**

The subject property is zoned R-2 General Residential Zone under the Halifax Peninsula Land Use By-law.

On March 19, 2007 a prospective buyer made a telephone inquiry to confirm the zoning and legal use of the subject property. He indicated there were three units in this building. Our records indicated that the legal use of the building was a duplex. A request was sent to our By-law Enforcement Division to investigate.

On April 29, 2008, the owner made an application to Occupy a three unit building. A refusal letter was issued May 22, 2008 because the proposal did not meet the minimum lot size requirement of 8,000

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square feet

The applicant at this time was notified that they could apply for a variance which they did on June 10, 2008. This application was refused by the Development Officer and notification in accordance with the Municipal Government Act was sent to the property owners (refusal letter attached)

An appeal of the refusal was received on July 14, 2008 (copy attached)

### **DISCUSSION**

The *Municipal Government Act* sets out guidelines under which the Development Officer may not 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 ?**

It is the opinion of the Development Officer that the variance does violate the intent of the Land Use Bylaw for Halifax Peninsula . 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 low density residential development, it is clear the bylaw intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas.

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

After careful review of this proposal it was determined that the situation experienced on this property is typical for the neighborhood. The immediate area is populated primarily with single family homes with a few 2 unit dwellings, the properties along Kaye Street, Hennessey Street and Agricola Street all have similar lot frontage, lot area, setbacks and building type.

**Is the difficulty experienced a result of an intentional disregard for the requirements of the land use bylaw?** There does appear to have been intentional disregard by the previous owners as they did not apply to convert to a three unit building.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused.

### **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 refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

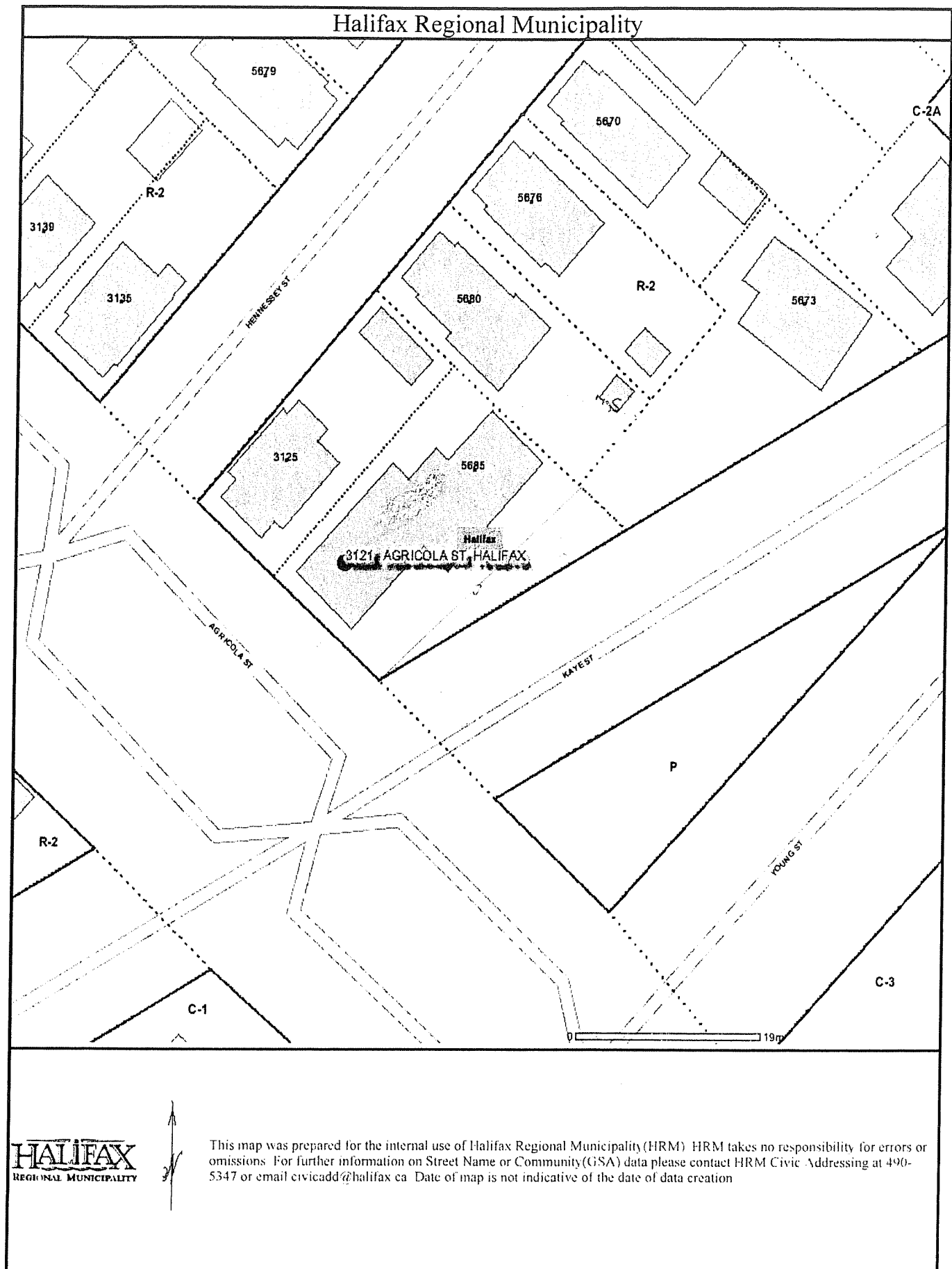
### **ATTACHMENTS**

1. Site plan
2. Refusal letter
3. Appellant 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:



*July 4, 2008*

Michael Sim  
3121 Agricola Street  
Halifax, NS  
B3K 4G4

Dear Mr. Sim:

**RE: Application for Minor Variance 14731 - 3121 Agricola Street, Halifax**

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

**Location:** 3121 Agricola Street  
**Project Proposal:** Convert from two units to three units  
**Variance Requested:** reduce lot area requirement from 8,000 square feet to 5,429 square feet

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 difficulty experienced is general to properties in the area. The immediate area is populated primarily with single family homes and a few 2 unit dwellings, the properties along Kaye Street, Hennessey Street and Agricola Street, all have similar lot frontage, lot area, setbacks and building type.

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 *July 15, 2008***

If you have any questions or require additional information, please contact this office at 490-5660.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner". The signature is fluid and cursive, with the first name "Andrew" written in a larger, more prominent script than the last name "Faulkner".

Andrew Faulkner,  
Development Officer

cc.

Julia Horncastle, Acting Municipal Clerk  
Councillor Patrick Murphy, District 11

July 13, 2008

Municipal Clerk  
C/o Andrew Faulkner  
HRM – Development Services – Western Region  
PO Box 1749  
Halifax, NS B3J 3A5

Dear Mr. Faulkner,

Re: Appealing variance decision for property located at 3121 Agricola Street  
File # 14731

We wish to officially appeal the decision to not grant the variance on our property allowing us to have three (3) legal apartments at 3121 Agricola/5685 Kaye Street.

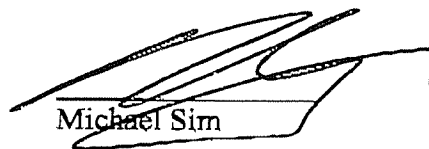
The third unit in question was built in 2006 by the previous owner as a fully wheel chair accessible apartment and our current tenant Barry Atkinson has lived there ever since. I probably do not need to inform you of the lack of availability of accessible units for physically challenged people in HRM. Removing this unit would be unfair to Barry and we feel the wrong decision to make. When we purchased the property in April 2007 we overlooked that the unit did not have the appropriate permit.

Our property is much larger than the usual PID in the area. We have a corner lot that has more frontage on Kaye Street then on Agricola Street. Kaye Street has more commercial appeal and fits more with multi-residential living.

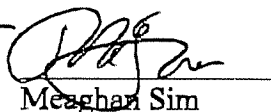
Due to the existence of the unit, that it is a full extension of the property and not in the basement, it has a Kaye Street address and that it serves a usually neglected demographic of our city we are asking the city to allow the third unit to exist. This is not for our own profit that we ask this, as we actually lose money every month on that unit but that for Barry and his needs it would be unjust and unfair to ask him to leave.

We will wait to hear our date to address Council.

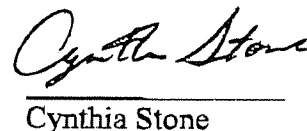
Best regards,



Michael Sim



Meghan Sim



Cynthia Stone

cc. Patrick Murphy