



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**May 17, 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:** April 28, 2016

**SUBJECT:** Case 19677: Appeal of Variance Approval – 1891 Vernon St., Halifax

**ORIGIN**

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

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality (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 1891 Vernon St., Halifax, to construct an addition to a single family dwelling to create two additional dwelling units (Maps 1, 2 and Attachment A). In order to facilitate this project, variances have been requested to relax the left side yard setback and increase the lot area, lot coverage and gross floor area requirements of the Halifax Peninsula Land Use By-law (LUB).

### **Site Details:**

**Zoning:** R-2 Zone, Halifax Peninsula Land Use By-law, Peninsula Centre

	<b>Requirement</b>	<b>Proposed</b>
<b>Minimum lot area (for lot size)</b>	5,000 sq. ft.	4,600 sq. ft.
<b>Maximum lot coverage</b>	35%	39%
<b>Minimum left side yard setback</b>	6 ft.	4 ft.
<b>Minimum lot area (for Maximum Gross Floor Area)</b>	4,600 square feet (2,925 sq. ft. gross floor area)	6,983 square feet (4,190 sq. ft. gross floor area)

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variances (Attachment B). Six neighbours have appealed the approval and the matter is now before Halifax and West Community Council for decision (Attachment C).

## **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 R-2 Zone allows properties to be developed with buildings containing up to four apartment units depending on lot frontage, lot size and side yard setbacks. To encourage the retention and rehabilitation of existing housing stock within certain detailed area plans such as Peninsula Centre (which this property is located) and the South End, these requirements are relaxed. The R-2 Zone also allows internal

conversions to existing buildings to allow up to three units. Through these options, landowners are provided various methods which enable properties to be developed with increased density.

This proposal retains the existing dwelling and density is increased through the proposed addition fronting Shirley Street. Several different proposals were provided throughout the course of the variance request and staff attempted to balance the applicant's request with the intent of the land use by-law. The current proposal was considered to be consistent with the intent of the land use by-law. The lot area, lot coverage and side yard setbacks are only slightly less than the minimum by-law requirements. The gross floor area requirement, which is the largest requested variance, was adopted to limit the size and intensity of a development. The permitted quantity of floor area determines how much living space can fit into a building and the plans provided do not indicate an excessive amount of living space (each unit contains 3 bedrooms). The two unit addition has been designed to complement the streetscape of the neighbourhood.

Based upon this, the requested variances do not represent a violation of the intent of the 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.

An assessment of the surrounding property conditions was undertaken and the area is comprised of a mix of single unit dwellings, two unit dwellings, and three unit dwellings. There are also three 16 unit apartment buildings nearby. Variances similar to this request which allow additional lot coverage and reduced side yard setbacks have been granted in this immediate area.

The lots in the immediate neighborhood range in size, configuration and unit mix, therefore it was determined that the difficulty experienced is not general to 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.

Intentional disregard is not a consideration in this case. The addition has not been constructed and the applicant has requested the necessary approvals in order to move forward with the project.

**Appellants' Appeal Comments:**

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>Appellants' Appeal Comments</b>	<b>Staff Response</b>
<i>"I challenge the four foot variance from the mandated 6 foot for the side yard facing Shirley St. Although the existing house is at 4 feet and is grandfathered.....especially since</i>	Where the proposal is on a corner lot, one of the side yards is a street, Shirley Street. The existing building has a left side yard setback of 4 feet. The proposed addition intends to maintain the established setback of

<p><i>the intention is to have the units proposed have doors facing onto Shirley St.”</i></p>	<p>the existing dwelling. This request is considered to be minor in nature being only two feet less than required.</p>
<p><i>“I challenge the lot coverage” The math is wrong. 1879 sq ft coverage of 4,600 sq ft is not 39%, but 40.84%.  An increase in the “Maximum Lot Area” covered by the new “addition” of over 50%.</i></p>	<p>Additional clarification was provided by the owner which confirmed the requested lot coverage is 39%.</p>
<p><i>Concerns raised about a commercial rental property and rental units. Significant change in the nature of the neighbourhood: from a family neighbourhood to a mixed rental/family home zone.</i></p>	<p>The existing neighbourhood has a mix of units from single unit to two and three unit dwellings. There is also a 16 unit building within the 30 metre notification area. The land use by-law does not regulate tenure.</p>
<p><i>Concern expressed about the impact to the neighbourhood, including the mass and size of the addition. Allowing such a massive structure is completely inconsistent with the neighbourhood and should not be permitted.</i></p>	<p>The request is considered to be only slightly over the minimum building size requirements and the height does not exceed the 35 foot maximum requirement.</p>
<p><i>The additional density is not supported and is contrary to the goals of the Municipal Planning Strategy.</i></p>	<p>The MPS supports the retention of and rehabilitation of housing stock and infill housing. The creation of dwelling units suitable for families with children is also encouraged. The R-2 Zone allows for up to four units subject to meeting certain standards which may be relaxed through the variance process.</p>

**Conclusion:**

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance request were approved as it was determined that the proposal does not conflict 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 variance request.

**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 approval is appealed, a hearing is held by Community 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. Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variances.
2. Halifax and West Community Council may deny the appeal and uphold the decision of the Development Officer and approve the variances.

### **ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevations
Attachment B:	Variance Approval Notice
Attachment C:	Letters of Appeal

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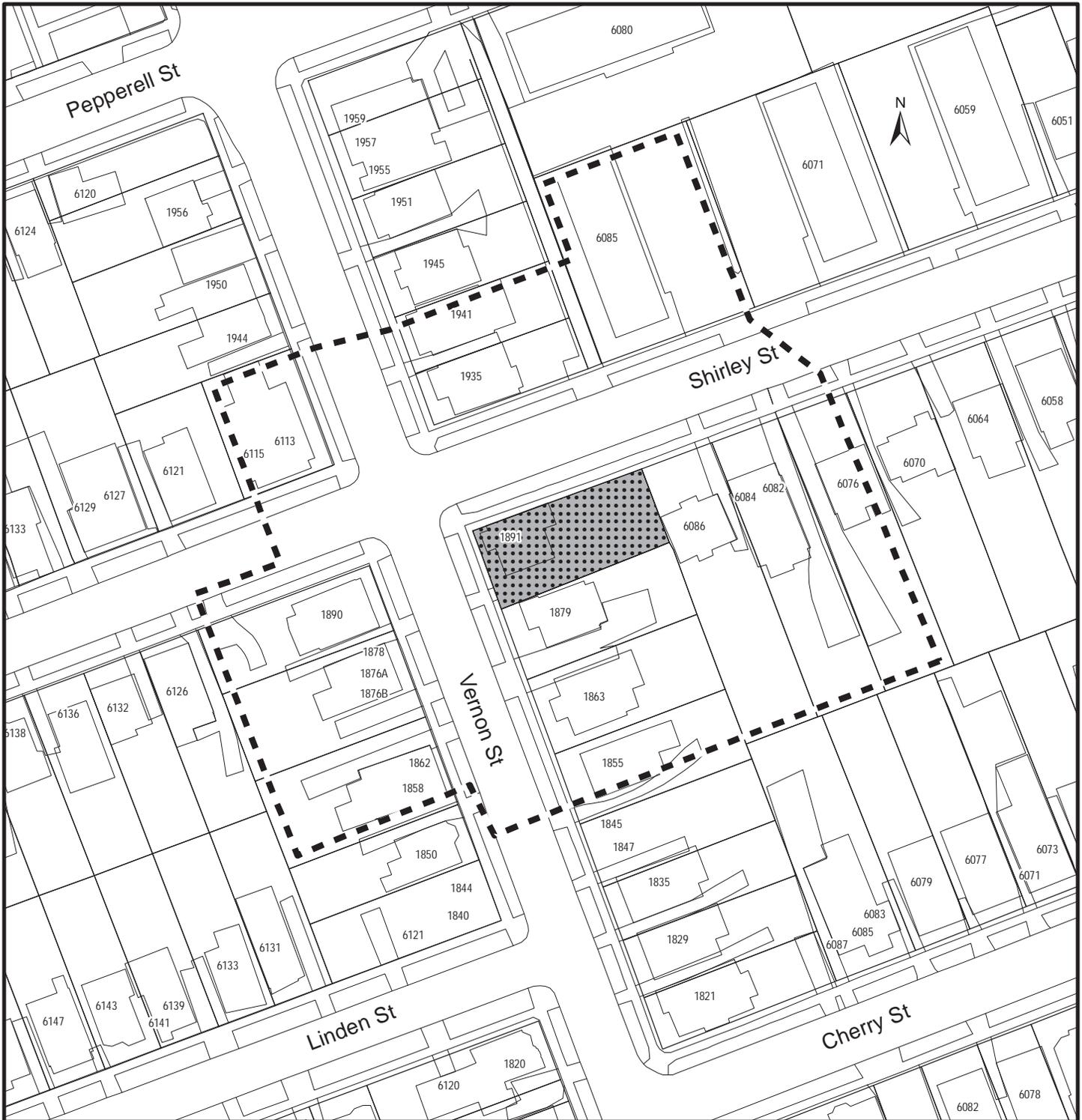
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Brenda Seymour, Planner I, 902.490-3244

Original Signed

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager Current Planning, 902.490.4800

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**Map 1 - Notification Area**

1891 Vernon Street  
Halifax

 Subject Property

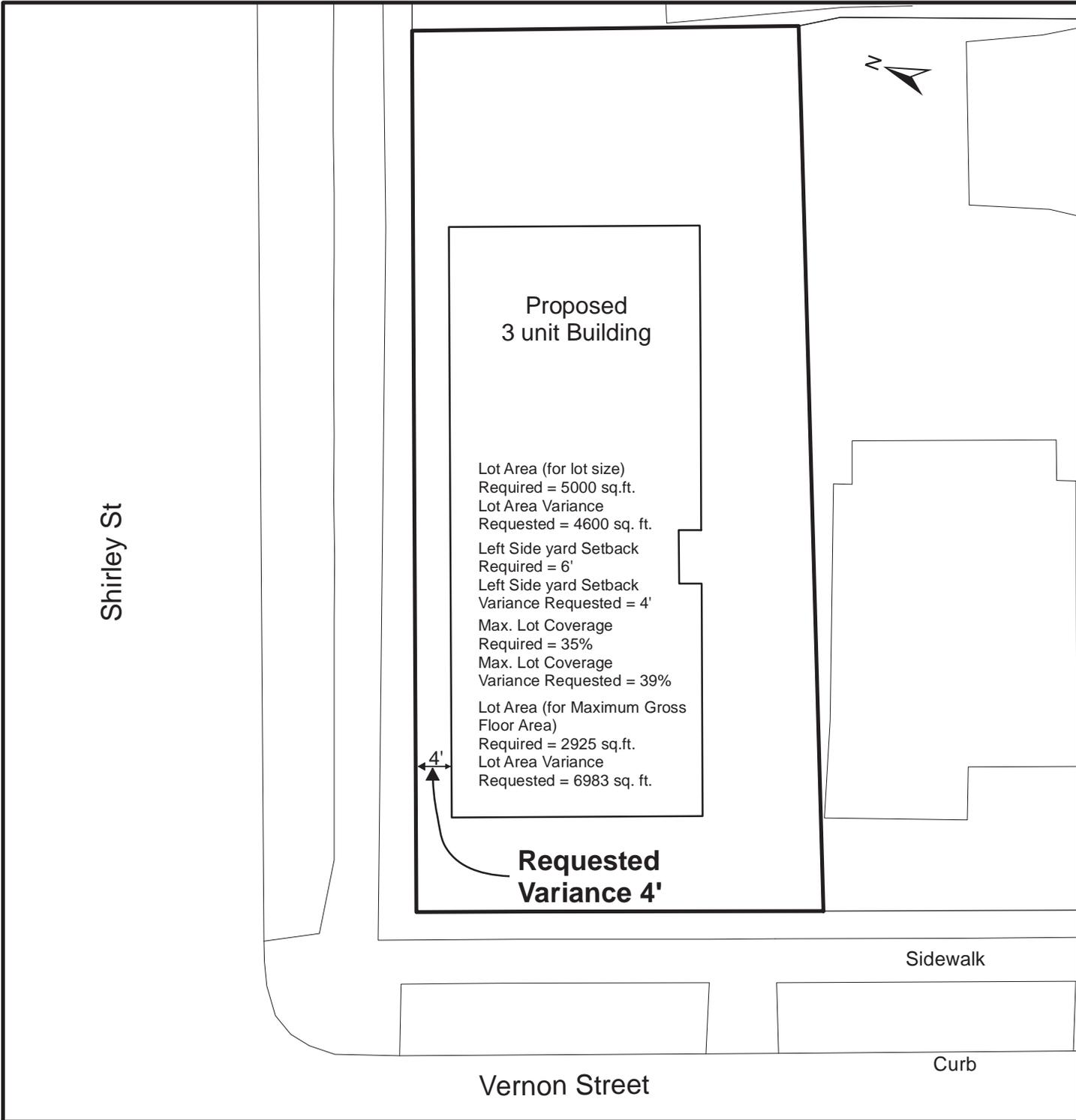
 Area of notification

Halifax  
Plan Area

**HALIFAX**



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



**Map 2 - Site Plan**

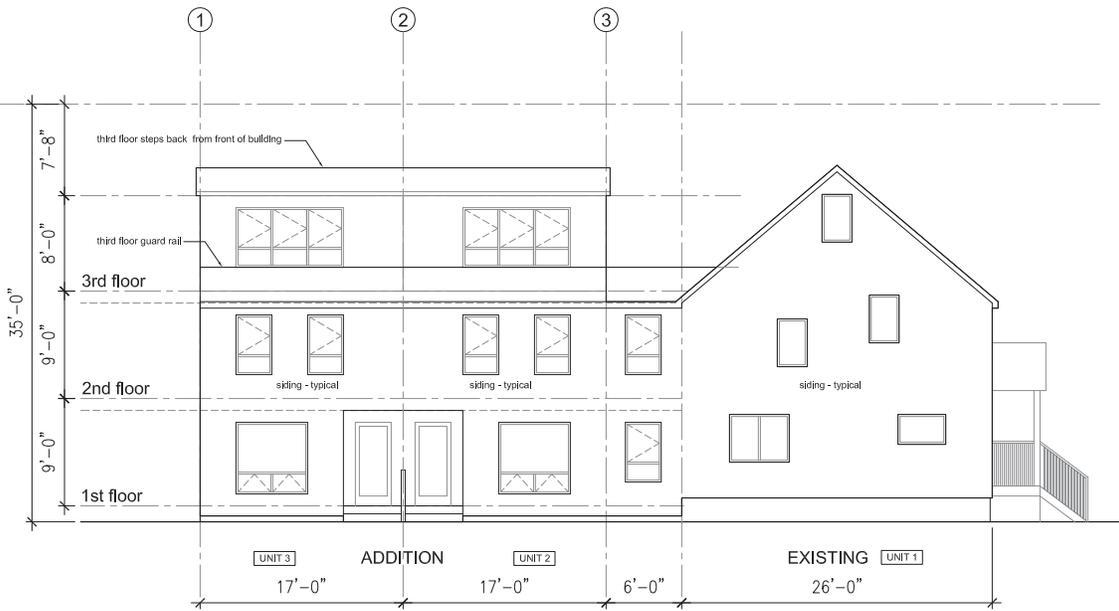
1891 Vernon Street  
Halifax

**HALIFAX**

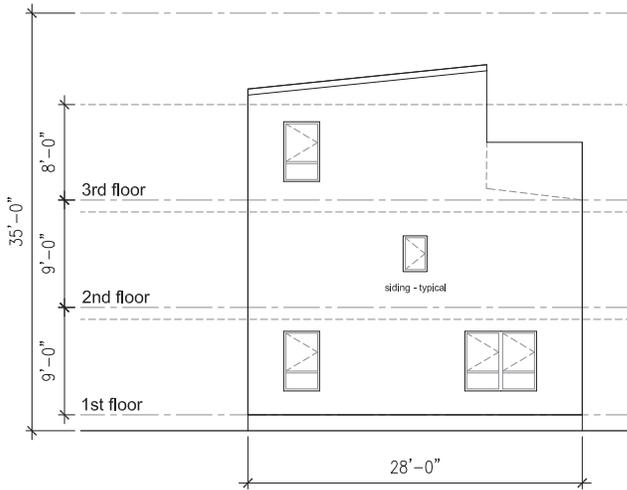


Halifax  
Plan Area

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



1 BUILDING ELEVATION - VIEW FROM SHIRLEY ST.  
A-5 SCALE: 1:192 (1/16")



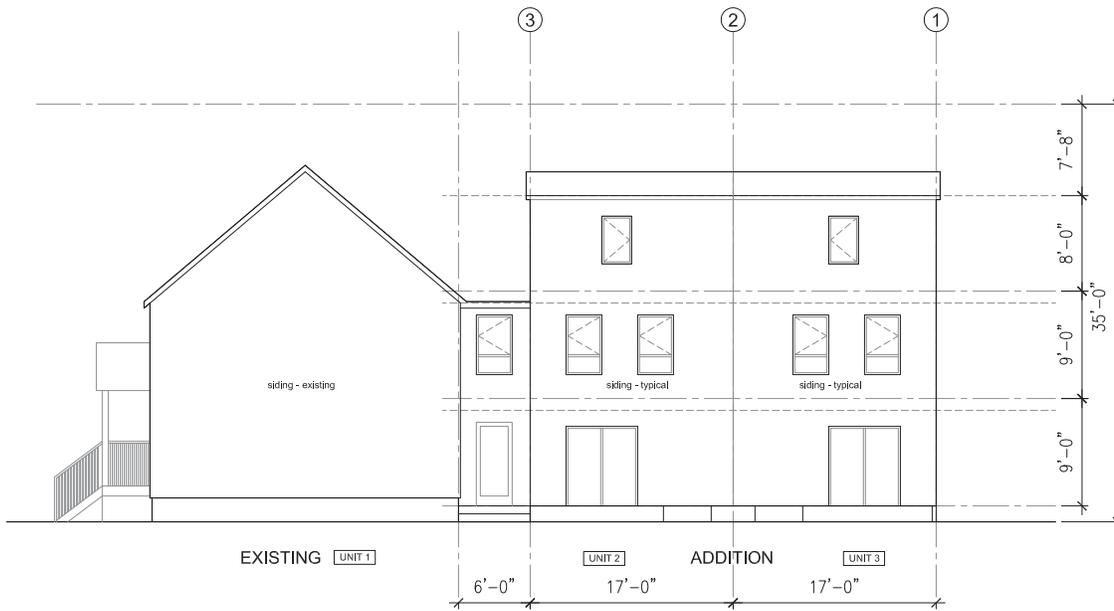
2 BUILDING ELEVATION - VIEW FROM REAR LOT  
A-5 SCALE: 1:192 (1/16")

NOTES:

# A-5

## ELEVATIONS

PROJECT	1891 VERNON ST.
DESIGN	JULIEN BOUDREAU
STRUCTURAL	-
ISSUE #	REV. 6
DATE ISSUED	DEC 11th, 2015



1 BUILDING ELEVATION - VIEW FROM SIDE LOT  
 A-6 SCALE: 1:192 (1/16")

NOTES:

**A-6**

**ELEVATIONS**

PROJECT	1891 VERNON ST.
DESIGN	JULIEN BOUDREAU
STRUCTURAL	-
ISSUE #	REV. 6
DATE ISSUED	DEC 11, 2015

June 2, 2015

Dear Sir or Madam:

**RE: Variance Application 19677- Variance for side yard setbacks, lot area, lot coverage and gross floor area requirements of Halifax Peninsula Land Use Bylaw to construct an addition to a single unit dwelling to create three dwelling units.**

**As you have been identified as a property owner within 30 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.**

As a Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the land use bylaw as follows:

**Project Proposal: Addition to single unit dwelling to create a three unit dwelling**

	<b>Requirement</b>	<b>Proposed</b>
Minimum lot area (for lot size)	5000 sq. ft.	4600 sq. ft.
Maximum lot coverage	35%	39%
Minimum left side yard setbacks	6 ft	4 ft
Minimum lot area (for Maximum Gross Floor Area)	4600 square feet (2925 sq. ft. gross floor area)	6983 square feet (4190 sq. ft. gross floor area)

Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before June 18, 2015.

Sean Audas, Development Officer  
c/o Municipal Clerk,  
Halifax Regional Municipality,  
Planning and Development - Western Region,  
P.O. Box 1749, Halifax, N.S.  
B3J 3A5.  
Clerks@halifax.ca

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

Yours truly,

Original Signed

Sean Audas,  
Development Officer

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

June 6, 2015

Sean Audas, Development Officer  
Halifax Regional Municipality  
Planning and Development – Western Region

RE: Variance Application 19677

Mr Audas,

Thank you for the notification of the above variance. My neighbours and I were unaware of the proposed changes to this property.

Unfortunately, I have to take exception to this proposal. Please consider this a notice of appeal of the variance. It is my understanding that several neighbours have hired lawyers to guide them through this process. Given this, our household adds its voice to their concerns/ issues.

We live in a family neighbourhood. Single family units are the majority of homes here, and if there are rental units, they are confined to family sized homes. The proposal given is for a 3 unit dwelling: one being a family sized home, connected to two apartment/ condo sized living spaces, certainly to be used as rental units at some point. This would effectively convert one lot into three, with three families/ units available. Certainly this does not conform to the surrounding "normal" use of a lot.

The variance includes an increase in the "Maximum Lot Area" covered by the new "addition" of over 50%. Certainly this is not just a small variance for a home addition. In my opinion, a reasonable variance for an addition to a family home would be 5-10%, but 50% is, in my eyes, is unreasonable; and speaks to the nature of the addition, as well as its intrusion to the neighbouring yards.

As the proposed structure is certainly too large for the lot, according to the current requirements, changing its current lot coverage from 15% to 39%, a 24% change and 4 % over the current allowed maximum; importantly, this is a massive 260% increase from the current home, and significant difference from the surrounding normal.

Its overall size and configuration will be intrusive on the neighbours, with its balconies overlooking the adjacent yards. The narrow driveway runs alongside the adjacent homes' yard for its entire length and ends in a parking area. I wonder where snow from the winter will be plowed to as there will be no room on the sides, and it certainly cannot be pushed into the neighbour's yard. Its height and length spans the length of all of the adjacent yards, becoming a major component of what we will all see when we use our yards, towering over us.

I have no problem with our neighbours modifying their homes, making additions that help them and their families, and improve their properties and homes. However, this proposed structure does none of these things. It creates a commercial rental property where there was once a Family Home, and in doing so it also intrudes on the neighbourhoods' yards, houses and values.

I did not buy a home in this area to be situated next to rental units. I purchased here to be in a family neighbourhood, close to schools, children playing on the streets and a general family environment. If this variance is allowed to pass, these things that myself and my neighbours find valuable will be diminished, and so will the neighbourhood. I know that if commercial rentals move into my neighbourhood, I will move. I know several of my neighbours will also leave. This structure will affect many people in many ways.

Please do not allow this to take place. Please keep our neighbourhood intact and as it is; we are not talking about a change to a house in our neighbourhood, but a significant change in the nature of our neighbourhood: *from* a family neighbourhood to a mixed rental/ family home zone. I completely and strongly disagree with allowing this project to proceed. I will contact my councilman. My neighbours have contacted lawyers. I hope you will take my voice into consideration.

Sincerely,

Original Signed

Dr M Peter Brown

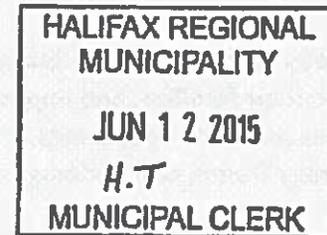
[Redacted]

[Redacted]

Smith-Lamothe

Halifax, Nova Scotia

Ms. Cathy Mallet, Municipal Clerk  
Halifax Regional Municipality  
PO Box 1749  
Halifax, Nova Scotia B3J 3A5



Ms. Mallet, (and Mr. Audas),

RE: Variance Application 19677, 1891 Vernon Street, Halifax

I wish to formally give notice of appeal of Variance Application 19677, concerning the property at 1891 Vernon Street, Halifax.

The lot is 4,600 square feet and the project footprint will be 1879 square feet according to the plan A-1 dated 9 April 2015 and noted as "Revision 6". The proposed addition has a Shirley Street setback of only 4 ft.:

1. I challenge the 4 foot variance (from the mandated 6 ft.) for the side yard facing Shirley Street. Although the existing house is at 4 feet distance and is "grandfathered" in, I see no reason why a skilled designer/architect could not fulfill the requirement for 6 ft. especially since the intention is to have the units proposed have doors facing onto Shirley Street. It is just good planning sense because this will become their *de facto* front yards and 4 feet setback is not practical in this situation. Just because the occupants will have a Vernon Street address does not, common sense-wise, mean that the Shirley Street will be a "side yard" --- it should respect that Shirley Street will be where the doors are and therefore, the "side" should be as generous as possible.
2. I challenge the lot coverage. As it appears in Mr. Audas' letter to the neighbours dated 2 June 2015, the math is wrong. 1879 sq. ft. coverage of 4,600 sq. ft. is not 39%, but 40.84%. To meet the mandatory 1,610 sq. ft. (35% of 4,600) this proposal would need to be reduced by 269 sq. ft. Again, a skilled designer/architect could probably meet this and have a less box-like elevation inflicted on the neighbourhood. 269 sq. ft. "extra" to the mandated 35% is too much.
3. Obviously, from a rental standpoint, having three rentable units on the property would produce the most income. However, to do this, the variance is asking for an additional 269 sq. ft. footprint on the property and a 40.84% lot coverage. Why not build only one additional unit and stay within the "as-of-right" development by-laws? Why has the planning department approved more lot coverage than the by-law allows? Sure, we want to see the peninsula of Halifax become more densely populated, but do we want to see that at the loss of a neighbourhood's character and do we want to create a wall of units 4 ft. from the sidewalk? One generous, well-designed rental unit in this coveted South End could probably rent for the same price as two small, box-like and extremely tight units, after all. Good design will obtain a better rental fee.

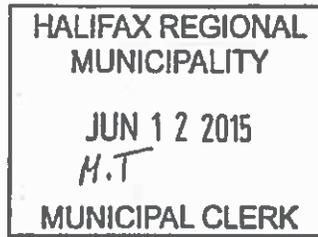
For the above-noted reasons, I am lodging this appeal and relish the opportunity to defend these reasons before Municipal Council one day soon.

Best regards,

Original Signed \_\_\_\_\_

T. E. Smith-Lamothe, M. Arch., MNSAA, MRAIC, LEED a.p.  
Architect and Resident, \_\_\_\_\_  
Past Chair, HRM Design Review Committee; Past Chair, HRM Heritage Advisory Committee

Mr. Sean Audas, Development Officer  
C/O Municipal Clerk,  
Halifax Regional Municipality,  
Planning and Development-Western Region  
P.O. Box 1749, Halifax, N.S.  
B3J 3A5



June 12, 2015

RE: Variance Application 19677 - 1891 Vernon Street

Dear Mr. Audas:

We have received your notice of the above application for a variance for side yard setbacks, lot area, lot coverage and gross floor area to construct an addition to a single unit dwelling to create three dwelling units. We are within 30 meters of the above address and ask you and Community Council to require a more strict adherence to the existing Halifax Peninsula Land Use Bylaws.

We note that the request is for a 4 ft. side yard setback as opposed to the 6 ft. requirement. We do not find this an unreasonable request as it would appear that the existing dwelling is approximately 4 ft. from the sidewalk at the present time. We note, also, that the application asks for lot coverage up to 39% from the required 34% which is a variance and leaves little green area around the total property and, we suspect, free space will be covered in asphalt or gravel to accommodate parked vehicles. This is not in keeping with the character and present attractiveness of the neighbourhood. This existing property usually has anywhere from 3-4 vehicles parked on its property at the present time. Two more units will further add additional cars in the back yard.

We note also that the request for a variance proposes to increase the maximum Gross Floor Area from 2925 sq. ft. to 4190 sq. ft. which is a considerable variance from the Land Use Bylaws for this zoning. The lot size is 4600 sq. ft. where zoning calls for 5000 sq. ft. and the proposed structure requires some 6983 sq. ft.; quite a departure from the Bylaws.

For the most part we understand and are in favour of densification on the Peninsula, however, this project is excessive in size for the lot of land in question and no effort has been made to conform to the character and grain of the surrounding neighbourhood and community. Therefore, it is incompatible with and a negative addition to the community.

We request that a revised application be submitted, one more closely adhering to the Land Use Bylaws.

Yours truly,

Marion Jay

Halifax, [REDACTED]

Stewart, April

**From:** catrina brown [REDACTED]  
**Sent:** June-18-15 2:09 PM  
**To:** Office, Clerks  
**Subject:** Variance Application 19677 1891 Vernon Objection

HALIFAX REGIONAL  
MUNICIPALITY  
JUN 18 2015  
H.T  
MUNICIPAL CLERK

Dear Mr. Sean Audas

I object to this variance on the basis of the ongoing changes to the neighborhood including the high-rise to be built at the corner of Vernon and Quinpoole. Neighbors have discussed the addition to 1891 Vernon Street and this will impose on other properties light and the resell valuation of properties as more and more single family dwellings become multiple units on this street. Further as for the requirements of Variation this proposal does not meet the requirements of 6 ft for minimum left side yard setbacks of 6ft as there are only 4 ft. And the maximum lot coverage is to be 35% and the proposed is 39% thus also not meeting the requirements. Taken together with existing unwelcome changes in the neighborhood, I am concerned about the impact on the neighborhood of this proposed variance at 1891 Vernon Street.

Sincerely,  
Dr. C. Brown

Judith Wright

Halifax, NS

June 8, 2015

Sean Audas  
c/o Municipal Clerk, Halifax Regional Municipality  
Planning and Development – Western Region  
PO Box 1749  
Halifax, NS B3J 3A5

Dear Mr. Audas:

I am concerned about the variance recently granted to the owner of the property at 1891 Vernon Street pursuant to Variance Application 19677.

Section VI, Policy 1.1.1 of the Halifax Municipal Planning Strategy (MPS) states that in residential environments in the Peninsula Centre area, "The City shall encourage the retention and creation of dwelling units suitable for families with children," a goal further echoed by Policy 1.2. Furthermore, Policy 1.1.4 sets as a guideline the "key principle of not significantly changing the character of an area when reviewing infill housing proposals," and Policy 1.1.5 emphasizes the importance of factors like population density, lot area, lot coverage, setback, and open space in this analysis.

Under this framework, the single-family homes that surround 1891 Vernon Street are ideal properties thanks to their ample living space and large yards. Indeed, so is the home that currently exists at 1891 Vernon Street.

The proposed development at 1891 Vernon Street, on the other hand, would be contrary to the goals of the MPS. The importance of the requirements for lot area, lot coverage, and setbacks is illustrated by Policy 1.1.5, and therefore a variance from these standards should not be granted lightly. The significant reduction in yard space, with even more of it converted to parking, and the smaller individual homes would significantly reduce the property's suitability for families with children.

Allowing the development would also open the door to more homes in the area to this higher-density model, giving children less space to grow and develop. The higher-density apartments would, in turn, attract different residents than a single-family home would, further changing the character of the neighbourhood and moving it away from its family focus.

On a more personal level, I am also concerned about how the excessive lot coverage and the insufficient setbacks of this development could affect the light

reaching my and other nearby properties. I have also been told that I might have to adjust the design of my own chimney to accommodate this development if it goes forward, which is not a fair burden.

I strongly urge you and Council to reconsider this variance and reject this proposed development.

Sincerely,

Original Signed

Judith Wright



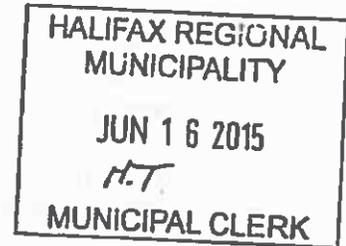
Purdy's Wharf Tower One, 900 – 1959 Upper Water Street, P.O. Box 997  
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 [stewartmckelvey.com](http://stewartmckelvey.com)

June 15, 2015

J. Andrew Fraser  
Direct Dial: 902.420.3390  
[afraser@stewartmckelvey.com](mailto:afraser@stewartmckelvey.com)

Via Email ([clerks@halifax.ca](mailto:clerks@halifax.ca)) and Hand Delivery

Sean Audas  
Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
Planning and Development – Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5



Dear Mr. Audus:

**Re: Letter of Appeal – Approval of Variance Application #19677 - Variance for side yards, lot area, lot coverage and gross floor area requirements of Halifax Peninsula Land-Use By-Law**

We have been retained by Joan Sullivan and Maura Sullivan in relation to an appeal of a Variance Application (Application #19677) which you approved as Development Officer for Halifax Regional Municipality (the "Variance").

The Variance allows for the construction of two additional dwelling units on the property civically known as 1891 Vernon Street, Halifax (the "Property"). Our clients reside at [REDACTED] Vernon Street, within 30 meters of the Property. In fact, they live beside the Property. They were informed of the Variance by way of letter dated June 2, 2015. Currently, the structure on the Property consists of one dwelling unit. The site plan indicates that the additional units are each to be three (3) storeys and contain 1,280 square feet.

The Variance authorizes a departure from the requirements established in the *Halifax Peninsula Land-Use By-Law* (the "Land-Use By-Law") as follows:

Description	Zone Requirement	Variance Requested
Minimum Lot Area	5,000 square feet	4,600 square feet
Maximum Lot Coverage	35%	39%
Minimum Left Side Yard Set Back	6 feet	4 feet
Minimum Lot Area (for maximum gross floor area)	4,600 square feet (2,925 square feet gross floor area)	6,983 square feet (4,190 square feet gross floor area)

2868423 v1

Sean Audas  
June 15, 2015  
Page 3

In the circumstances, Council should overturn the Variance on the basis that it violates the intent of the *Land-Use By-Law* and that all properties in the area experience the same difficulty as expressed in Section 250(3)(a) and (b) and therefore should not have been granted by the Development Officer.

**(i) The Variance Violates the Intent of the Land-Use By-Law**

Variations are intended to be slight deviations from the requirements of Municipal Zoning. The Property is located within the R2 Zone – General Residential – of the *Land-Use By-Law* which establishes maximum gross floor areas based on the size of the lot on which a building is located. In this case, the gross floor area is exceeded by 1,265 square feet. The Property would have to be much larger, approximately 2,383 square feet larger according to your letter to our clients, to allow for the maximum gross floor area granted by the Variance. This constitutes a dramatic increase in allowable gross floor area that violates the intent of the *Land-Use By-Law*. The intent of the *Land-Use By-Law* was to set a minimum lot area and corresponding maximum gross floor area in an attempt to preserve a lower form of density within this area of Peninsula Centre.

Although increased density may be warranted in some areas on the Halifax Peninsula, the gross floor area requirement in the *Land-Use By-Law* should be maintained to promote the existing pattern of development in the neighbourhood. The Variance allows a marked departure from that development pattern and increased gross floor space to a level the *Land-Use By-Law* intended to prohibit. Our clients advise us that there are no buildings similar to this in the immediate neighbourhood.

Where the intent of the *Land-Use By-Law* is not clear on its face, Council may look to the Halifax Municipal Planning Strategy to assist in determining its intent. Section VI of the Municipal Planning Strategy – Peninsula Centre Area Plan provides the relevant policies for the area. Section VI, Subsection I, speaks to policies relevant to residential environments.

In determining whether to allow this appeal, our clients urge Council to consider Municipal Planning Strategy Policies 1.1.1, 1.1.4, 1.1.5, and 1.2 which state as follows:

*1.1.1 The city shall encourage the retention and creation of dwelling units suitable for families with children.*

...

*1.1.4 For the purposes of this Plan, the concept of compatibility shall be deemed to require that infill housing projects are compatible with and enhance the existing development context of a neighbourhood. The City shall use as a guideline in considering rezonings, zoning amendments or contract agreements the key principle of not significantly changing the character of an area when reviewing infill housing proposals.*

*1.1.5 Without limiting the generality of Policy 1.1.4 above, the City shall, in reviewing proposals for compatibility with the surrounding area, have regard for the relationship of the proposal to the area in terms of the following:*

a) *land use;*

Sean Audas  
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For all of the above noted reasons, the Variance proposal conflicts with the statutory criteria set out in section 250(3) of the *HRM Charter*. Our clients respectfully request that Council decline to grant to Variance.

Yours very truly,

**Original Signed**

J. Andrew Fraser

JAF/JDW/slc

c. Client

Councillor Wayne Mason (District 7)  
Jeff Waugh