



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

**Item No. 10.2.2**  
**Halifax and West Community Council**  
**January 23, 2018**

**TO:** Chair and Members of Halifax and West Community Council

**SUBMITTED BY:** **Original Signed**

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Kelly Denty, Acting Director, Planning and Development

**DATE:** November 30, 2017

**SUBJECT:** **Case 20885: Appeal of Variance Approval – 14 Vimy Ave, Halifax**

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**ORIGIN**

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

**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 approve the request for a variance.

## **BACKGROUND**

A variance request has been submitted for 14 Vimy Ave to demolish an existing duplex and permit the site to be developed with a new 12 unit residential dwelling (Map 1 and Attachment 1 and 2). In order to facilitate this project, a variance has been requested to relax the required minimum lot frontage.

The subject property is located within the R-2AM, General Residential Conversion Zone, Halifax Mainland Plan Area (Map 1). The zone permits a range of residential uses from single unit dwellings to 14 unit apartment buildings. The lot requirements range from 4,000 sq. ft. with 40 ft. of frontage to 7,500 sq. ft. with 75 ft. of frontage as density increases from 1 to 14 units. The maximum height, regardless of use, is 35 ft.

The proposed multi-unit building will meet the height requirement, as well as all side, rear and front yard setbacks. The lot is 10,560 sq. ft. in area; however, the frontage is only 66 ft. where 75 ft. is required.

A variance request has been submitted to relax the required lot frontage by 9 ft. to accommodate the development.

### **Site Details:**

**Zoning:** R-2AM (GENERAL RESIDENTIAL CONVERSION) Zone, Halifax Mainland Land Use By-Law

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Lot Frontage</b>	75 feet	66 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). A neighbour 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 recommends that Community Council deny the appeal and uphold the decision of the Development Officer to approve the request for the variance.

## **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 should 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 and building setbacks should increase based on 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. For example, the standard minimum lot area requirements of the R-2 Zone are 4,000 square feet for single unit dwellings, 5,000 square feet for duplexes and 8,000 square feet for three and four unit buildings. Side yard setbacks are also increased as the number of units is increased, ranging from 4 feet to 6 feet. For low density residential development, the By-law intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas and greater open space between buildings and side yard lot lines.

The R-2AM Zone is intended to be developed with apartment buildings of up to 14 units. The 12 unit apartment proposed is actually less dense than that permitted in the zone. The setbacks are intended to maintain a separation distance between uses on adjacent lots and the street. The building proposed meets all setback requirements. The lot area required is 7,500 square feet. The lot at 14 Vimy Ave. is 10,560 sq., exceeding the requirement by more than 3,000 sq.ft. The lot frontage required is 75 ft. where the lot at 14 Vimy Ave. is 66 ft. The proposed development meets all other requirements of the by-law with the exception of the minimum required frontage.

It is the Development Officer's opinion that this proposal meets the general intent of the Land Use By-Law and the variance was granted.

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

In considering variance requests, the characteristics of the surrounding neighbourhood must be considered 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

While the surrounding properties are developed with a variety of land uses including single, two and three unit dwellings, as well as 11, 12 and 48 unit apartments, the lot fabric of five of the multi-unit residential properties in the area are on lots with similar lot area and frontage. The lot in question and abutting three lots are of same configuration and were created by deed as early as 1923.

There are a number of properties in the immediate area with similar lot frontage and lot areas. Some of which have already been developed with multi-unit dwellings. A variance would not be required for the existing 11 and 12 unit apartments to add 3 and 2 units, respectively. Therefore, the difficulty is not general to properties of similar size and use 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 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 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:

<b>Appellant’s Appeal Comments</b>	<b>Staff Response</b>
<i>Lot coverage, as per the site plan, seems to exceed maximum coverage.</i>	The R-2AM zone does not have a lot coverage requirement. Lot coverage is controlled by the setback requirements.
<i>The front yard setback is short of 30 feet</i>	The front yard requirement in the R-2AM Zone is 15 feet. The proposed setback is 25 feet.
<i>Overall height of project does not seem to consider the underground parking on which the then three story building will sit.</i>	"Height" when applied to a building, means the vertical distance of the highest point of the roof above the mean grade of the surface of all the streets adjoining the building or the mean grade of the natural ground so adjoining if such grade is not below the grade of the surface. The underground parking is not considered in measuring the overall height.
<i>Final grade of project makes no reference to adjacent properties thereby making potential negative impact hard to assess particularly as this lot is on a sloped street. No indication of intention to remediate lot grade changes and or backfill against the adjacent property.</i>	A grading plan will be required at the building permit stage and will be reviewed by HRM Engineering department to ensure compliance of their regulations. Pre and post runoff must be balanced.
<i>The most striking and the likely impactful feature of the development, as proposed in the presented concept, is the imposition of twelve balconies overlooking 12 Vimy Ave.</i>	The balconies will be required to meet the 12 foot side yard setback as proposed. Even though the lot is 9ft narrower than required, all side yard setbacks will be met.

**Conclusion:**

Staff has reviewed the relevant information in this variance proposal. As a result of that review, the variance request was 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. The procedure for public notification is mandated by the *HRM Charter*. Where a variance **approval is appealed**, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 30 metres of the variance 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 allow the appeal and overturn the decision of the Development Officer and deny the variance.
2. Council may deny the appeal and the decision of the Development Officer to approve the variance stands.

### **ATTACHMENTS**

Map 1	Notification Area
Map 2	Site Plan
Attachment 1	Entrance & Harbour Side Building Elevations
Attachment 2	Side and Street View Building Elevations
Attachment 3	Variance Approval Letter
Attachment 4	Letter of Appeal

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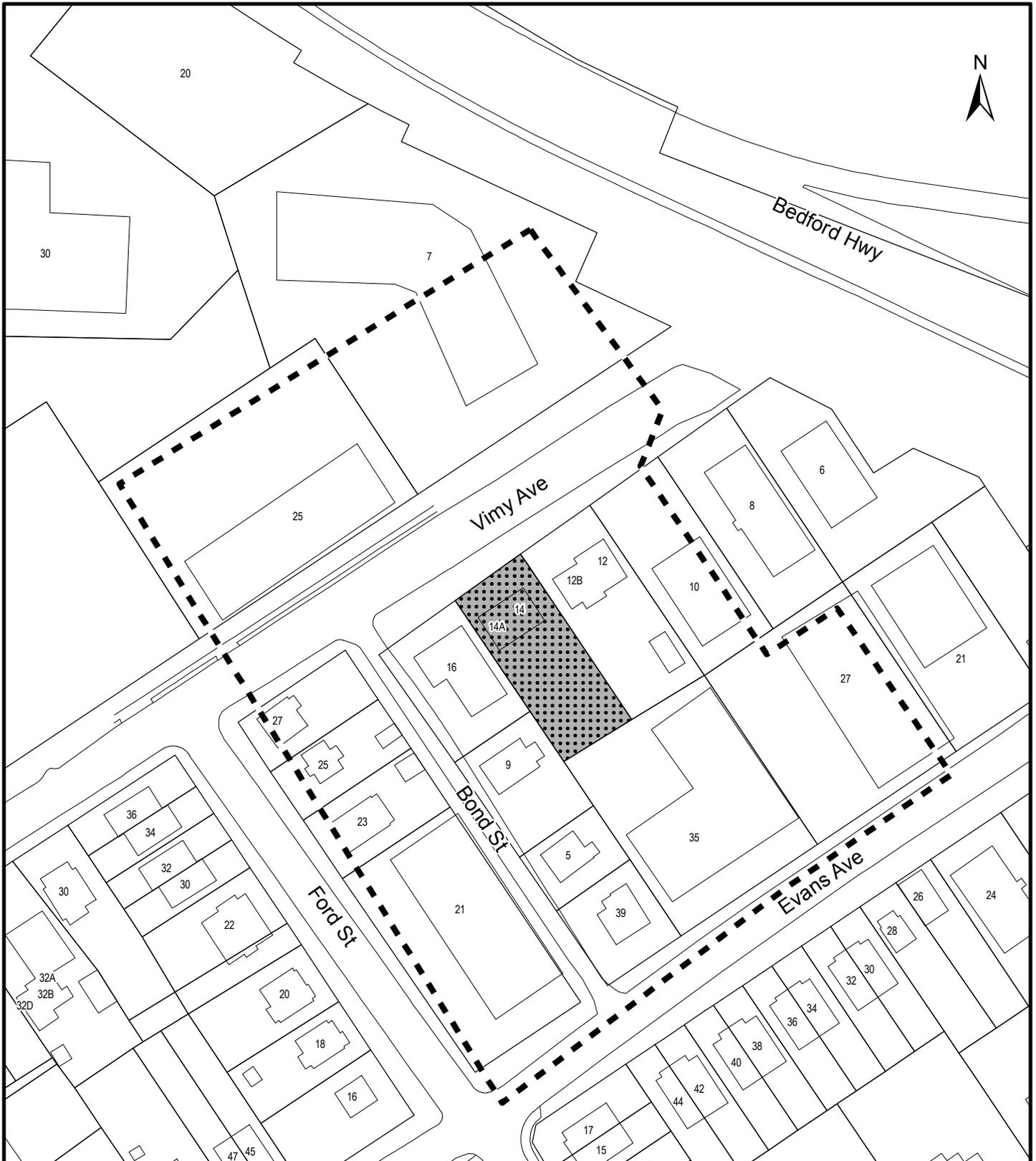
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Brenda Seymour, Planner 902-490-3244

Original Signed

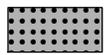
Report Approved by: Kevin Warner, Manager, Land Development & Subdivision 902-490-1210

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**Map 1 - Notification Area**

14 Vimy Ave.,  
Halifax

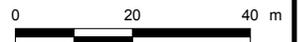


Subject Property



Notification Area

**HALIFAX**

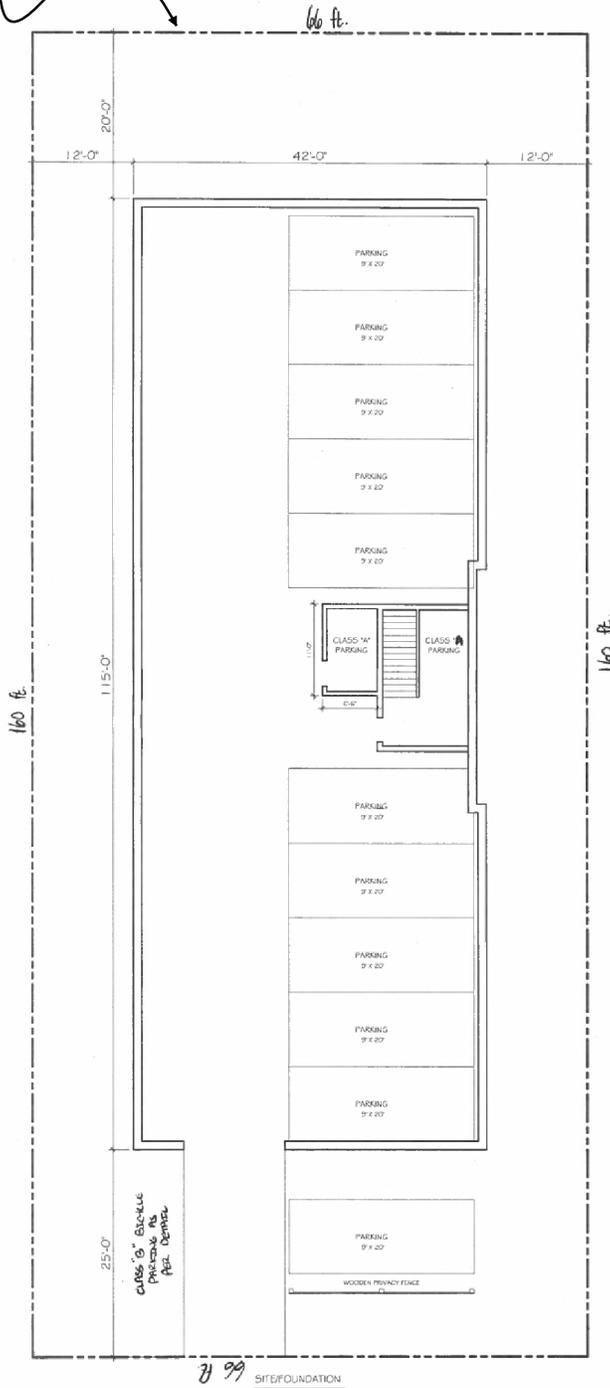


Halifax Plan Area

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

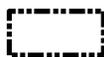
# Vimy Ave

Variance Request  
to reduce lot frontage  
from required 75 ft  
to 66 ft



## Map 2 - Site Plan

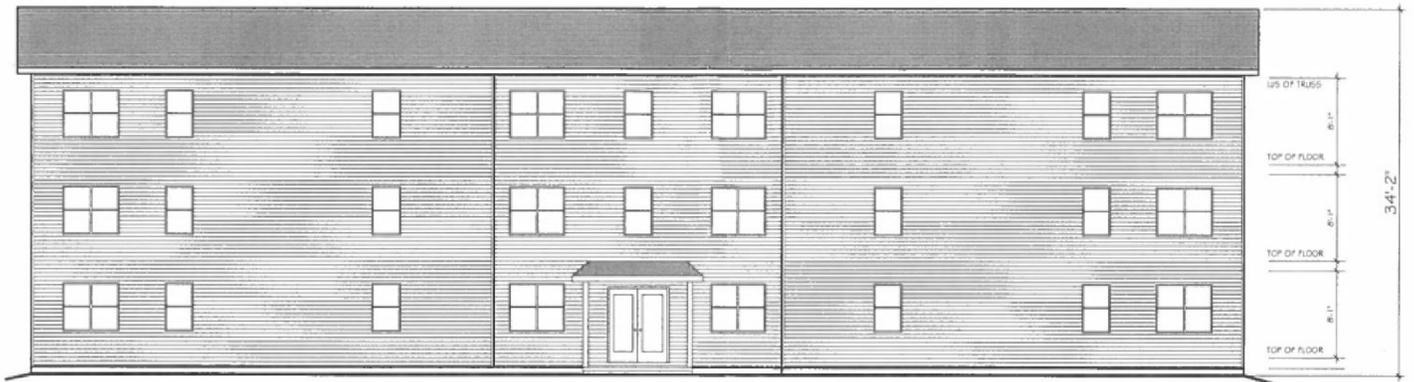
14 Vimy Ave.,  
Halifax



Subject Property

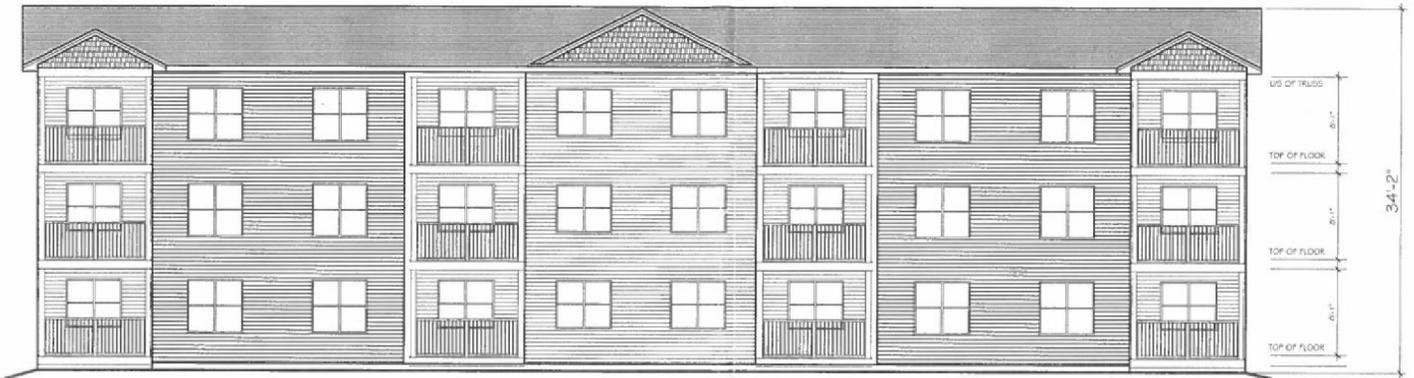
Halifax Plan Area

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



ENTRANCE VIEW

Entrance View Elevation



HARBOUR SIDE

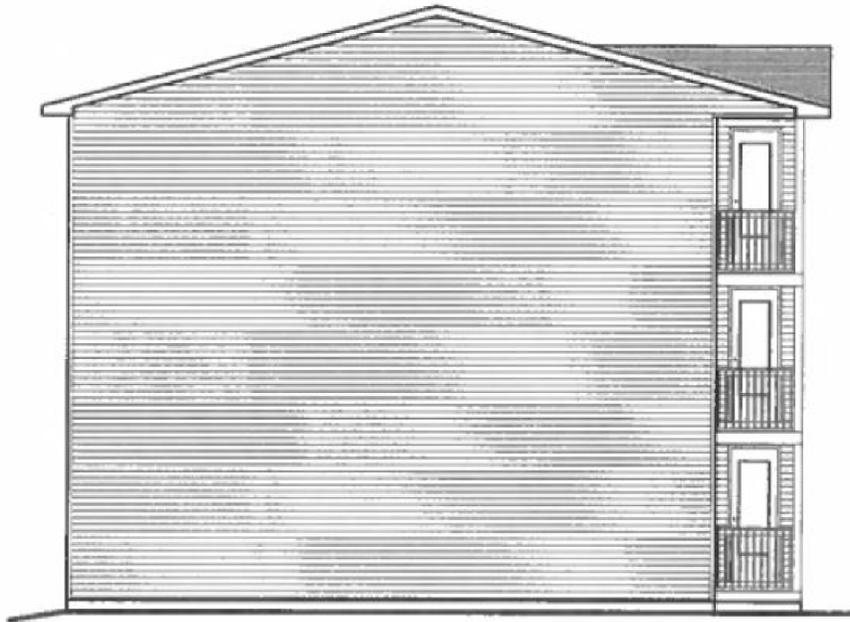
Harbour side Elevation

## Attachment 1- Entrance & Harbour Side Building Elevations

14 Vimy Ave.,  
Halifax

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





SIDE VIEW



STREET SIDE

## Attachment 2- Side and Street View Building Elevations

14 Vimy Ave.,  
Halifax

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



## Attachment 3- Variance Approval Letter

December 6, 2016

Dear Sir:

**RE: Variance Application #20885**

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

**Location: 14 Vimy Ave, Halifax**  
**Project Proposal: Construct 12 unit Multi-dwelling**

	Requirements	Proposal
<b>Minimum Lot Frontage</b>	<b>75 feet</b>	<b>66 feet</b>

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 30 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before **December 22, 2016**

**No permits will be issued until the appeal period has expired and any appeals disposed of.**

If you have any questions or require additional information, please contact Brenda Seymour, 902-490-3244.

Sincerely,

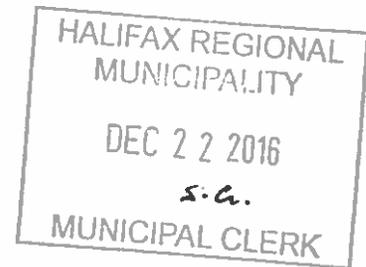
Andrew Faulkner  
Principal Planner/Development Officer

cc. Kevin Arjoon, Municipal Clerk  
Councilor Russell Walker - District 10

## Attachment 4 - Letter of Appeal

December 21, 2016

Andrew Faulkner, Principal Planner/Development Officer  
C/O Municipal Clerk  
Halifax Regional Municipality  
Planning and Development - Western Region  
P.O. Box 1749, Halifax N.S. B3J 3A5



Mr. Faulkner,

With reference to your December 6 correspondence in regard to an approved Variance Application #20885 for 14 Vimy Avenue, specifically a variance from a 75' required street frontage to 66', I would like to offer the following.

As the previous owner of the subject property at 14 Vimy Avenue and current owner of 12 Vimy Ave, I am well aware of the zoning issues surrounding these two properties and the immediate neighbourhood in general. The 9' variance requested has been previously granted for construction on 38 Vimy, 10 Vimy, and 6 Vimy. In this immediate neighbourhood this has meant construction of 10-12 unit buildings on undersize lots. Many of these buildings were accommodated by a former HFX Alderman with close ties to a particular developer.

This same Alderman later, in concert with a home owners group concerned with potential development on the former Titus Smith School property, then caused the development potential of 12 and 14 Vimy Avenue to be lost through quietly removing the R-2AM zoning. To be clear, we actively pursued a return to the R-2AM zoning for these two properties and, albeit after an extensive process and fight against the City, a vindictive neighbour, a bogus Homeowners group and the Alderman in question, were successful. In the end the close ties of the Alderman to the developer was a factor in having the zoning restored.

With the above background as an outline I would therefore respectfully appeal the variance granted based on its tie to a non-specific final project. I suggest that the conceptual drawings presented are too vague in detail to reflect sufficient grounds for the variance. I would like to point out some specifics:

- Lot coverage, as per the site plan, seems to exceed maximum coverage
- The front yard setback is short of 30'.
- Overall height of project does not seem to consider the underground parking on which the then three story building will sit.
- Final grade of project makes no reference to adjacent properties thereby making potential negative impact hard to assess particularly as this lot is on a sloped street.
- No indication of intention to remediate lot grade changes and or backfill against the adjacent property.

The most striking and the likely impactful feature of the development, as proposed in the presented concept, is the imposition of twelve balconies overlooking 12 Vimy Avenue to the detriment of future enjoyment of private property. Current experience of trash such as cigarette butts, coffee cups, beer cans and occasionally broken liquor bottles being throw across the property line would warrant some consideration.

I would suggest that a firm proposal with specifics as outlined addressed prior to granting variances would be preferable.

I have asked my son, John, to follow up on this matter as he resides at 12 Vimy Ave. Any correspondence can continue to be sent to my Porters Lake address.

In concluding I would like to clearly state that my appeal of the already granted variance is based solely on the vagueness of the conceptual plans presented.

Respectfully,

