



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

Item No. 10.2.2
Halifax and West Community Council
March 29, 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: March 14, 2016

SUBJECT: **Case 20344: Appeal of Variance Refusal – 6125 North 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

RECOMMENDATION

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

BACKGROUND

A variance request has been submitted for 6125 North Street, Halifax to construct a new three unit dwelling on the property (Map 1). Until 2012, there was a single unit dwelling on the property but it was demolished due to building condition. The proposed three unit dwelling would not meet the side yard setbacks, minimum lot area, minimum lot frontage, or maximum gross floor area requirements of the Halifax Peninsula Land Use By-law. All of these deficiencies have prompted the variance requests.

History of the Variance Request

Regarding this variance request, staff provides the following events and dates relative to the application:

- On January 20, 2014, a permit was issued to demolish a single unit dwelling on the property at 6125 North Street, Halifax.
- On April 14, 2015, a permit was then issued to construct a new single unit dwelling, but was cancelled by the applicant on May 1, 2015.
- On May 1, 2015, the applicant applied for variances to allow for the construction of a two unit dwelling (duplex). The Development Officer approved the variances and no appeals were submitted. Therefore, the following requirements were varied to allow the property to be developed with a two unit dwelling:

	<u>Zone Requirement</u>	<u>Variance Requested</u>
Lot area:	5,000 sq.ft.	3,395 sq.ft.
Lot frontage:	50 ft	31 ft
Left side yard setback:	5 ft	2 ft
Right side yard setback:	5 ft	3 ft

- The project proposal for a two unit dwelling met the gross floor area (GFA) maximum (2,317.04 sq.ft.) proposed however, construction of a two unit dwelling was never commenced.
- On August 11, 2015, a new variance application was submitted to allow for the construction of a new three unit dwelling on the property. The application was denied by the Development Officer, and no appeal was received from the applicant during the appeal period.
- On January 13, 2016, another variance application was submitted requesting the same variances to allow for a three unit dwelling (Maps 1 and 2). In order to facilitate the project, several variances have been requested (Attachments A and B) to relax the lot area, lot frontage, side yard setback, and GFA requirements of the Halifax Peninsula Land Use By-law (LUB) for the R-2 (General Residential) Zone under the Peninsula North Secondary Plan Area (Area 2).

Site Details

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

	<u>Zone Requirement</u>	<u>Variance Requested</u>
Lot area:	8,000 sq.ft.	3,395 sq.ft.
Lot frontage:	80 ft	31 ft
Left side yard setback:	6 ft	2 ft
Right side yard setback:	6 ft	3 ft
GFA maximum:	2,546.25 sq.ft.	3,476 sq.ft.

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variances (Attachment C). The applicant subsequently filed an appeal of the refusal (Attachment D) 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 *HRM 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 above 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 the proposal violates the intent of the land use By-law.

Throughout the Land Use By-law, there is a correlation between residential unit density and lot standards. This intent is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard 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 dwellings. Side yard setbacks are also increased along with unit density, from four feet for single unit dwellings, five feet for duplex dwellings and six feet for three and four unit dwellings. 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 the buildings and side lot lines.

Within these standard requirements, there are also a number of exemptions that reduce some of these requirements based on the character of sub-areas throughout the peninsula area of the city. In the case

of the subject property, existing buildings may be converted internally to accommodate a maximum of two units, however there are no such special circumstances for buildings containing three units.

Apart from the provisions of the land use by-law, there are certain development rights that apply to the property through the application of the *HRM Charter*. The previous single unit dwelling, for which a demolition permit was issued on January 20 2014, had been a non-conforming structure under Section 253 of the *HRM Charter*. Section 254 of the *HRM Charter* allows for the reconstruction of non-conforming residential structures provided that they are substantially the same, that they are occupied by the same use, and that the reconstruction does not further reduce the minimum required yard or separation distances that do not conform with the land-use by-law. The proposed construction of a new three unit dwelling on the property does not satisfy any of these requirements, therefore the non-conforming status of the demolished single unit dwelling does not present justification for approving the requested variances.

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 that the intent of the by-law in this case is clear, and noting that buildings in this area are already subject to reduced requirements for certain uses, the Development Officer believes that further reduction to allow an additional unit would violate the intent of the By-law.

2. Is the difficulty experienced general to the 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.

The majority of adjacent properties in the R-2 Zone would not be able to meet the zone requirements for a three unit dwelling use. Many of the properties are developed with single unit dwellings. A number of two and three unit dwellings exist in the surrounding neighbourhood, but many are non-conforming structures and would not meet several lot requirements, including setbacks and lot area, if they were proposed as new projects.

Because the majority of the properties in the subject neighbourhood would be unable to meet the lot requirements for a three unit dwelling use, the difficulty experienced at 6125 North Street is in fact general to the area.

3. Is the difficulty experienced the result of 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 variance in good faith and 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

The appellant has not presented any rationale in their letter of appeal (Attachment D). However, the variance application form states the applicant's reasons why the variance request cannot be avoided. While the criteria of the *HRM Charter* limit Council to making any decision that the Development Officer

could have made, staff's comments relative to the applicant's rationale in making the request are provided in the following table:

Appellant's Comments	Staff Response
The condition of the building was an impediment to its renovation.	The physical condition of the building is not a factor in considering a variance request. Owners are expected to maintain their properties in good repair and in keeping with community standards.
In order to make financial sense, and due to the high costs of construction, it is required that the building be a triplex.	The economic viability of a proposal is not a consideration in assessing a variance request. The requirements of the LUB must be observed and the subject property does not meet standards contained within the R-2 Zone.
A triplex would be suitable for the area as there are two others in the immediate area.	Notwithstanding that other three unit buildings may exist in the area, the LUB requirements are not met for the development of a three unit dwelling on this property.

Conclusion

Staff has reviewed all the relevant information regarding this variance proposal. As a result of that review, the variance request was 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 variance request.

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 Community Council to provide the opportunity for the applicant, all assessed property owners within 30 metres of the variance request, and anyone who can demonstrate that they are specially 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 approve the variances.

2. Halifax and West Community Council may deny the appeal and uphold the decision of the Development Officer to refuse the variances.

ATTACHMENTS

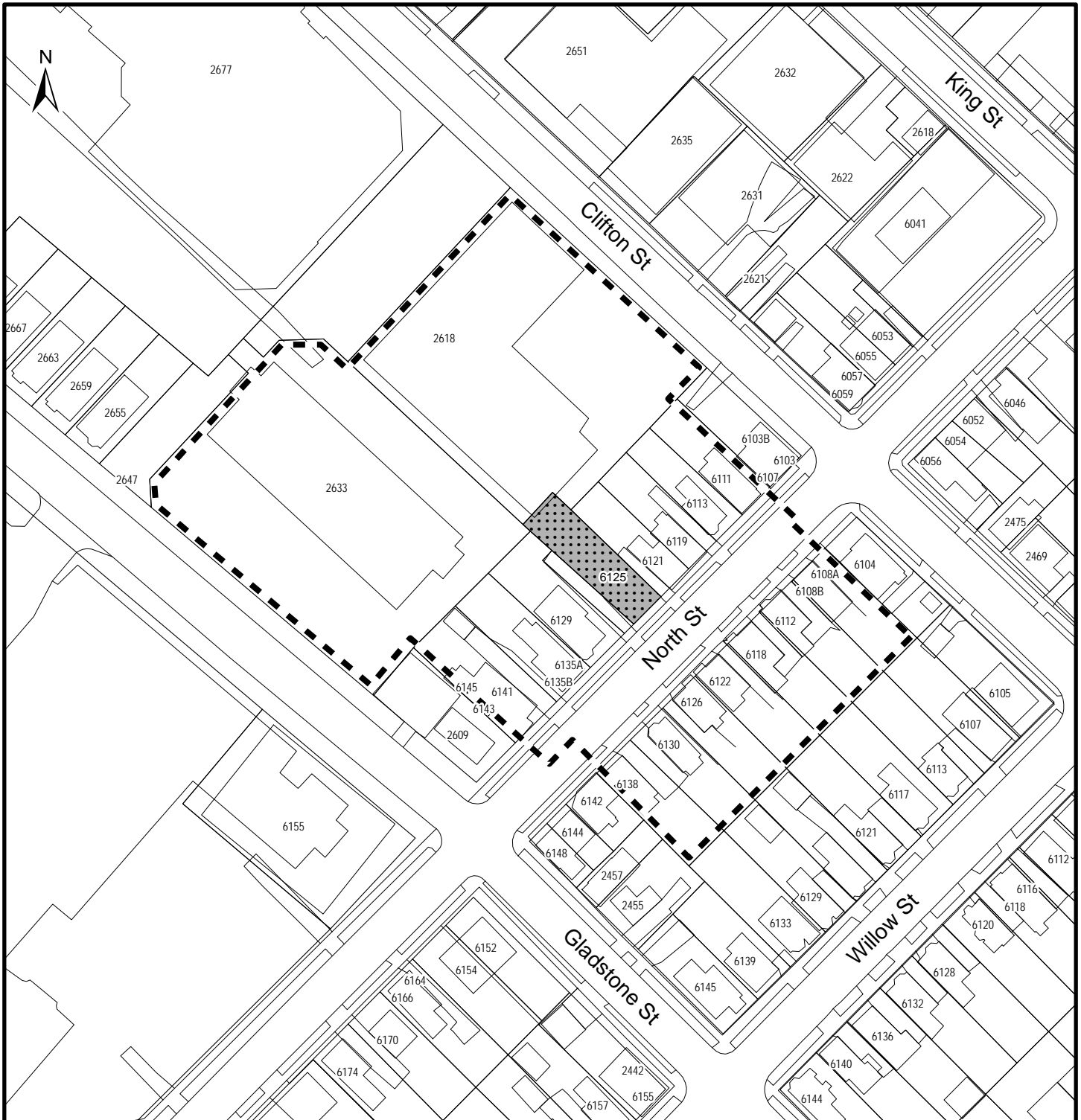
Map 1 – Notification Area
Map 2 – Site Plan

Attachment A – Variance Application
Attachment B – Building Plans
Attachment C – Variance Refusal Letter
Attachment D – Letter of Appeal from the Applicant

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

Report Prepared by: Nathan Hall, Development Technician Intern, 902.490.5985
Andrew Faulkner, Development Officer, 902.490.4341


Report Approved by: Original Signed
Kelly Denty, Manager, Development Approvals, 902.490.4800




Map 1 - Notification Area

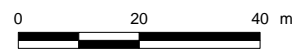
HALIFAX

6125 North Street
Halifax

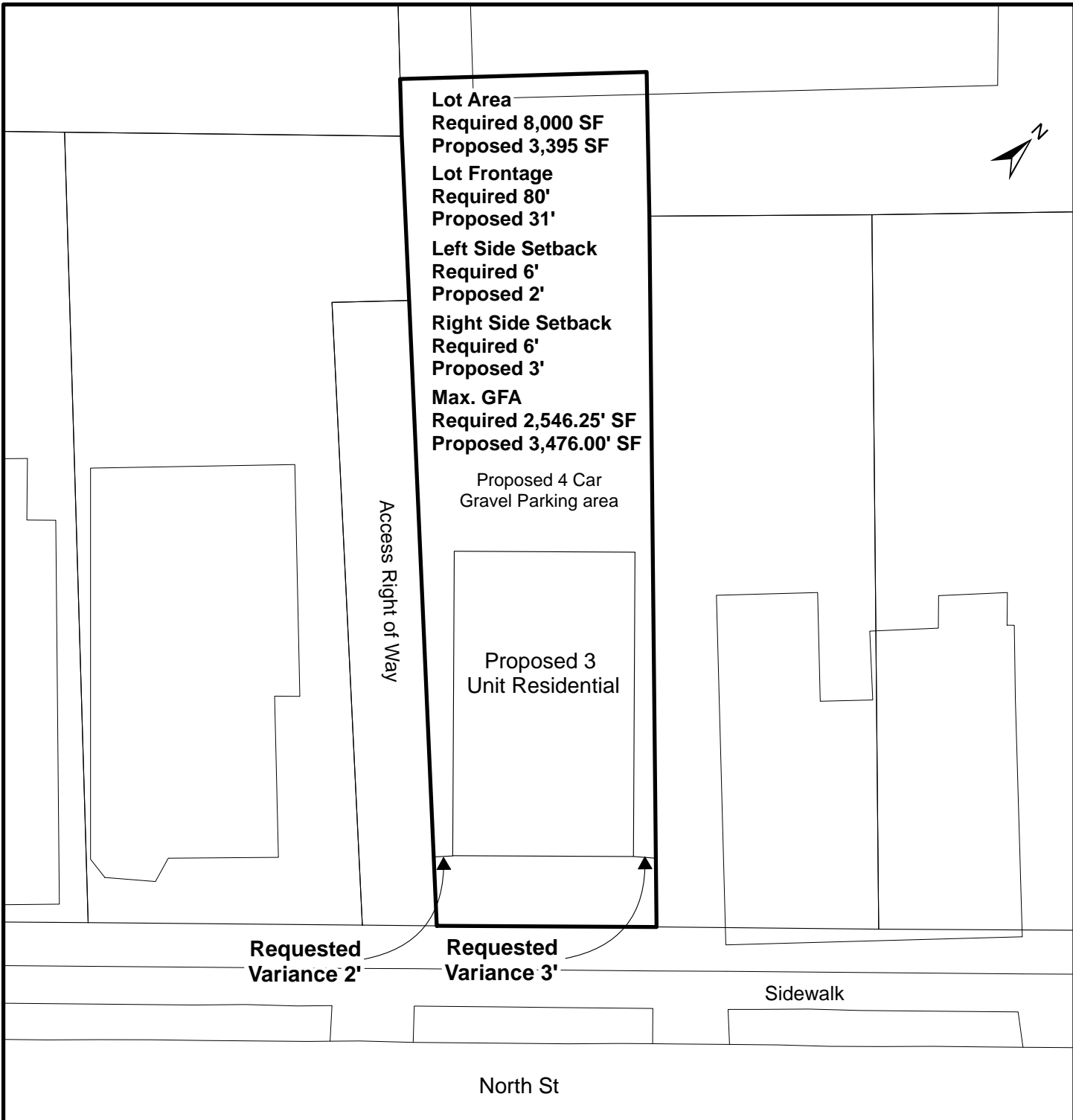
 Subject Property

 Area of notification

Halifax
Plan Area



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



Map 2 - Site Plan

6125 North Street
 Halifax



Halifax
 Plan Area

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



HRM file # _____

Variance Application

It is advisable to familiarize yourself with the Land Use Bylaw as it applies to your application. All By-Laws are available online at <http://www.halifax.ca/planning/map.html>

Part I - Please complete the following information.

Address of Property:

6125 North Street

The application is to vary what requirement of the Land Use Bylaw? (Please check off all that apply)

- | | |
|---|---|
| a. size of yards (setbacks) <input checked="" type="checkbox"/> | d. lot area <input checked="" type="checkbox"/> |
| b. lot coverage <input type="checkbox"/> | e. GFAR (gross floor area) _____ |
| c. lot frontage <input checked="" type="checkbox"/> | |

What is the existing use of the property?

The property was once a dilapidated single family home, which was demolished in 2012, as it was in too bad a condition to repair

Please provide a description of the proposal which requires the variance.

We are looking to build a 3-unit (over/under). For which we would require a total of 3 variances.

Please provide an explanation as to why the variance request cannot be avoided and why other alternatives are not feasible.

Due to the condition of the home, we were unable to renovate. For the property to make financial sense, we require it to be a triplex, due to the high cost of construction. After much research we have found that a triplex would be suitable for the area, as there are currently two others in the immediate surr

Part II - Your completed application form must be accompanied with the following:

1. Application fee of \$500 (includes \$200.00 application fee, \$300.00 variance appeal deposit (may be refunded if no appeals.)
(Cash, Cheque or Debit Card only, no Credit Cards. Cheques made payable to Halifax Regional Municipality)
2. One copy of a plot plan drawn to scale and showing the proposed variance and the following items:
 - a. the dimension of the subject property;
 - b. the location and dimensions of existing and proposed buildings on the property and any proposed additions;
 - c. the distance from property lines to existing or proposed buildings and additions; and,
 - d. distances from property line to buildings on adjacent lots.

Note: A plot prepared by a Nova Scotia land surveyor may be required if the plot plan submitted does not permit the Development Officer to properly evaluate the application.

3. Additional information that may be required, if applicable:
 - a. a copy of floor plans, existing and proposed, drawn to scale;
 - b. a copy of building elevations drawn to scale (building photographs are acceptable); and ,
 - c. a copy of parking layout drawn to scale.

Note: Plans not drawn on 8 1/2" x 11" paper must be folded separately to 8 1/2" x 11"

Applicant Name: 

Mailing Address: 

Email Address: 

Daytime Phone Number:  Cell Phone: 

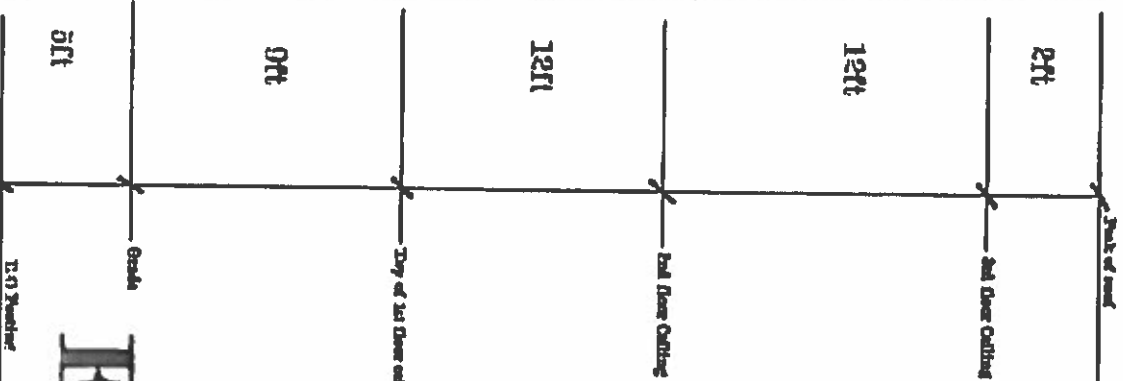
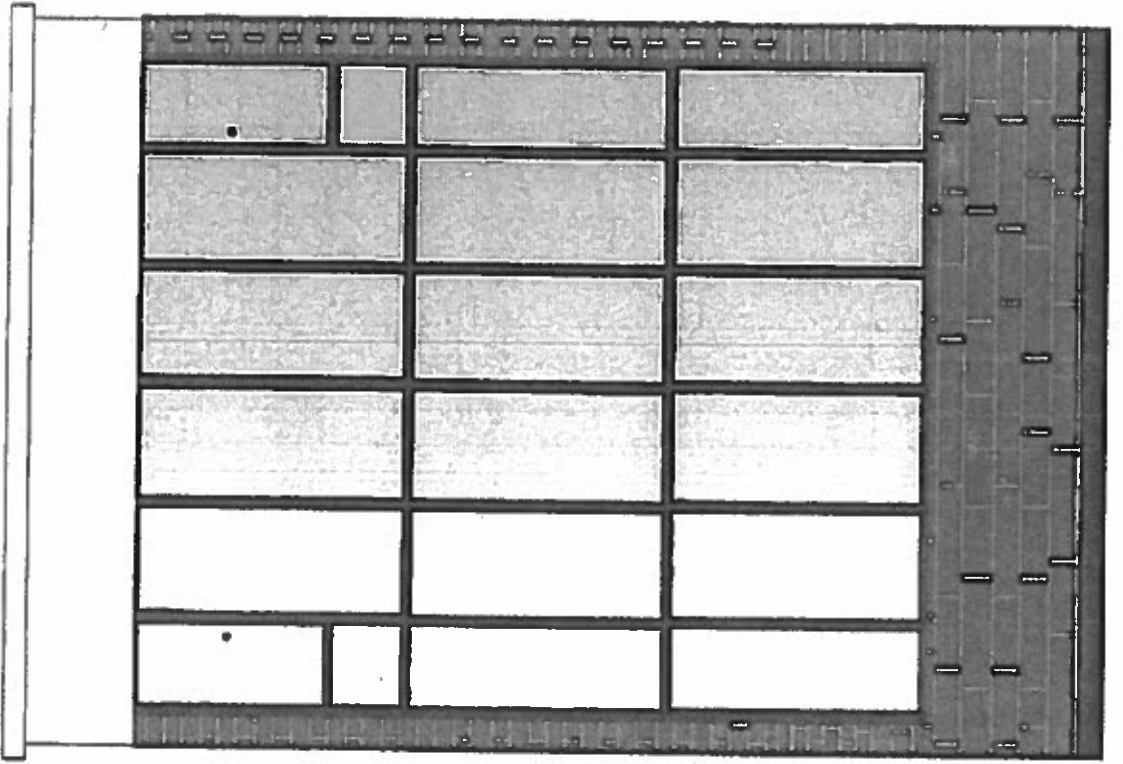
I declare that all of the above information is true and accurate and has the same force and effect as if made under oath. If application is being signed by someone other than the property owner, written permission from the owner must accompany this application.

Owner Signature Original Signed Date: 1/13/2016

Applicant Signature Original Signed Date: 1/13/2016

Halifax Office (Western Region):
7071 Bayers Rd, Suite 2005
Halifax, NS B3L 2C2
Ph: 490-5660 fax: 490-4645

Dartmouth Office (Eastern & Central Regions):
40 Alderney Dr, 2nd fl
Dartmouth, NS B2Y 2N5
Ph: 490-4490 fax: 490-4661



2ft
1st floor ceiling

12ft
2nd floor ceiling

9ft
Grade

Specs

Materials:

- Siding: Shingles or Stone
- Window/door trim: Black
- Front step: Stone pathway at grade.
- Glass window wall

5ft
1st floor finish

12ft

9ft
Top of 2nd floor ceiling

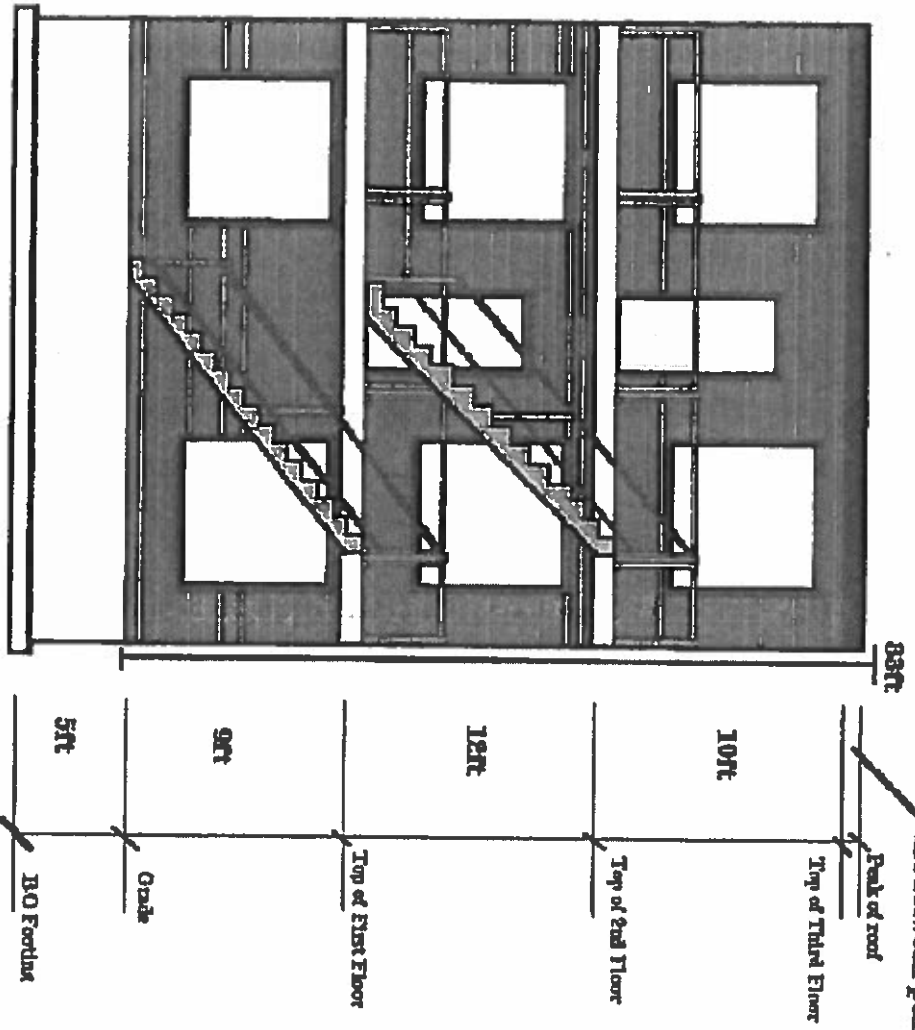
5ft

Grade

5ft

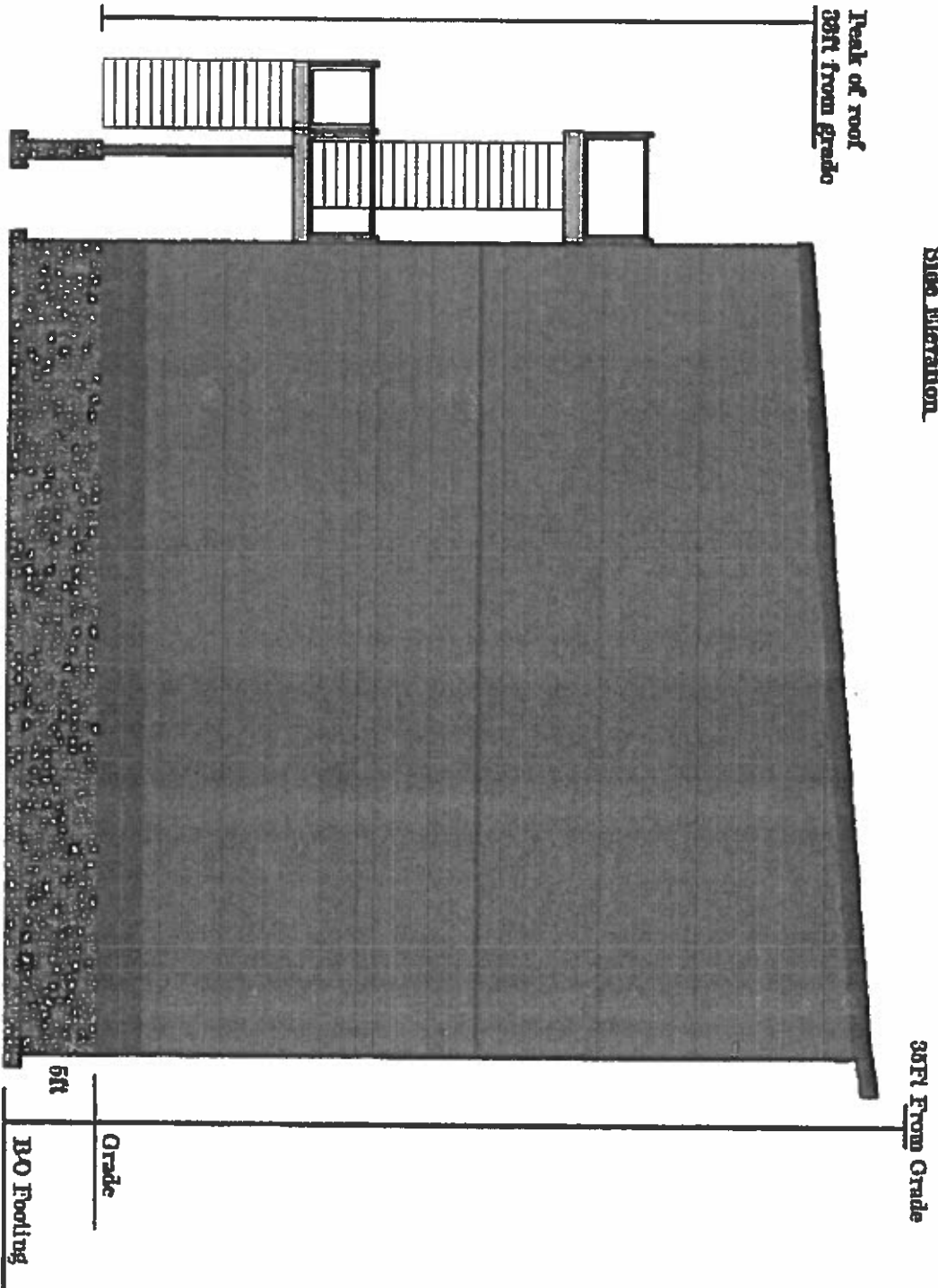
Front View

1:10 Finish



Back View

Slide Illustration



**Peak of roof
38ft from grade**

36ft From Grade

5ft

Grade

B.O. Footing

COPY

January 18, 2016

Dear Mr. Saulnier,

RE: Application for Variance, File No. 20344 – 6125 North Street, Halifax

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

Location: 6125 North Street, Halifax
Project Proposal: For new three-unit dwelling
Variance Requested: To vary the lot area, lot frontage, side yard setback, and GFA requirements

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.*

It is the opinion of the Development Officer that the variance (a) violates the intent of the land use by-law and (b) the difficulty experienced is general to properties in the area, therefore your request for a variance has been refused.

HALIFAX

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

halifax.ca

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. **Your appeal must be filed on or before January 29, 2016.** The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Land Development and Subdivision
P.O. Box 1749
Halifax, NS B3J 3A5**

If you have any questions or require additional information, please contact Nathan Hall at 490-5985, or by email at halln@halifax.ca.

Sincerely,

Original Signed

**Andrew Faulkner
Development Officer
Land Development and Subdivision
Halifax Regional Municipality**

**Tel 902.490.4341
Fax 902.490.4661
Email faulkna@halifax.ca**

CC. Cathy Mellett, Municipal Clerk

Jennifer Watts, Councillor

Case 20344 – Attachment D: Letter of Appeal from Applicant

January 21, 2016

File No. 20344 – 6125 North Street, Halifax

Dear Mr. Faulkner,

I received your letter concerning the denial of my application for Variance, File No. 20344 for my property located at 6125 North Street.

As per Section 251(4) of the Halifax Regional Municipality Charter I would like to appeal the decision that you made to Municipal Council. I would like to have the opportunity to state my case and my intent regarding the 4 variance applications that I made.

Should you have any questions or require additional information, please don't hesitate to contact me at [REDACTED] or by email at [REDACTED]

I look forward to hearing from you,

Sincerely,

Original Signed

Jacques Saulnier