



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

**Item No. 10.2.2**  
**Halifax and West Community Council**  
**April 17, 2018**

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

**SUBMITTED BY:** Original signed  
\_\_\_\_\_  
Steve Higgins, Acting Director, Planning and Development

**DATE:** March 19, 2018

**SUBJECT:** Case 21198: Appeal of Variance Approval – 6151 Cedar Street, Halifax

**ORIGIN**

Appeal of the Development Officer's decision to approve a 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 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**

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 variance.

## **BACKGROUND**

An application has been submitted to construct additions to an existing single unit dwelling at 6151 Cedar Street, Halifax, (Map 2). The proposal exceeds the lot coverage requirement and the applicant has requested a variance to relax this requirement.

### **Site Details:**

#### **Zoning**

The subject property is zoned R-2 (General Residential) Zone Under the Halifax Peninsula Land Use Bylaw (Peninsula Centre Secondary Plan Area). Lot coverage requirements in the R-2 zone are identified in the table below:

	Zone Requirement	Proposal
Maximum Lot Coverage	35%	37.2%

#### **Process for Hearing an Appeal**

The Development Officer approved the variance (Attachment B) and provided notification of the right of appeal to properties within 100-meters of the subject site. An appeal was received (Attachment C) and the question before Council is whether to uphold or deny the appeal. Upholding the appeal would overturn the Development Officer's approval and denying the appeal would confirm the Development Officer's approval.

## **DISCUSSION**

### **Development Officer's Assessment of Variance Request:**

When considering a variance appeal, Council may make any decision that the Development Officer could have made within the context of the criteria provided in the *Halifax Regional Municipality Charter*.

The *Charter* sets out the following criteria under which the Development Officer may not grant variances. In order to be approved, any proposed variance must not conflict with any of the criteria:

"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; or
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law."

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?**

Lot coverage requirements of the Land Use By-law restrict the area of a lot that can be covered by roofed structure and it is expressed as a percentage of lot size. The requested increase in lot coverage is 2.2% which represents a total of 81 sq. ft. This is considered to be a minimal variance that would result in a building not materially different than one in compliance with the 35% coverage requirement. Under these circumstances, it is the Development Officer's opinion that the proposed variance does not violate the intent of the Land Use By-law.

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

There are thirteen properties within the notification area which are also zoned R-2. The majority have lot frontages and areas that are slightly larger than the subject property. The average lot area of those 13 lots is approximately 190 sq. ft. larger than the subject property. This lot size constraint creates some minor difficulty on this lot that is not generally present throughout the area.

On this basis, it was felt 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?**

The applicant has applied for a Development Permit and variance in good faith prior to commencing any work. Intentional disregard of By-law requirements was not a consideration in this variance request.

**Appellant's Appeal:**

The appellant has raised two points in the letter of appeal (Attachment C) for Council's consideration. They have suggested that the proposed variance will worsen impacts associated with these issues. These points are summarized in the table below along with staff's comments:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<p><i>The appellant indicated the proposed variance will increase drainage issues on their property which they believe are the result of a decreasing amount of permeable land surface for water runoff in the area.</i></p> <p><i>The appellant indicated the proposed variance will negatively impact access to sunlight on their property.</i></p>	<p><i>Staff do not believe the proposed variance results in a building that is materially more impactful on these items than the building that would be built by-right in compliance with the 35% site coverage restriction.</i></p>

**Conclusion:**

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*, and the variance request was approved. 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 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 deny the variance.

### **ATTACHMENTS**

Map 1	Notification Area
Map 2	Site Plan
Attachment A	Plot Plan and Building Rendering
Attachment B	Variance Approval Letter
Attachment C	Letter of Appeal

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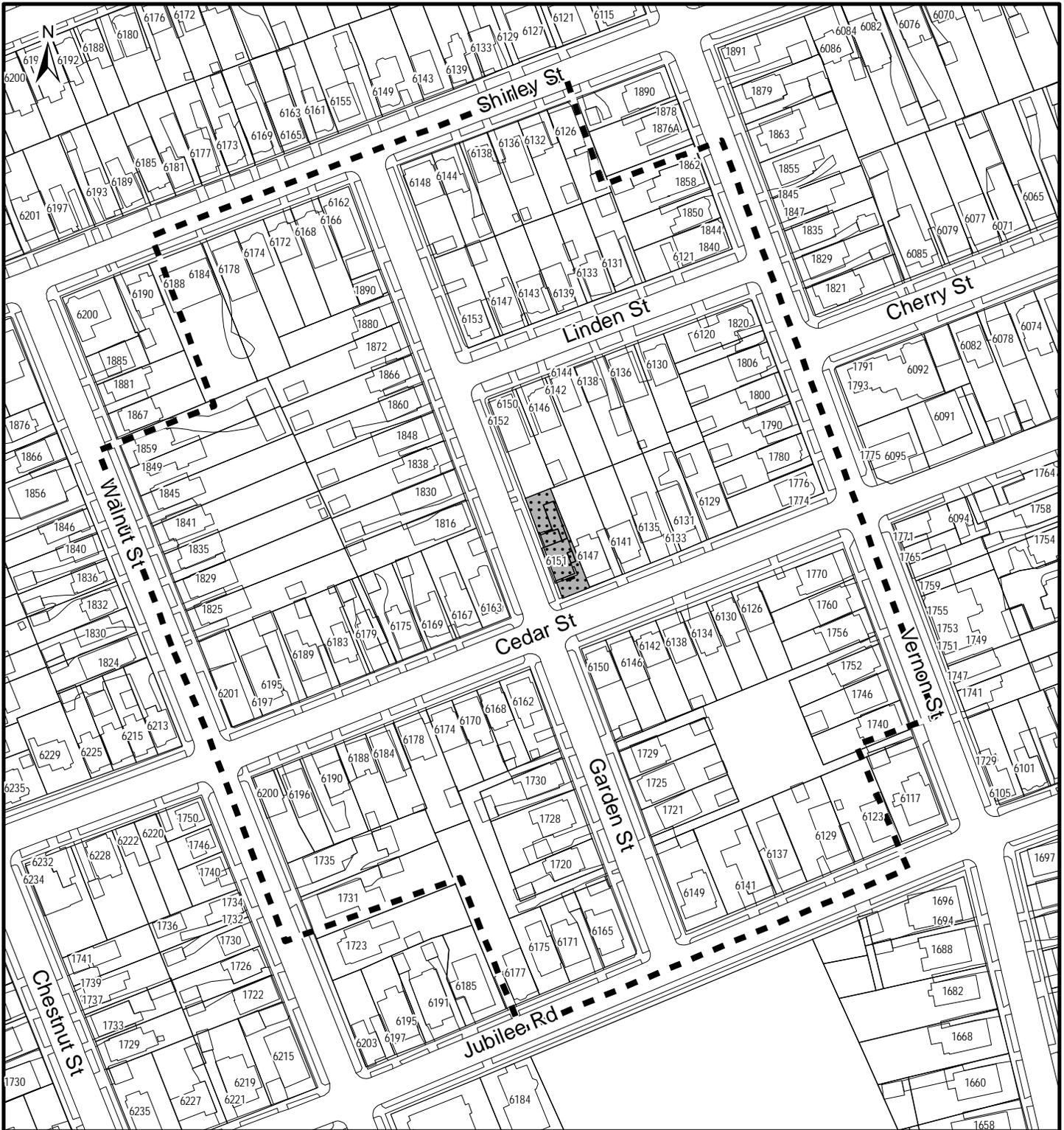
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Walsh, Planner 1, 902.490.4462  
Sean Audas, Principle Planner & Development Officer, 902.490.4402

Original signed

Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.490.1210

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**Map 1 - Notification Area**

6151 Cedar Street  
Halifax



Subject Property



Notification Area

Halifax Plan Area

**HALIFAX**



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



Garden St

Lot Coverage  
Permitted: 35%  
Proposed: 37.2%

Proposed  
Addition

Deck

Existing  
Dwelling

6151

Proposed  
Addition

6147

## Map 2 - Site Plan

6151 Cedar Street  
Halifax

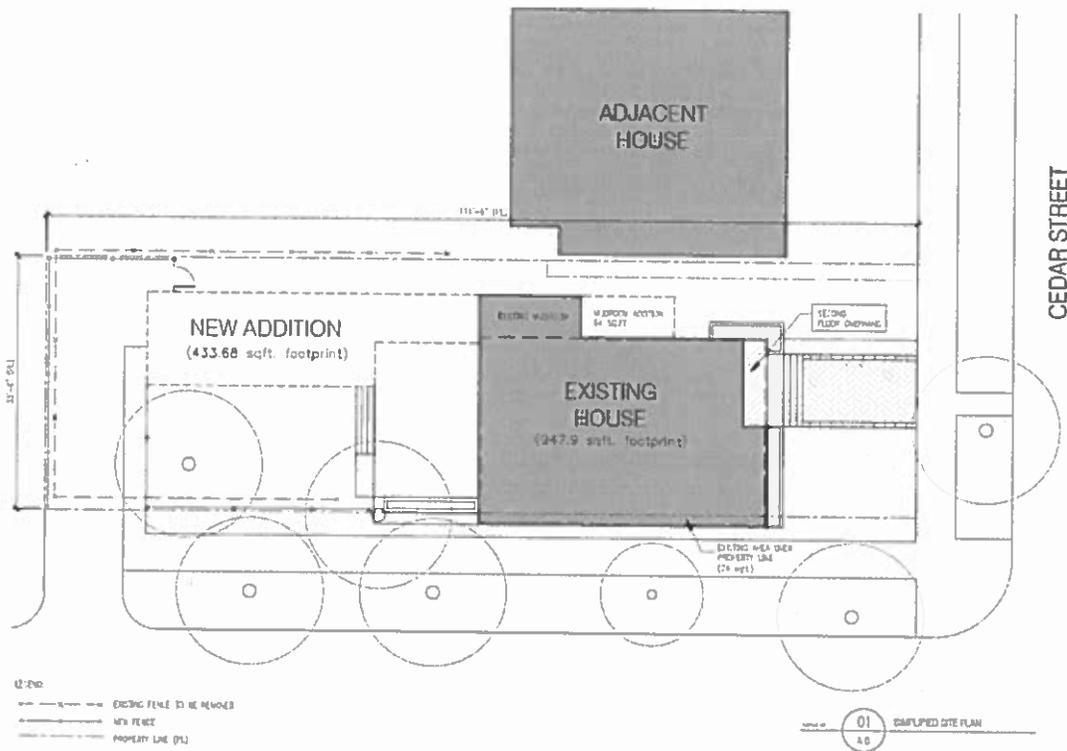
**HALIFAX**



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Halifax Plan Area

Attachment A: Plot Plan and Building Rendering



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 T 802 421 2102  
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Attachment B: Variance Approval Letter

August 4, 2017

Dear Sir or Madam:

**RE: Variance Application #21198, 6151 Cedar Street, Halifax, PID #00157917**

As you have been identified as a property owner within 100 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipal Charter, Section 251.

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

**Location:** 6151 Cedar Street, Halifax, PID #00157917  
**Project Proposal:** Additions to a single unit dwelling

LUB Regulation	Requirements	Proposal
Maximum Lot Coverage	35% Lot Coverage	37.2% Lot Coverage

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before August 21, 2017 and address your appeal to:

**Municipal Clerk**  
**Halifax Regional Municipality**  
P.O. Box 1749, Halifax, N.S. B3J 3A5  
clerks@halifax.ca

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance. If you have any questions or require clarification of any of the above, please call Laura Walsh, Planner 1 at (902) 490-4462.

Yours truly,  
**Original Signed**

**Sean Audas, Principal Planner / Development Officer**  
Halifax Regional Municipality

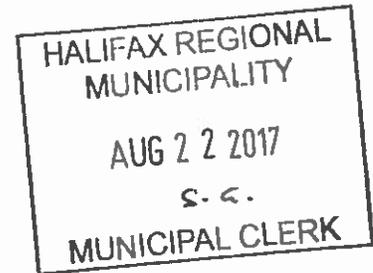
cc. Kevin Arjoon, Municipal Clerk  
Councillor Waye Mason

Stewart, April

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**From:** Valerie Gibson  
**Sent:** August-21-17 4:47 PM  
**To:** Office, Clerks  
**Subject:** Re: Variance Application #21198, 6151 Cedar St, Hfx, PID #00159717

Municipal Clerk  
Halifax Regional Municipality  
PO Box 1749, Halifax, NS B3J 3A5  
clerks@halifax.ca



Dear Madam or Sir:

I wish to appeal the approval of the above variance #21198.

The primary reason for my objection is the ever decreasing amount of permeable land surface for water run off and of sunlight availability on this block. I live at \_\_\_\_\_ on this block and I have resided here for 35 years. My house is the original house on this block and has only a rubble foundation. Over the years since I bought this house, there have been numerous additions to houses on the block, sheds, garages, decks added, driveways paved and front and backyards paved as well. I have experienced increasing problems with water in my basement. One of the reasons for this I am sure is the increasing scarcity of water permeable land space. The concern is not just the percentage of ground available for water permeability on each house lot but the absolute area of ground available as my block is a small one to start with. Front and back yards are small and the houses are very close together. There is no common area in the centre of the block as there is in many other blocks near by. Filling in what little water permeable land there is left with more water impermeable structures therefore is of major concern to me.

It is also of concern to me that there is less and less sunlight available to me in my back yard to grow vegetable gardens etc. The backyard of the house lot on my alley way side is already filled with over 100 trees and further light opaque structures at 6151 Cedar St will restrict sunlight filtering even further.

Sincerely,  
Valerie Gibson

**Original Signed**

Sent from [Outlook](#)

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