



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
September 8, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:

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

Andrew Faulkner - Development Officer

DATE: August 20, 2008

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance #14703, Isleville St, PID 00161398

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the lot area, lot frontage, right, left and rear sideyard setback requirements of the Halifax Peninsula Land Use Bylaw to construct a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

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

Section 37 of the R-2 zone requirements state:

“buildings erected, altered or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:

	<i>Lot Frontage</i>	<i>Lot Area</i>	<i>Side Yard</i>
	<u><i>(Ft.)</i></u>	<u><i>(Ft.)</i></u>	<u><i>(Ft.)</i></u>
<i>R-1 Uses</i>	<i>40</i>	<i>4000</i>	<i>4</i>
<u>duplex</u>	<u>50</u>	<u>5000</u>	<u>5</u>

The proposal does not meet the following requirements:

- minimum lot area requirement of 5000 sq ft; **to 2000 feet**
- minimum lot frontage requirement of 50 feet; **to 20 feet**
- minimum right side yard setback of 5 feet; **to 4 feet**
- minimum left side yard setback of 5 feet; **to 0 feet**
- minimum rear side yard setback of 20 feet; **to 4 feet**

A variance application was received June 2, 2008, and was refused July 9, 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 require a lot area of 4000 square feet for single unit dwellings, 5000 sq ft. for duplexes and 8000 sq ft for three and four 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 and the lot line.

Under the General Provisions of the Halifax Peninsula Land Use By-Law, Section 16C(1) allows for single family residential uses on existing lots that are 3000 sq ft in area and a lot frontage of 30 ft. Taking this into consideration, the Development Officer might support a variance for a single unit dwelling.

Given that the intent of the bylaw in this case is clear, the Development Officer believes that further reduction to allow additional units would clearly 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 on the frontage, lot area and side yard setbacks. The side and rear yard setbacks and lot frontage and area found on this property do not meet the requirements for a two unit dwelling. The majority of properties in the buffer do not meet the minimum lot requirements for a two unit dwelling. They range from 2000 sq ft to 3900 sq ft, 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, as the applicant has made application for a development permit and subsequently applied 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. Location Plan
2. Notification Letter
3. Appeal Letter
4. Map of Area

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

July 23, 2008

COMMUNITY DEVELOPMENT

Samir Metlej
15 Samuel Terrace
Halifax, N.S.
B3N 2Z9

Dear Mr. Metlej:

RE: Variance 14703 - Property at Isleville Street, (PID 00161398)

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 Monday, September 8th at 7:00p.m. at Council Chambers, 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,

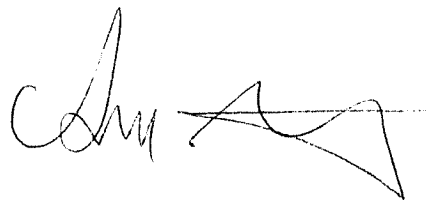
A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner,
Development Officer

cc: Councillor Patrick Murphy (District 11)
Julia Horncastle, Acting Municipal Clerk

Dear Mr. Faulkner

I am writing to appeal your refusal of my
variance application # 14703.

July 21/08 



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

August 8, 2008

COMMUNITY DEVELOPMENT

Dear Sir or Madam:

RE: Variance 14703 - Property at Isleville Street, (PID 00161398)

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.

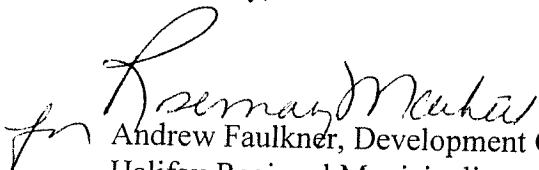
As the Development Officer for the Halifax Regional Municipality, I have refused a request for a variance from the requirement(s) of the Land Use Bylaw for Halifax Peninsula Plan Area as follows:

Location:	Property at Isleville Street, (PID 00161398)
Project Proposal:	To construct a Two Unit Dwelling
Variance Requested:	Vary lot area from 5,000 square feet to 2,000 square feet
	Vary lot frontage from 50 ft to 20 ft
	Vary left sideyard setback from 5 ft to 0 ft
	Vary right sideyard setback from 5 ft to 4 ft
	Vary rear yard setback from 20 ft to 4 ft

The applicant has appealed my refusal and the objection will be presented to the Peninsula Community Council on Monday, September 8th at 7:00p.m. at Council Chambers, 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

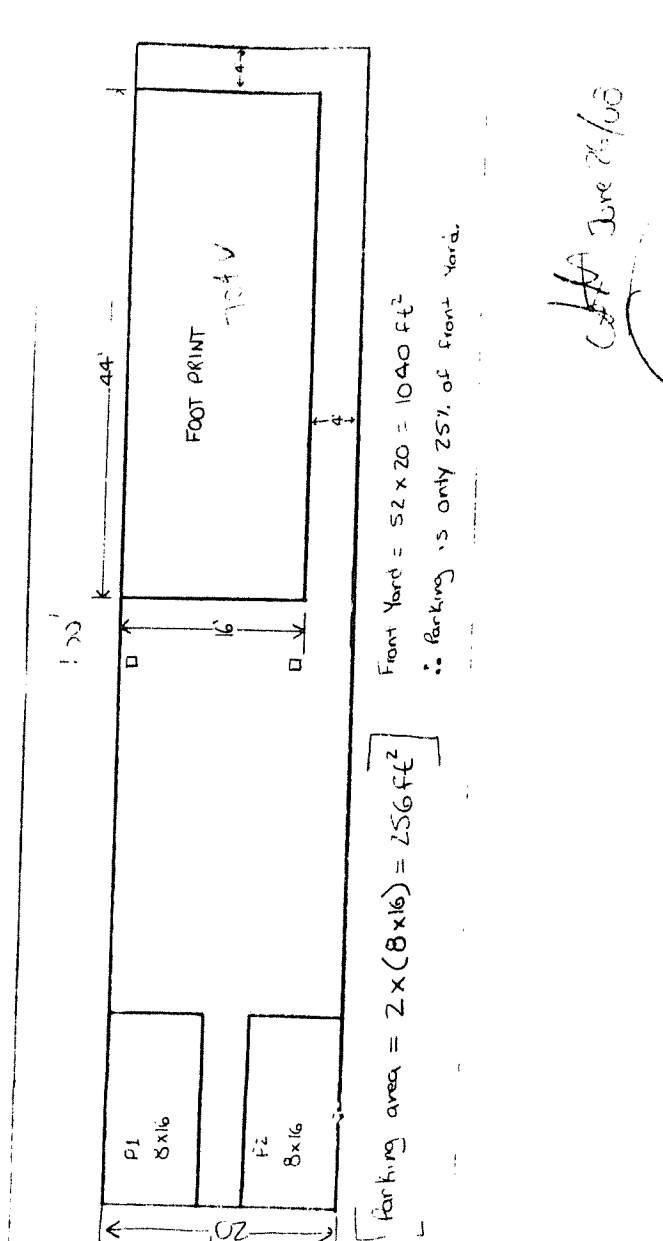
cc: Councillor Patrick Murphy (District 11)
Julia Horncastle, Acting Municipal Clerk

DATE: August 8th, 2008

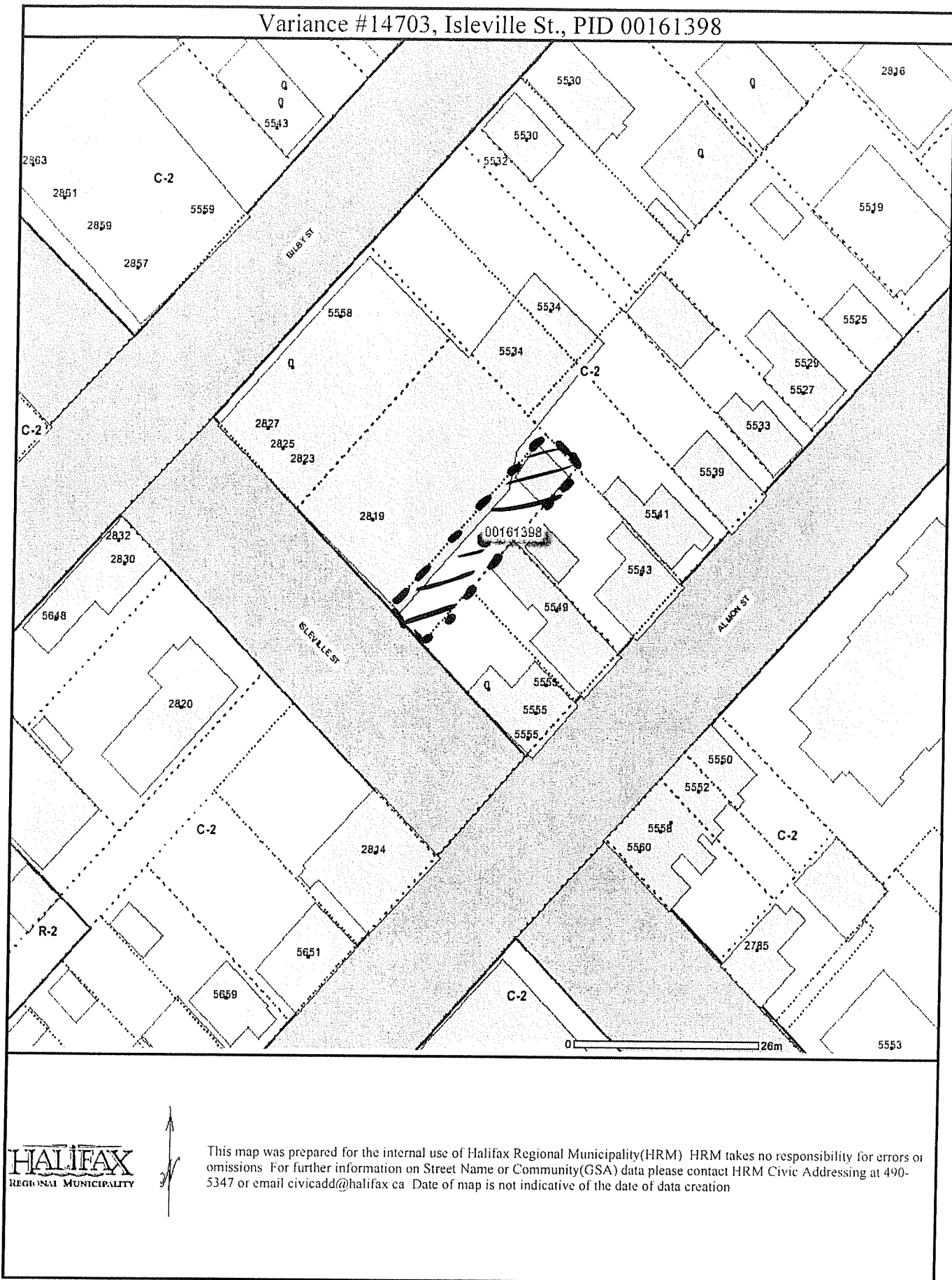
SUBJECT: Variance application for Property at Isleville Street, PID 00161398
To construct a two unit dwelling

SITE PLAN

Variance Requested: Vary lot area from 5,000 square feet to 2,000 square feet
Vary lot frontage from 50 ft to 20 ft
Vary left sideyard setback from 5 ft to 0 ft
Vary right sideyard setback from 5 ft to 4 ft
Vary rear yard setback from 20 ft to 4 ft



Variance #14703, Isleville St., PID 00161398



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 civicadd@halifax.ca. Date of map is not indicative of the date of data creation.