



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 10.2.2
Halifax and West Community Council
October 10, 2017

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Kelly Denty, Acting Director, Planning and Development

DATE: September 22, 2017

SUBJECT: Case 20399: Appeal of Variance Approval – 2890 Connolly Street, Halifax

ORIGIN

Appeal of the Development Officer's decision to approve a request for variances.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; VIII, Planning and Development:

- S.250, a development officer may grant variances in specified land use by-law or development agreement requirements but under 250(3) a variance may not be granted if:
 - (a) The variance violates the intent of the development agreement or land use bylaw;
 - (b) The difficulty experienced is general to properties in the area;
 - (c) The difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use bylaw
- S.251, regarding variance requirements for notice, appeals and associated timeframes
- S.252, regarding requirements for appeal decisions and provisions for variance notice cost recovery

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

It is recommended that Halifax and West Community Council deny the appeal, and in so doing, uphold the decision of the Development Officer and approve the request for variances.

BACKGROUND

A proposal has been submitted for 2890 Connolly Street, Halifax to demolish the existing dwelling and construct a new two unit dwelling in its place (Maps 1 and 2). In order to facilitate this project, a variance has been requested to relax the minimum lot area and the gross floor area requirements.

This is the second variance request for this property. In August of 2012, variance requests were also made in support of developing the lot with a two unit dwelling. Those requests were refused by the Development Officer and upheld by Community Council on appeal. That application proposed a lot coverage of 36%, exceeding the permitted 35%; a reduction in lot area and a gross floor area of 3,988 sq. ft.

The current proposal meets the lot coverage requirement and the gross floor area proposed has been reduced by 800 sq. ft. The lot area remains the same.

Site Details:

Zoning: R-2 (General Residential) Zone
Halifax Peninsula Land Use By-law (No Secondary Plan Area)

	Zone Requirement	Variance Requested
Min Lot Area	5,000 sq. ft.	3,774 sq. ft.
Min Gross Floor Area	2,641 sq. ft.	3,193 sq. ft.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variances (Attachment C). A property owner within the 30-meter notification boundary has appealed the approval and the matter is now before Halifax and West Community Council for decision.

Process for Hearing an Appeal

Administrative Order Number One, the Procedures of the Council Administrative Order requires that Council, in hearing any appeal, must place a motion to “allow the appeal” on the floor, even if such motion is in opposition to the recommendation contained in the staff report. As such, this report contains within the Recommendation section, the wording of the appeal motion for consideration as well as a staff recommendation. For the reasons outlined in this report, staff recommend the Community Council deny the appeal and uphold the decision of the Development Officer to approve the request for variances.

DISCUSSION

Development Officer’s Assessment of Variance Request:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

“250(3) A variance may not be granted if:

- (a) *the variance violates the intent of the development agreement or land use by-law;*
- (b) *the difficulty experienced is general to properties in the area;*
- (c) *the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.”*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer’s assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

The Land Use By-law intends that lot sizes should increase as the number of residential units increases. Throughout the by-law, site density is controlled by lot area requirements. However, the R-2 Zone permits two unit dwellings through the internal conversion of existing residential buildings regardless of lot area. New two unit dwellings must be developed on lots which meet the minimum lot area requirements.

The property is zoned R-2 which permits a two unit dwelling. The internal conversion clause of the zone would permit the existing single family dwelling to be converted to two units as-of-right, i.e. without a variance for lot area. The existing building could be converted to two units, but the building is older and modest in size and the resulting units would be relatively small. The new building proposed is a modest, two and a half storey building with each two bedroom dwelling unit being approximately 1,600 sq. ft. in area.

Requirements limiting gross floor area (GFAR) were adopted by Council in November 2011 in response to a proliferation of large single unit dwellings being developed at minimum setbacks, maximum height and maximum lot coverage, with many bedrooms. Six bedrooms are permitted in a two unit dwelling and only four are proposed. Lot coverage is at the maximum permitted, but the building is 30 feet in height, where 35 feet is permitted. The gross floor area exceeds the permitted floor area by only 550 sq. ft.

It is the Development Officer's opinion that the requested lot area, and GFAR variances to enable the development of a two unit dwelling on the property do not violate the intent of the Peninsula Land Use By-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

There are fifteen properties within the immediate neighbourhood within the same R-2 zoning as the subject property. All the lots have similar lot frontage and area dimensions and none of the lots meets the minimum lot size requirements for the R-2 Zone. There are eight single unit dwellings and three, two unit dwellings and a multi-unit dwelling.

The lot is located at the corner of London Street and Connolly Street. The lot size is not unique to the general area; however, the other lots at this corner consist of two, two-unit dwellings and an apartment building. In the immediate area this lot was somewhat unique as it is the only single unit dwelling at this corner, however the single unit has now been demolished.

It is the Development Officer's opinion that the difficulty experienced is not general to properties in the area.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

That is not the case in this request. The applicant has applied for a Development Permit and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

Appellant’s Appeal:

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment D) for Council’s consideration. These points are summarized and staff’s comments on each are provided in the following table:

Appellant’s Appeal Comments	Staff Response
<i>The variance is for both Lot Area and Gross Floor Area. Allowing these variances together compounds the out-of-character nature of the application. The lot is 32% smaller than permitted for a two-unit dwelling and the Gross Floor Area is 20% larger than permitted – this has a compounding effect on the mass of the building. The building is too large for the intended lot.</i>	Refer to earlier discussion concerning violation of the intent of the land use by-law. Since the original 2012 proposal, the applicant has revised the building form to enable it to better fit with the neighbourhood. The original building size has been reduced by 800 sq. ft. in area and now complies with the lot coverage requirement.
<i>This is the second time this application was brought forward. The previous application was Case 17476 and was heard by Halifax and West Community Council on December 10, 2012. At that time, Mr. Faulkner and HWCC rejected the application. I cannot understand the rational (sic) for approving the variance now; whereas it was rejected in 2012 under very similar characteristics. The application today is marginally smaller in Gross Floor Area but is still substantially too large and does not meet the intent of the Municipal Planning Strategy or Land Use Bylaw. I’m also disappointed that this fact was not disclosed in the letter since it’s quite relevant to the discussion.</i>	A decision on a variance does not set precedent. Every variance request must be reviewed on its own merits. Refer to earlier discussion concerning violation of the intent of the land use by-law.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were approved as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report.

COMMUNITY ENGAGEMENT

Community engagement, as described by the Community Engagement Strategy, is not applicable to this process. Where a variance approval is appealed, a hearing is held by Council to provide the opportunity for the applicant, appellants and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may deny the appeal and uphold the decision of the Development Officer and approve the variances.
2. Council may allow the appeal and overturn the decision of the Development Officer and refuse the variances.

ATTACHMENTS

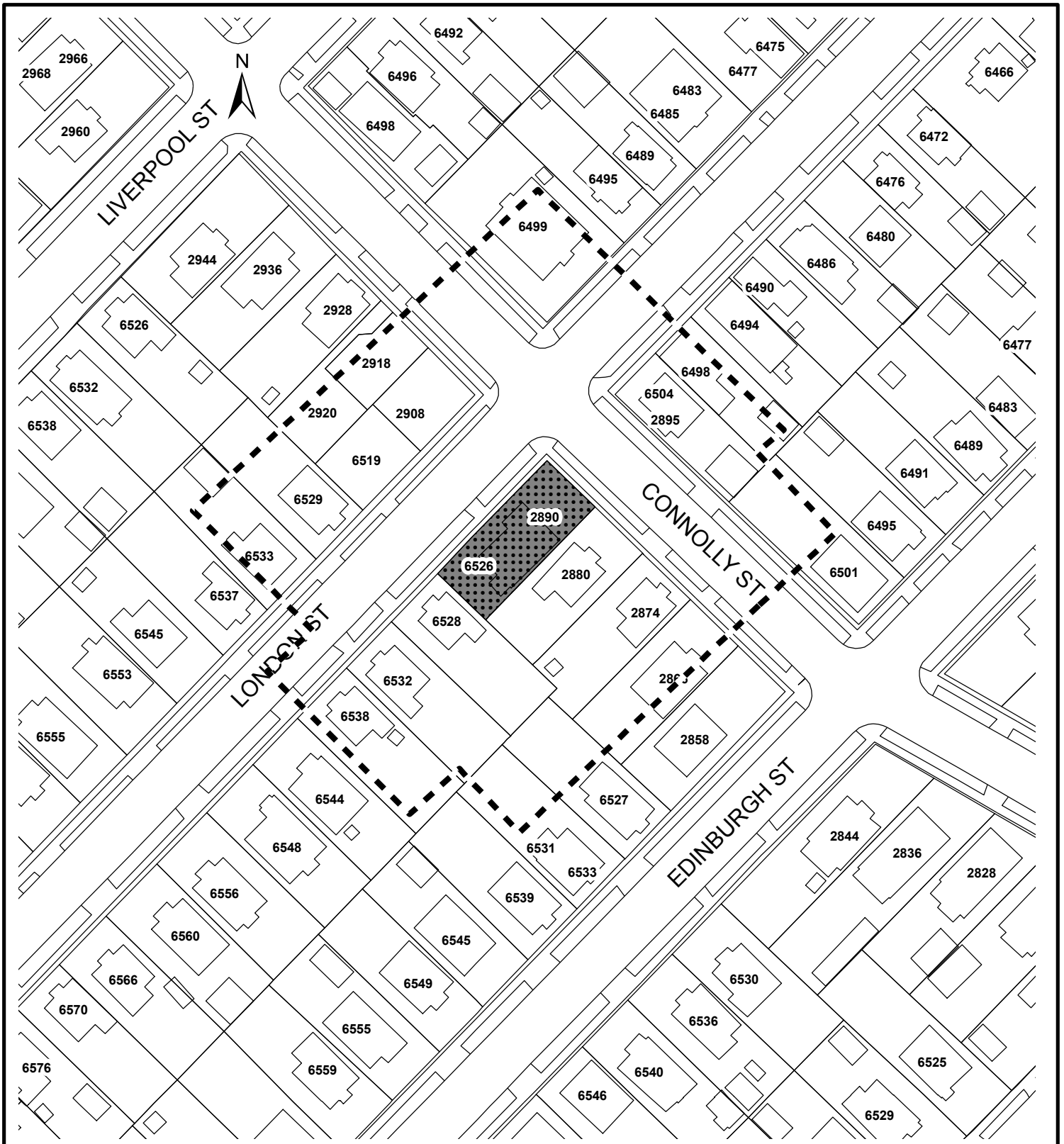
Map 1	Notification Area
Map 2	Site Plan
Attachment A	East and West Building Elevations
Attachment B	North and South Building Elevations
Attachment C	Variance Approval Letter
Attachment D	Letter of Appeal

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Walsh, Planner I, 902.490.4462
Andrew Faulkner, Principal Planner and Development Officer 902.490.4341

Original Signed

Report Approved by: Kevin Warner, Program Manager, Land Development and Subdivision 902.490.1210



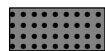
Map 1 - Notification Area

2890 Connolly Street,
Halifax

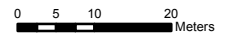
HALIFAX



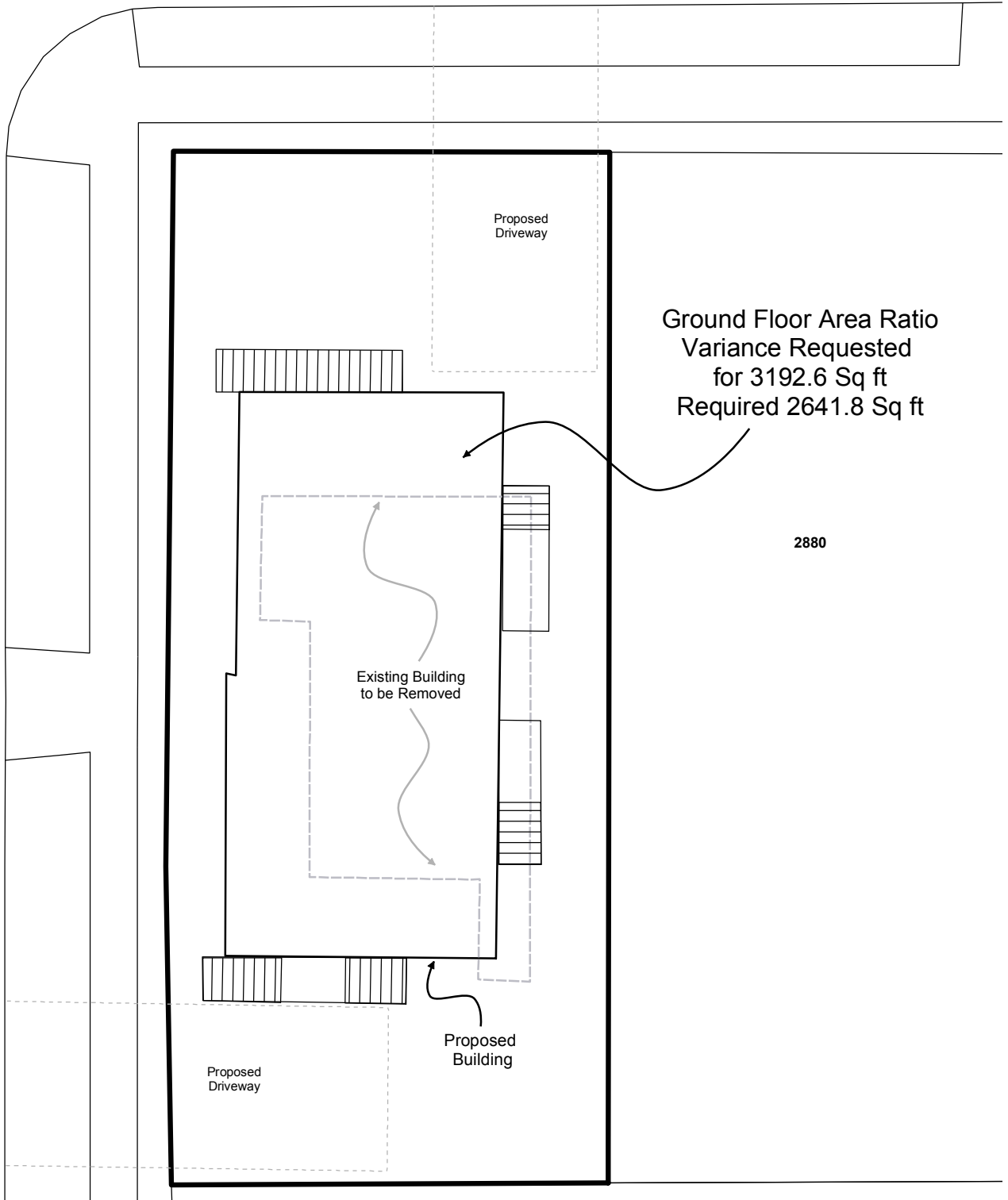
Notification Area



Subject Property



HRM does not guarantee the accuracy of any base map information on this plan.



Map 2 - Site Plan

2890 Connolly Street,
Halifax

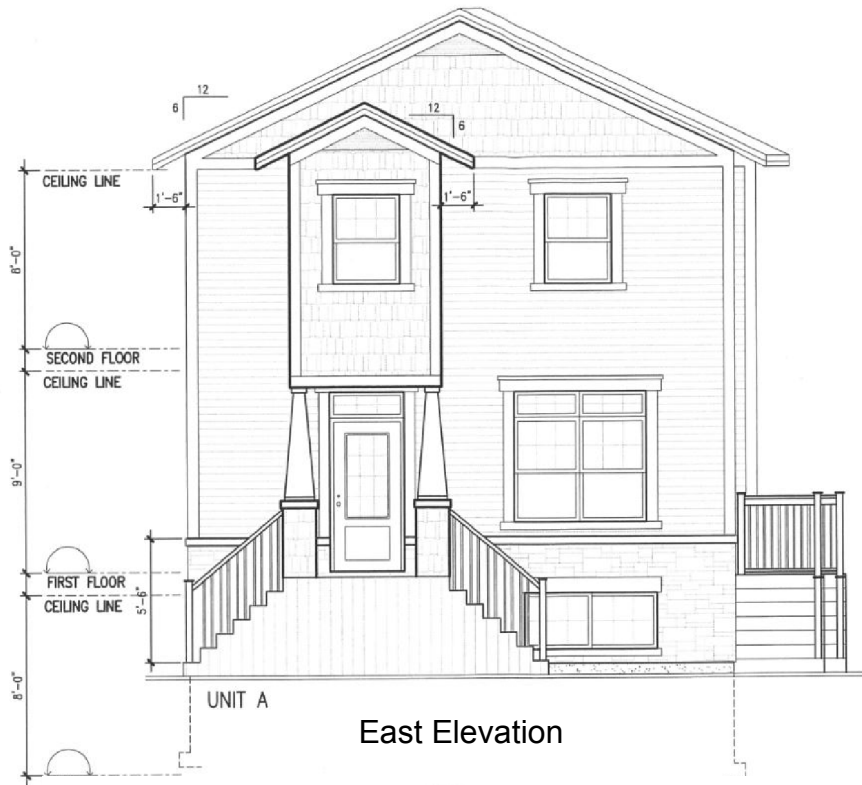


Subject Property

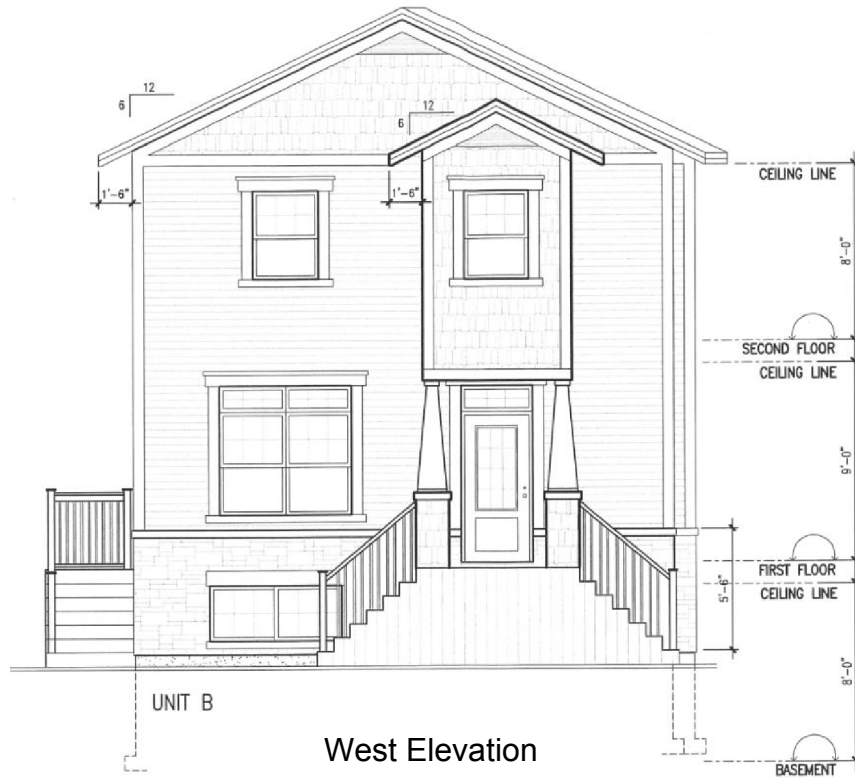
HALIFAX



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East Elevation



West Elevation

Attachment A - East and West Building Elevations

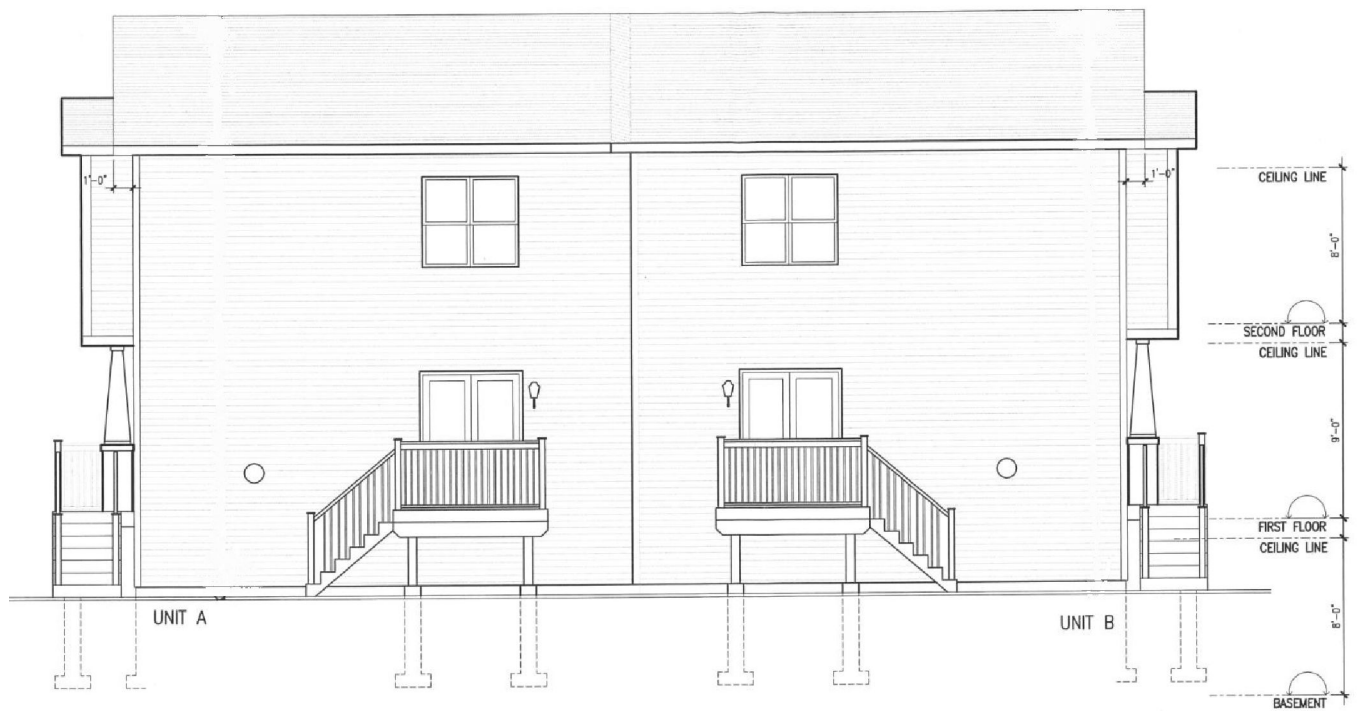
2890 Connolly Street,
Halifax



HRM does not guarantee the accuracy of any base map information on this plan.



North Elevation



South Elevation

Attachment B - North and South Building Elevations

2890 Connolly Street,
Halifax



HRM does not guarantee the accuracy of any base map information on this plan.

Attachment C - Variance Approval Letter

May 20, 2016

Mierlo Properties Limited
C/O Greg Kelly
19 Nottingham Street
Bedford, N.S B4A 3A8

Dear Mr. Kelly,

Re: Case No. 20399 - Variance for 2890 Connolly Street, Halifax, Nova Scotia. PID # 00117796

This will advise that I have approved your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 2890 Connolly Street, Halifax, Nova Scotia
Project Proposal: Construct a two unit dwelling

Required Lot Area: Five thousand square feet in area (5000sqft)
Approved Lot Area Variance: Three thousand seven hundred and seventy four square feet in area (3774sqft)

Required Gross Floor Area: Two thousand six hundred and forty one square feet in area (2641 sqft)
Approved Gross Floor Area Variance: Three thousand s one hundred and ninety three square feet in area (3193sqft)

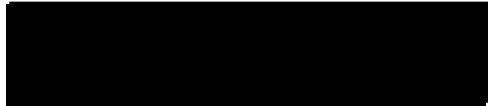
In accordance with Section 251(1) of the Halifax Regional Charter, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **June 6, 2016. No permits will be issued until the appeal period has expired and any appeals disposed of.**

HALIFAX

Halifax Regional Municipality
PO Box 1749, Halifax, Nova Scotia
Canada B3J 3A5

halifax.ca

If you have any questions or require additional information, please contact Laura Walsh at 490-4462.



Andrew Faulkner, Development Officer

cc. Kevin Arjoon, Municipal Clerk
Councilor Linda Mosher

Attachment D - Letter of Appeal

May 26, 2016

Andrew Faulkner, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5 Canada

Sent Via E-Mail: Clerks@halifax.ca

Dear Mr. Faulkner:

Re: Case No.20399 – Variance for 2890 Connolly Street, Halifax, Nova Scotia (PID #00117796)

I received your letter dated May 20, 2016 stating that you had approved a request for a variance for the above noted property. I am writing to make formal appeal of your decision.

My reason for appealing the decision is as follows:

- The variance is for both Lot Area and Gross Floor Area. Allowing these variances together compounds the out-of-character nature of the application. The lot is 32% smaller than permitted for a two-unit dwelling and the Gross Floor Area is 20% larger than permitted – this has a compounding effect on the mass of building on the property. The building is too large for the intended lot; and,
- This is the second time this application was brought forward. The previous application was Case 17476 and was heard by Halifax and West Community Council on December 10, 2012. At that time, Mr. Faulkner and HWCC rejected the application. I cannot understand the rationale for approving the variance now; whereas, it was rejected in 2012 under very similar characteristics. The application today is marginally smaller in Gross Floor Area but is still substantially too large and does not meet the intent of the Municipal Planning Strategy or Land Use Bylaw. I'm also disappointed that this fact was not disclosed in the letter since it's quite relevant to the discussion.

I look forward to hearing what Halifax and West Community Council has to say in this matter – four years after having already made a decision on this application in 2012.

Regards,


Nathan Rogers
2880 Connolly Street