



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

Item No. 10.2.1
Halifax and West Community Council
January 23, 2018

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed
Kelly Denty, Acting Director, Planning and Development

DATE: November 30, 2017

SUBJECT: Case 19997: Appeal of Variance Refusal – 5516 Falkland Street, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part 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 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.
- 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 to refuse the request for variances.

BACKGROUND

A development proposal has been submitted for 5516 Falkland Street, Halifax, to construct an addition and convert a single unit dwelling to a two-unit dwelling (Map 2). In order to facilitate this project, variances have been requested to relax the required lot area, lot frontage, lot coverage, left side yard and right side yard requirements.

Site Details:

Zoning: R-2 General Residential Zone under the Halifax Peninsula Land Use By-law (Peninsula North, Area 8, Sch A)

	Requirement	Proposed
Minimum Lot Area	5,000 square feet	1,896 square feet
Minimum Lot Frontage	50 feet	21 feet - 8 inches
Maximum Lot Coverage	35 percent	38 percent
Minimum Left Side Yard	5 feet	0 feet
Minimum Right Side Yard	5 feet	0 feet

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment B). The applicant has appealed the refusal and the matter is now before Halifax and West Community Council for decision (Attachment C).

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 that Community Council deny the appeal and uphold the decision of the Development Officer to refuse 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?

It is the Development Officer's opinion that this proposal violates the intent of the LUB.

Lot Coverage

The maximum permitted lot coverage is 35 percent. A variance is required for lot coverage as the proposed addition will result in 38 percent lot coverage. The proposal does not meet the intent of the Land Use By-Law because the second unit could be permitted through an internal conversion option. The intent of the internal conversion clause recognizes an existing condition and provides a property owner additional density provided the existing condition remains the same, such as lot coverage, side yard setbacks and building mass. The effect on the neighborhood is seen as minimal where the existing condition exists and there is a small increase in density. This proposal, if approved, would not provide the neighborhood with the same condition where the request is to maintain the reduced lot frontage, reduced side yards and increase the lot coverage with a larger building outside the limits of the original footprint.

Lot Area and Frontage

The Land Use By-law intends that lot sizes and building setbacks should increase based on the number of residential units to be established on a property and throughout the By-law, site density is directly or indirectly controlled by lot area requirements. The intent of the By-law is to require larger lots for developments containing larger numbers of dwelling units. The required lot frontage and area for a two-unit dwelling is 50' and 5000 square feet. The required lot frontage and area for a single unit dwelling on a lot existing prior to May 11/95 is 30' and 3,000 square feet. This property has 21'8" of frontage and has a lot area of 1,896 square feet, less than that required for a single unit dwelling. The existing residence is a two-unit dwelling, however, the authorized use for this site is a single unit dwelling. A variance is required to legalize the existing two-unit dwelling. The existing two-unit dwelling could be legalized, without requiring variances, under Section 431 (Two Unit Conversion – Peninsula North) if an addition was not proposed.

Side Yard Setbacks

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. A variance is required for the side yard setbacks because the authorized use is a single unit dwelling and a change in use to a two-unit dwelling (not through an internal conversion) results in an increase to the required side yards. As outlined in the above table the required side yard for a single unit dwelling is 0 feet, whereas the required side yard for a two-unit dwelling is 5 feet. The existing residence is 0 feet from the right and left side yard (in fact, it encroaches over the left side property line). The proposed addition is 5' from the left side property line and 0 feet from the right side property line. Where a change in use is proposed such as this, the entire residence has to meet the applicable requirements for the new use.

As such, the Development Officer determined that the requested variances violate the intent of the 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 neighborhood 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.

The difficulty experienced is general to properties in the area. There are 21 properties (including 5516 Falkland) in the notification area.¹ Of those 21, 16 are zoned R-2. These 16 properties are developed as follows: nine are single unit dwellings, four are developed as two unit dwellings, one is a four-unit dwelling, and two are vacant. The lot next door to this site (5520 Falkland) was recently issued a development permit to rebuild a non-conforming two-unit dwelling. A variance application was not required for that development.

¹ On February 21, 2017, Regional Council increased the distance for notice of a variance from 30m to 100m.

Four properties are zoned C-2, one is a 55 unit building with commercial space, one is an office and two are vacant. One property is zoned C-2 and R-2 and is commercial (restaurant and Salvation Army). The majority of the properties zoned R-2 are developed with single unit dwellings on undersized lots which would also require a variance for a similar proposal.

On this basis, the difficulty experienced relative to the requested variances is 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 in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in the approval of the 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 appellants have raised certain points in their letters of appeal (Attachment C) 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 proposed conversion from one to two-units is consistent with other properties in the area as there are two and three unit homes adjacent or on the same block as the property. There is as well a six-storey mixed-use but largely residential building directly across the street."</i>	As outlined earlier in this report the majority of the properties zoned R-2 are developed with single unit dwellings on undersized lots which would also require a variance for a similar proposal. The mixed use building noted is located at 5505 Falkland and the property is zoned C-2.
<i>"With close proximity to amenities and public transit on Gottingen Street, we believe both this property and the area would benefit from the proposed increase in density from one to two units as an over under duplex, and have no adverse effect."</i>	The points noted are not criteria for consideration.
<i>"Our client is offering to provide a right of way from the adjacent two-unit property, 5520 Falkland Street that she also owns in order to provide two parking spaces for this proposed conversion. Currently, 5516 Falkland has no parking."</i>	The proposed development meets the parking requirements under the Halifax Peninsula Land Use Bylaw.

Conclusion:

Staff has reviewed all the relevant information for this variance proposal. As a result of that review, the requests were refused as it was determined that the proposal conflicts with the statutory criteria provided by the *HRM Charter*. The matter is now before Halifax and West Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this request for variances.

RISK CONSIDERATION

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

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a variance approval is refused, and appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellant(s) to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.
2. Halifax and West Community Council may deny the appeal and uphold the decision of the Development Officer and refuse the variance.

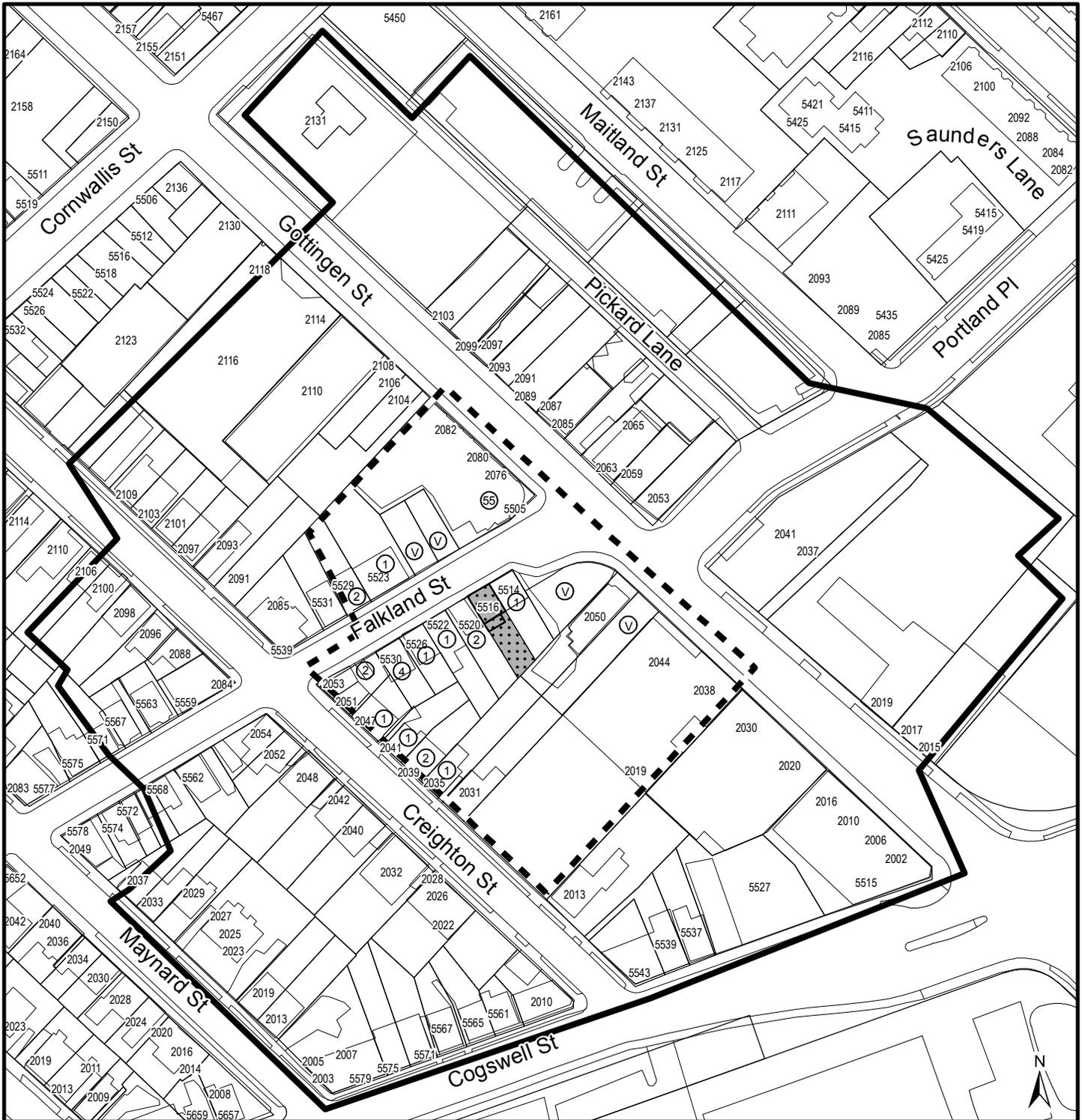
ATTACHMENTS

Map 1	Notification Area
Map 2	Site Plan
Attachment A	Building Elevations
Attachment B	Variance Refusal Notice
Attachment C	Letter of Appeal from Applicant

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: Sean Audas, Development Officer 902.490.4402

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

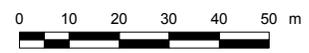


Map 1 - Notification Area

HALIFAX

5516 Falkland Street
Halifax

-  Subject Property
-  30m notification Area
-  100m notification Area
-  Number of Residential Units
-  Vacant Properties



Halifax
Plan Area

The accuracy of any representation on this plan is not guaranteed.

Falkland St



Requested Frontage 21' 8"
Required Min. Frontage 50'

5522

Existing Dwelling

5516

5514

5520

Proposed Addition

7' 9"

Requested Setback 0'
Required Setback 5'

Requested Setback 0'
Required Setback 5'

16' 9 5/16"

Requested Lot Area 1,896 Sq. Ft.
Required Lot Area 5,000 Sq. Ft.

Requested Lot Coverage 38%
Required Max. Lot Coverage 35%

Map 2 - Site Plan

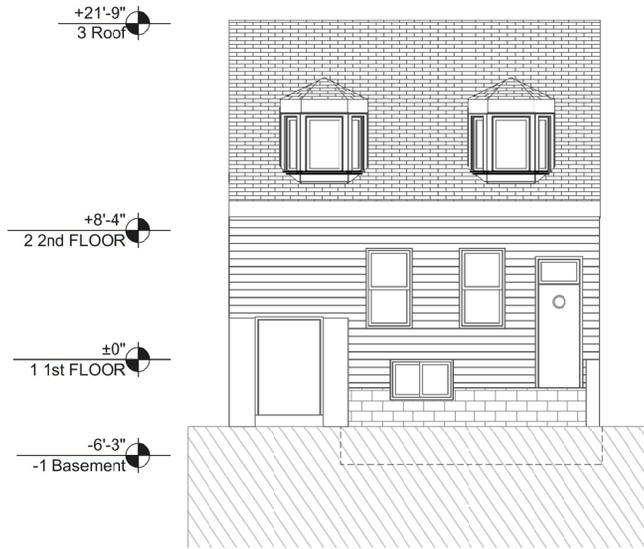
5516 Falkland Street
Halifax

HALIFAX



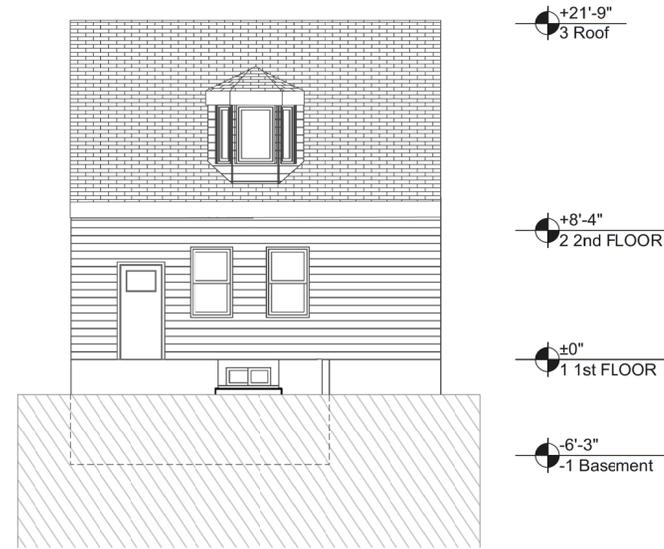
Halifax
Plan Area

The accuracy of any representation on this plan is not guaranteed.



EXISTING NORTH ELEVATION

SCALE: 1/8" = 1'-0"



EXISTING SOUTH ELEVATION

SCALE: 1/8" = 1'-0"

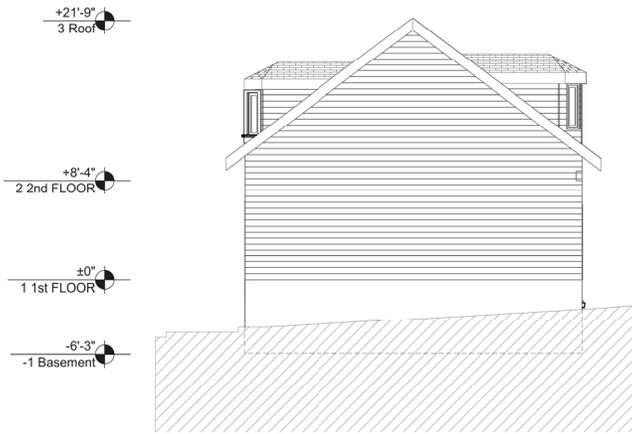


2242 Maitland St
Halifax, NS B3K 2Z9
902 412 2329

5516 FALKLAND ST, HALIFAX
EXISTING North/South Elevation

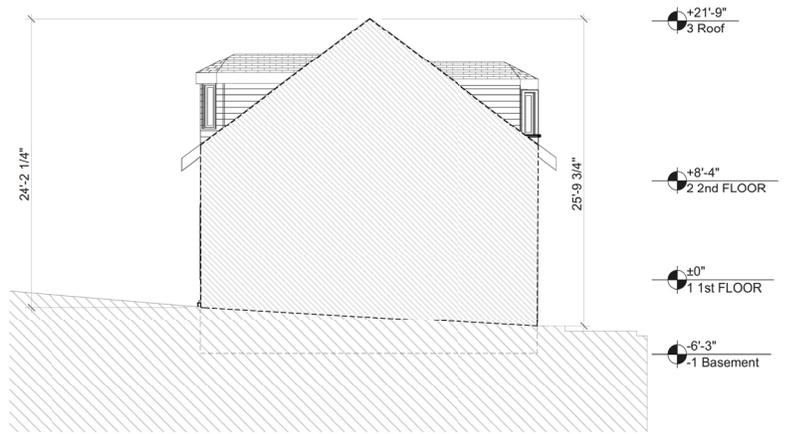
DEVELOPMENT PERMIT
APPLICATION
Owner: Nanci Lee

Date: 2015-10-16
Scale: 1/8" = 1'-0"



EXISTING WEST ELEVATION

SCALE: 1/8" = 1'-0"



EXISTING EAST ELEVATION

SCALE: 1/8" = 1'-0"



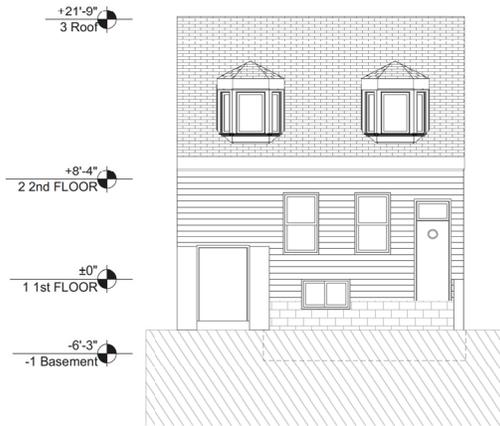
2242 Maitland St
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5516 FALKLAND ST, HALIFAX
EXISTING West/East Elevation

DEVELOPMENT PERMIT
APPLICATION
Owner: Nanci Lee

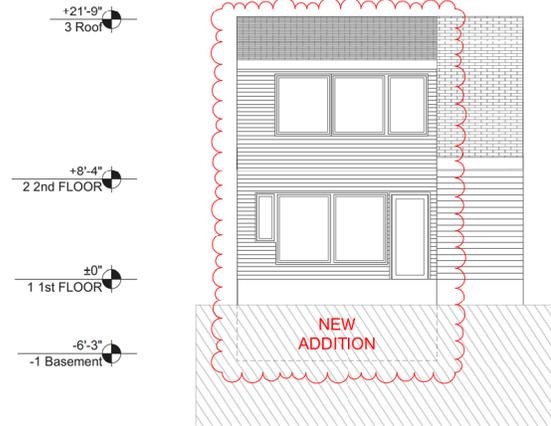
Date: 2015-10-16
Scale: 1/8" = 1'-0"

AX-2.2



NEW NORTH ELEVATION

SCALE: 1/8" = 1'-0"



NEW SOUTH ELEVATION

SCALE: 1/8" = 1'-0"



2242 Maitland St
Halifax, NS B3K 2Z9
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5516 FALKLAND ST, HALIFAX
PROPOSED North/South Elevation

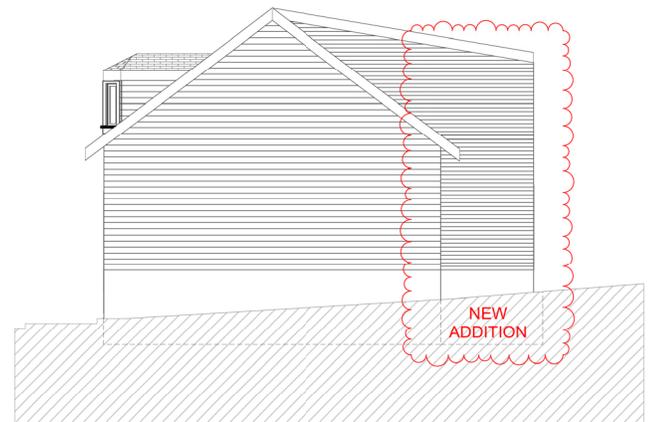
DEVELOPMENT PERMIT
APPLICATION
Owner: Nanci Lee

Date: 2015-10-16
Scale: 1/8" = 1'-0"



NEW EAST ELEVATION

SCALE: 1/8" = 1'-0"



NEW WEST ELEVATION

SCALE: 1/8" = 1'-0"



2242 Maitland St
Halifax, NS B3K 2Z9
902 412 2329

**5516 FALKLAND ST, HALIFAX
PROPOSED West/East Elevation**

DEVELOPMENT PERMIT
APPLICATION
Owner: Nanci Lee

Date: 2015-10-16
Scale: 1/8" = 1'-0"

July 24, 2015

Ed Edelstein
Ecogreen Homes

Dear Mr. Edelstein,

RE: Variance Application #19997, 5516 Falkland St., Halifax, PID #00159129

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

Location: 5516 Falkland Street, Halifax PID #00159129
Project Proposal: To construct an addition and convert from a Single Unit Dwelling to a Two Unit Dwelling.

	Requirement	Proposed
Minimum Lot Area	5000 square feet	1896 square feet
Minimum Lot Frontage	50 feet	21 feet 8 inches
Maximum Lot Coverage	35 percent	38 percent
Minimum Left Side Setback	5 feet	0 feet
Minimum Right Side Setback	5 feet	0 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 this variance application does not merit approval because:

- (a) the variance violates the intent of the land use bylaw
- (b) the difficulty experienced is general to properties in the area.

HALIFAX

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

halifax.ca

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 Sean Audas, 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 **August 10, 2015**.

If you have any questions or require clarification of any of the above, please call Janice MacEwen at 902-490-3993.

Sincerely,


Original Signed

**Sean Audas
Development Officer**

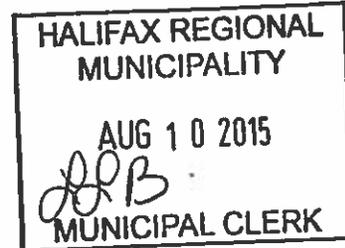
cc. **Cathy Mallet, Municipal Clerk
Councillor Wayne Mason, (District 7)**



2242 MAITLAND STREET
HALIFAX, NS
B3K 2Z9
ed@ecogreenhomes.ca
a division of 2004547 Ontario Inc.

August 7, 2015

Cathy Mellett, Municipal Clerk
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5



RE: Application for Variance - File #19997 – 5516 Falkland Street, Halifax - PID 00159129

Dear Municipal Clerk,

As agents for our client, Ms. Nanci Lee, owner of 5516 and 5520 Falkland Street, Halifax, we are acting in response to the refusal by Mr. Audas, Development Officer, of our request for a variance of the Halifax Peninsula Land Use Bylaws for this property. Please accept this as a letter of appeal of the denial of variance application # 19997.

The property is located in Area 8 of the Peninsula North Planning Area, and is designated as medium-density residential on the Generalized Future Land Use Map of the Halifax Municipal Planning Strategy. The proposed conversion from one to two-units is consistent with other properties in the area as there are two and three unit homes adjacent or on the same block as the property. There is as well as a six storey mixed-use but largely residential building **directly across the street.**

With close proximity to amenities and public transit on Gottingen Street, we believe both this property and the area would benefit from the proposed increase in density from one to two units as an over under duplex, and have no adverse effect. Our client is offering to provide a right of way from the adjacent two-unit property, 5520 Falkland Street that she also owns in order to provide two parking spaces for this proposed conversion. Currently, 5516 Falkland has no parking.

We respectfully request this variance appeal be heard at Council around the beginning of October if possible as our client is traveling at times until then.

Yours truly,

Edward Edelstein,
EcoGreen Homes

c/o Sean Audas, Development Officer
c/c Councillors Waye Mason and Jennifer Watts