



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

Item No. 10.2.1
Halifax and West Community Council
June 28, 2016

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

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: June 15, 2016

SUBJECT: Case 20144: Appeal of Variance Refusal – 6164 North Street, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development

RECOMMENDATION

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

BACKGROUND

A proposal has been submitted for 6164 North Street, Halifax to demolish the existing dwelling and construct a new three unit dwelling in its place (Maps 1 and 2). In order to facilitate this project, variances have been requested (Attachment A) to relax the minimum lot frontage, lot area and the side setbacks requirements.

Site Details:

Zoning: R-2 (General Residential) Zone
Halifax Peninsula Land Use By-law (Peninsula North Secondary Plan Area)

	Zone Requirement	Variance Requested
Min. Lot Area	8,000 sq. ft.	3,332 sq. ft.
Minimum lot frontage	80 feet	33 feet
Minimum side yard setback	6 feet	4 feet

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

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 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.

Staff advise that the intent of the By-law is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard minimum lot area requirements of the R-2 Zone is 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 density increased, from 4 feet to 6 feet. For low density residential development, it is clear 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.

Within these standard requirements, there are also a number of areas where these requirements are reduced based on the character of sub-areas throughout the peninsula area of the city. In the case of the subject property, the standard requirements have been reduced, through the Peninsula North Secondary Plan, to allow existing single unit dwellings to be internally converted into a maximum of two units notwithstanding that the lot and building do not meet the R-2 Zone standards.

In every case, for low density residential development, it is clear the By-law intends to restrict higher number of dwelling units to lots with comparatively larger lot areas. Given the clear intent of the By-law, and noting that properties in this area are already subject to reduced requirements, the Development Officer believes that the requested lot area, frontage and side yard setback variances further to enable the development of a three unit dwelling on the property would 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 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 ten 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 two, two unit dwellings. There are no three unit dwellings in the immediate area. The proposed three unit dwelling would be unique among the existing single and two unit dwellings within the established neighbourhood.

It is the Development Officer's opinion that the difficulty in meeting the lot area, frontage and setbacks 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 refusal 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 B) 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 current building has 4 apartment units since the last 20 years+ which has been documented by the Halifax Property Tax Valuation Services.</i>	There are no permits on record authorizing this as a four unit dwelling. The authorized land use is a two unit dwelling. There is no correlation between property valuation for taxation purposes and authorized land use.
<i>We have proposed to demolish this building and build a 3 unit building (1 unit less than the existing situation).</i>	HRM records indicate this is a two unit dwelling. There is no evidence otherwise to suggest that the property has non-conforming rights. The site could accommodate a two unit dwelling in keeping with land use by-law requirements.
<i>We have also provided all necessary parking on the lot within the inside parking garages, which means the cars will be off the street round the year.</i>	Parking requirements must be met in all proposals and cannot be relaxed through the variance process.
<i>We could have applied for a renovation permit and retained the existing 4 units.</i>	The authorized use of the building is a two unit dwelling and could be replaced with a two unit dwelling, as-of-right.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were refused as it was determined that the proposal conflicts 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 request for variances.

RISK CONSIDERATION

The risks considered rate low. There are no significant risks associated with the recommendations in this report. To reach this conclusion, consideration was given to the location of the proposed development on the property and whether relaxation of the land use by-law would result in a hazard to abutting properties or present an operational difficulty, such as access for snow removal or maintenance on a public right-of-way.

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

ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

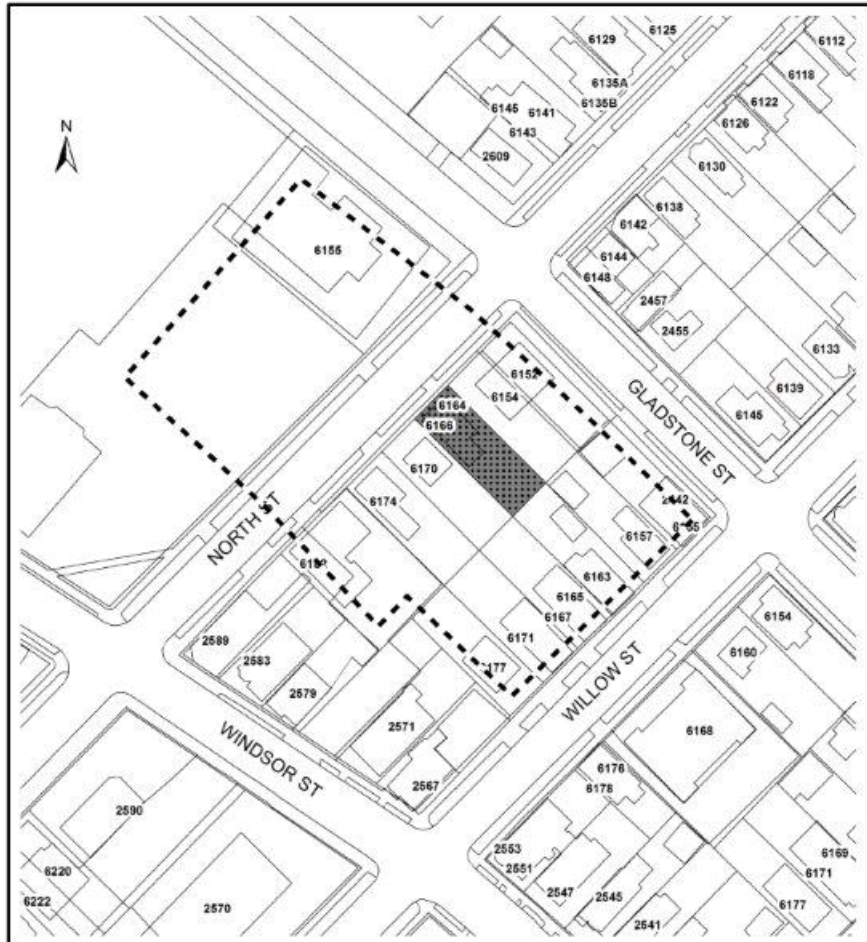
Attachment A: Building Elevations- Front and Rear
Attachment B: Building Elevations – Right and Left
Attachment C: Variance Refusal Letter
Attachment D: Letter of Appeal from Applicant

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

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: _____
Kelly Denty, Manager, Current Planning, 902-490-4800



Map 1 - Notification Area

6164 North Street,
Halifax

HALIFAX

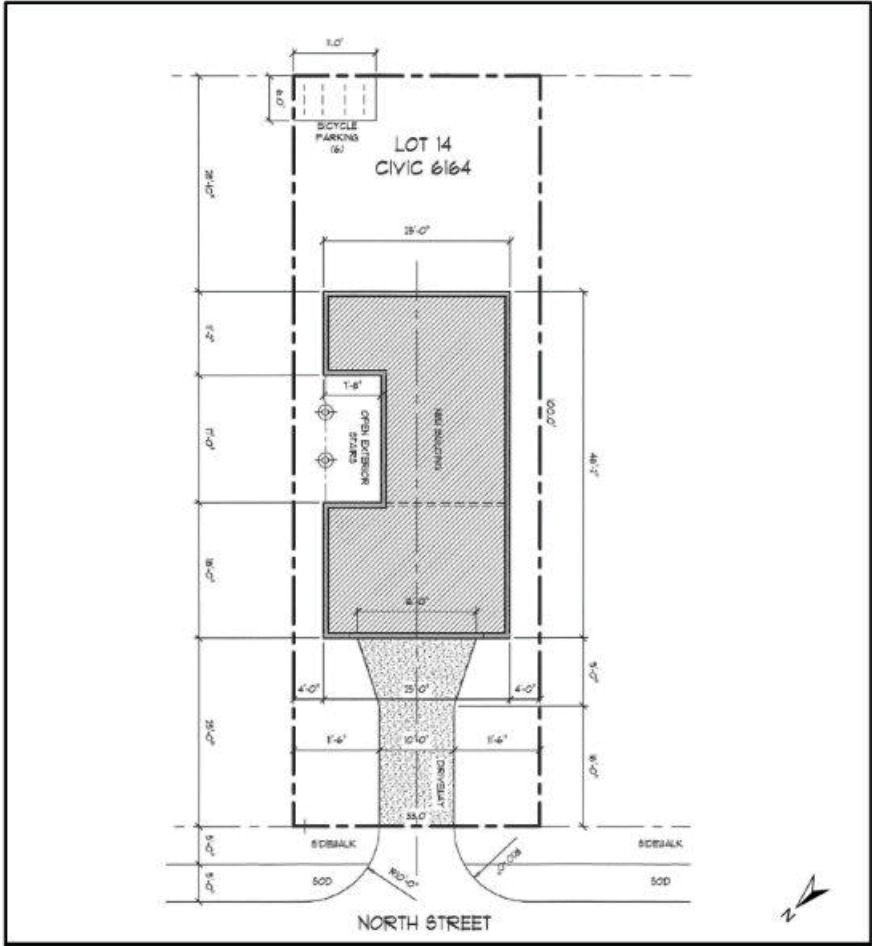
 Notification Area  Subject Property

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



December 22, 2015

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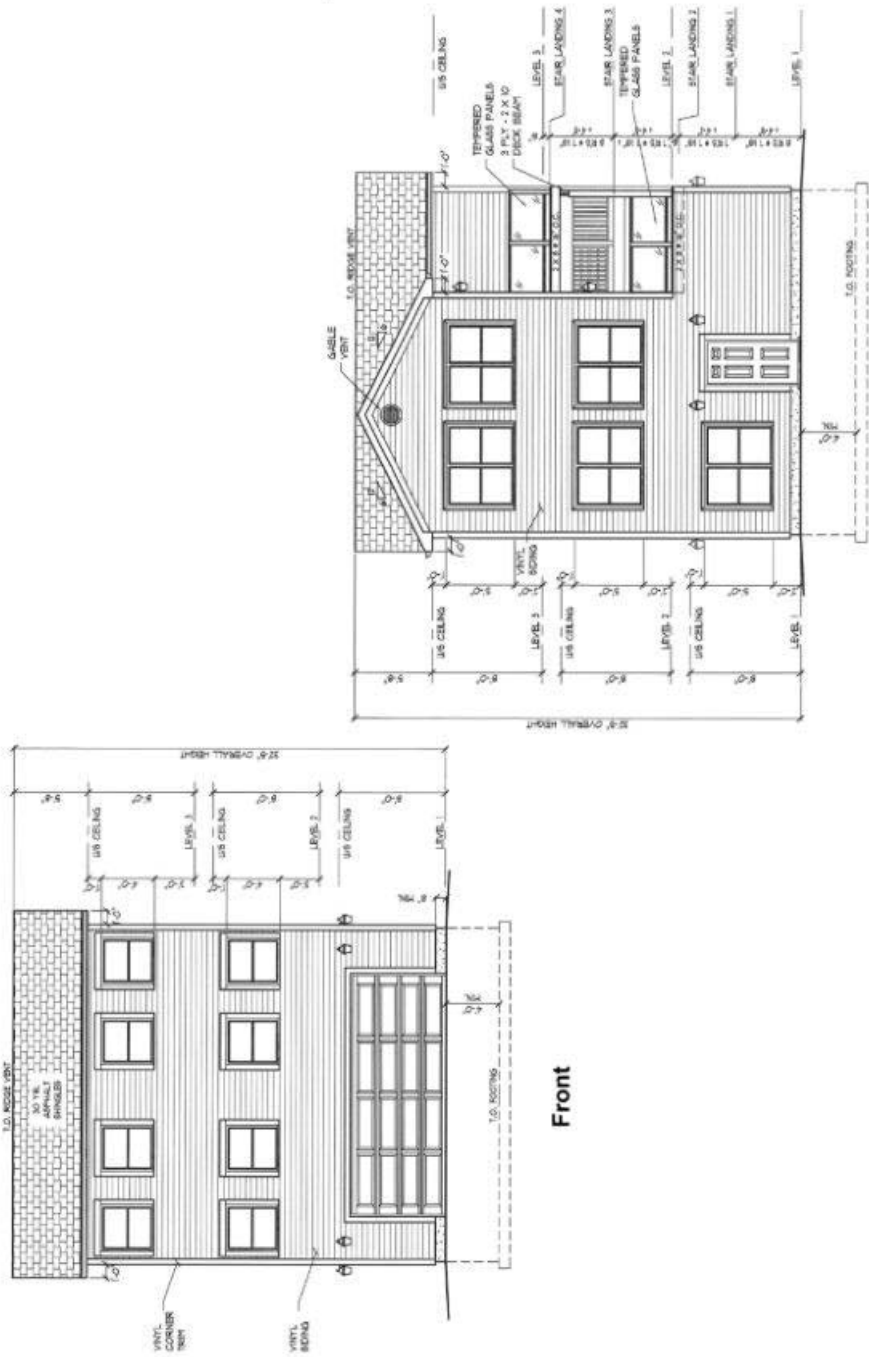
Map 2- Site Plan

6164 North Street,
Halifax

 Subject Property

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

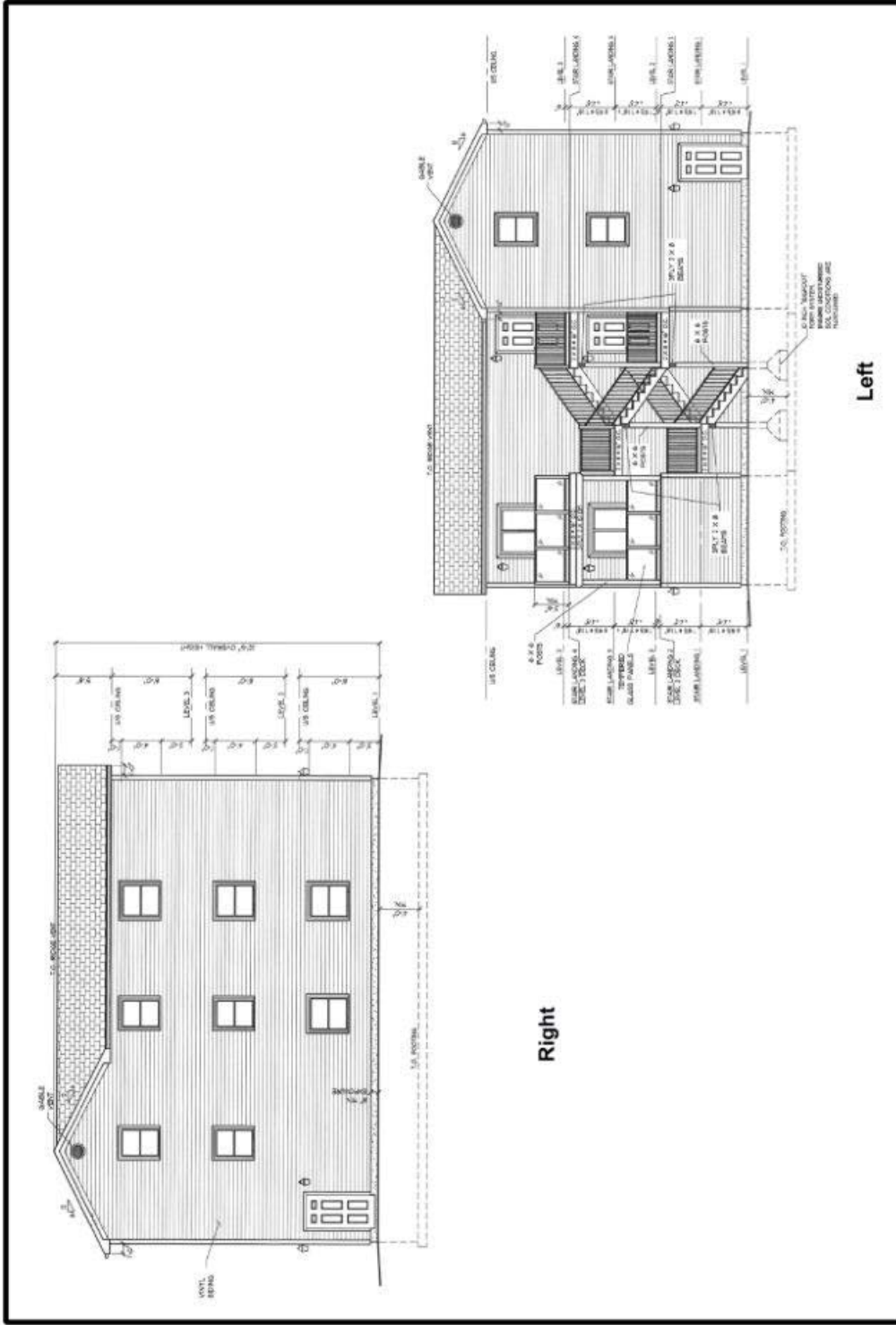




Attachment A : Front & Rear Elevation

Not to Scale

HRM does not guarantee the accuracy of any base information.



Attachment B: Right & Left Elevation

Not to Scale

HRM does not guarantee the accuracy of any base information.

Attachment C Variance Refusal Letter

November 17, 2015

K.J.Genhl Innovation Architects Ltd
182 Bedford Hwy
Halifax, NS
B3M 04A

Dear Mr. Gandhi:

RE: Application for Variance No. 20144 – 6164 North Street, Halifax, NS

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 6164 North Street, Halifax
Project Proposal: to construct a 3 unit dwelling
Variance Requested: to reduce the lot frontage and lot area as well as the side setbacks

Section 250(3) of the Halifax Regional Municipality Charter states that:

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.

HALIFAX

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

halifax.ca

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the Halifax Regional Municipality Charter 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
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before December 4, 2015.

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

Sincerely,

Original Signed

Andrew Faulkner
Development Officer

cc. Cathy Mellett - Municipal Clerk
Councillor Jennifer Watts

Attachment D Letter of Appeal from the Applicant

Andrew P.

INNOVATION ARCHITECTS LTD.

182 BEDFORD HIGHWAY, HALIFAX, NS, B3M 0A4 TEL: (902) Original Signed FAX: (902) Original Signed

December 01, 2015

RECEIVED

DEC 01 2015

CEM

Municipal Clerk
Halifax Regional Municipality
Development Services – Eastern Region
P.O. Box 1749
Halifax

Attn: Municipal Clerk

Re: Appeal to the Variance Request refusal 6164 North Street,
Variance No. 20144, Your refusal letter dated November 17, 2015

Dear Sir/Madam,

We have received your letter refusing the Variance Request for the above project.

We hereby appeal the decision made by the Development Officer in this case.

The current building has 4 apartment units since last 20 years + which has been documented by the Halifax Property Tax Valuation Services. The tax on this property has been collected based on 4 units for the last 20+ years. The Development Officer have stated that this documentation cannot be accepted by the Development Office while considering the Variance Request.

We have proposed to demolish this building and build a 3 unit building (1 unit less that existing situation) with the same or larger setbacks on the side yard and front yard and approximate same volume of the building as the existing building. The current building is in a bad shape and a new building on this street will enhance the streetscape of the area and contribute positively to the building stock in the area.

We have also provided all necessary parking on the lot within inside parking garages, which means the cars will be off the street round the year.

We could have applied for a renovation permit and retained the existing 4 units but we believe that the new construction with its landscaping, design and appearance will enhance the streetscape of North Street in that area.

We have attached a copy of the set of drawings for the proposed building on the lot.

We hope the appeal council review the merits of this case and approves our Variance Request.

Yours sincerely,

Original Signed

K.J. Gandhi ()
Architect NSAA

