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PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Peninsula Community Council  
September 8, 2008

**TO:** Members of Peninsula Community Council

**SUBMITTED BY:**

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

Andrew Faulkner, Development Officer

**DATE:** August 28, 2008

**SUBJECT:** Appeal of the Development Officer's refusal of a Variance #14684 - 6175 Charles St.

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**ORIGIN**

This is an appeal of the Development Officer's decision to refuse an application for a variance of the minimum lot area requirements, minimum lot frontage requirements, minimum left and right side yard setbacks.

**RECOMMENDATION**

It is recommended that Council uphold the decision of the Development Officer to refuse the request for variance.

**BACKGROUND**

The subject property is located on the Northwest side of Charles Street between Windsor and Gladstone streets (refer to attachment 1) and is zoned R-2 (General Residential) in the Peninsula North Secondary Plan, Area 3, Halifax Peninsula Land Use Bylaw.

The application for variance was made May 22, 2008 (refer to attachment 2 for the site plan), and came about from a denial of a development permit for a two unit conversion. A site visit was conducted, and the applicant was notified in a letter dated June 20, 2008 that the variance was refused. A letter from the applicant appealing the Development Officer's decision to refuse was received prior to the June 30, 2008 deadline (refer to attachment 3).

## **Community Council Report**

### **Appeal of Approval of Variance #13509**

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The applicant is proposing converting a single unit dwelling into a 2 unit dwelling; it should be noted that a construction permit was issued November 12, 1996 for a Single Unit Dwelling.

The lot is approximately 3519 square feet, which would be considered an average lot size for the immediate neighbourhood. It measures 33 feet along the front and rear property lines and by 106.66 feet on both sides. The dwelling was constructed to 51 feet from the front property line, 32 feet to the rear property line, 4 feet to the right side property line and 7 feet to the left side property line with a roof coving the basement entrance projecting 4 feet into the side yard, leaving a setback of 3 feet.

The requirements for a two unit dwelling in this area include a minimum lot size of 5,000 square feet, minimum lot frontage of 50 feet, minimum side yard setback of 5 feet. It these requirements that cannot be met.

Section 41, a two unit conversion clause, states “A building in existence on or before the 11<sup>th</sup> of May, 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following...”. As previously stated a construction permit was issued on November 12, 1996, meaning the structure did not exist, and cannot be converted into 2 units using this section.

Further, Clause 43I relates to two unit conversions in the Peninsula North area (which is the area of the subject property). It states “Notwithstanding Sections 37 to 40 a building, excluding accessory buildings, in existence on the date of adoption of this section in the “Peninsula North Area” may be converted to a maximum of two units provided...” This section was adopted in 1993; the construction permit was issued in 1996, therefore this section does not apply to the subject property.

Neighbouring uses include several two unit dwellings, single unit dwellings and an apartment building.

## **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:

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*(a) variance violates the intent of the land use bylaw;*

The intent of minimum frontage, area and side yard setbacks requirements is to provide adequate separation of buildings from to adjacent properties. This is necessary to ensure compatibility of uses, and to minimize potential conflicts between neighbouring properties. Two unit dwellings require larger lot sizes and setbacks because of the higher intensity of the use, in comparison to a single unit dwelling. To permit the variances would violate the intent of the land use bylaw.

*(b) difficulty experienced is general to the properties in the area;*

The area is comprised of a mix of single and two unit dwellings (and one apartment building). The buildings have existed prior to 1993, thus making them eligible for internal conversion (subject to meeting other requirements). Because of the mix of housing types in buildings that existed prior to 1993, the difficulty experienced is not general to properties in the area.

*(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

As no construction has occurred at this site intentional disregard was not a consideration in approving this variance.

**BUDGET IMPLICATIONS**

None

**ALTERNATIVES**

1. Uphold the decision of the Development Officer to approve the application for variance. This is the recommended alternative.
2. Overturn the decision of the Development Officer, thereby refusing the variance.

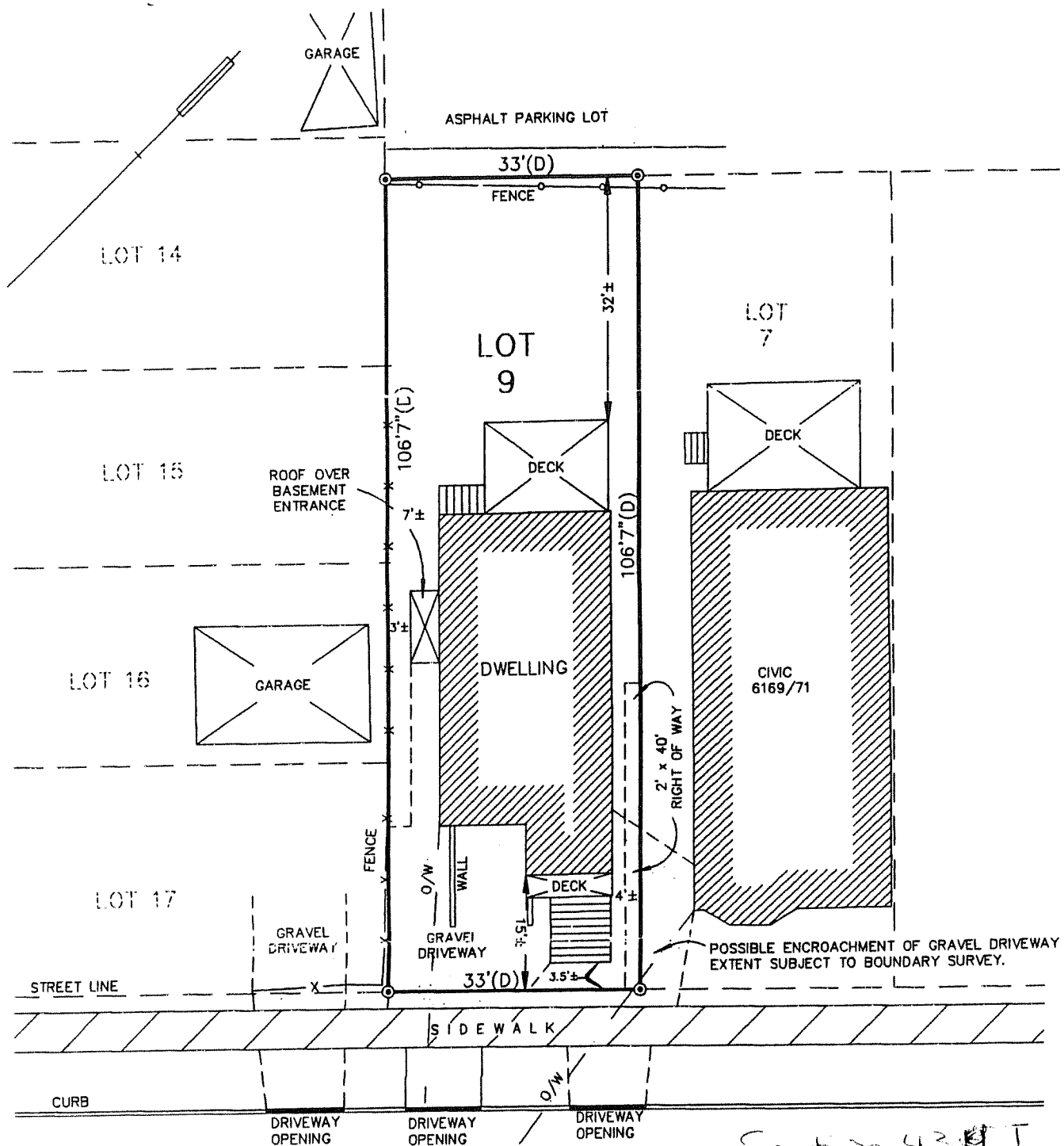
**ATTACHMENTS**

1. Location map
2. Site Plan
3. Appellant's Letter

<p>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: Andrew Faulkner, 490-4402.</p>
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# SURVEYOR'S LOCATION CERTIFICATE



CHARLES STREET

Section 43 I  
April 13/1993

6175 Charles Street,  
Halifax,  
NS B3K 1L5  
23<sup>rd</sup> June 2008  
Phone: (902) 422 0772  
Email: [david@pate.ca](mailto:david@pate.ca)

Municipal Clerk,  
c/o Trevor Creaser, Development Officer,  
Halifax Regional Municipality,  
Development Services – Western Region,  
P.O. Box 1749,  
Halifax B3J 3A5

**Re: Variance #14684 – 6175 Charles Street, Halifax**

Dear Mr. Creaser,

I wish to appeal the decision to deny my request for a variance from the requirements of the Land Use Bylaw.

I am not asking for a substantial change to the existing situation. Note that my request for a variance does not alter the structure in any practical way. I am seeking to convert the existing finished basement to an apartment. The basement already has a separate external entrance and internal plumbing. It is my intention to finish it as a studio apartment for my son while he studies at Dalhousie University while retaining the option to use it as an income apartment in the future. Our house was designed with this thought in mind, which is why the basement has its own gate and entrance door at the side of the building.


Granting this variance would not alter the character of the neighbourhood. Of the five properties that share my boundaries, only one is a single-family dwelling; one is an apartment building; two are owner-occupied with a rental unit on the upper floor; and the final property is a co-op housing unit.

I would be within my rights to proceed with the proposed conversion and to allow my son to live there instead of in the main body of the house. However, I prefer to make sure that all legalities are observed in the event that I choose to rent out the apartment in the future.

I have already supplied diagrams of what is proposed but do not hesitate to contact me if you have any questions. As you note in your letter of June 20<sup>th</sup>, a Building Permit for the lot was issued on November 12<sup>th</sup> 1996. The approved plans for the building – supplied as part of my original application and available on request – include the separate entrance already mentioned and plumbing for a full bathroom in the basement. The pipes and wiring were installed at the time of construction but we decided not to build the bathroom until later. That time has now arrived.

I merely propose to finally finish what was approved more than a decade ago – with the exception of the formal creation of a second unit.

Yours sincerely,

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

David Pate

cc. Councillor Sheila Fougere