



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**August 7, 2018**

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

**-Original Signed-**

**SUBMITTED BY:** \_\_\_\_\_  
Steve Higgins, Manager, Current Planning

**DATE:** July 18, 2018

**SUBJECT:** Case 21645: Appeal of Variance Approval – 1532 Larch 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 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**

In accordance with Administrative Order One, the following motion must be placed on the floor:

**That the appeal be allowed.**

Community Council approval of the appeal will result in refusal of the variance.

Community Council denial of the appeal will result in approval of the variance.

Staff recommend that Halifax and West Community Council deny the appeal.

## **BACKGROUND**

A variance request has been submitted for 1532 Larch Street in Halifax to enable the existing single unit dwelling to be converted to a three-unit dwelling. To facilitate this project, a variance has been requested to relax the required right, side yard setback, as the existing structure does not meet the side-yard requirement for a three-unit dwelling (Map 2 and Attachment A) where it is currently placed. The proposal meets all other requirements of the Land Use By-law.

### **Site Details:**

#### **Zoning**

The property is located within the R-2 (General Residential) Zone of the Halifax Peninsula Land Use By-Law (LUB) and is within the Peninsula Centre Secondary Plan Area. The requirement of the LUB and the related variance request is as identified below:

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Side Yard</b>	6 feet	2 feet

For the reasons detailed in the Discussion section of this report, the Development Officer has approved the requested variance (Attachment B). Four property owners within the 100-metre notification area have appealed the approval (Attachment C) 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, the Recommendation section of the report contains the required wording of the appeal motion as well as a staff recommendation.

For the reasons outlined in this report, staff recommend that Community Council deny the appeal and uphold the decision of the Development Officer to approve 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.”

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 for buildings containing no more than four units. The by-law provides various avenues to approve such proposals, including an internal conversion clause for the Peninsula Centre Secondary Plan Area, which waives many of the standard requirements of the zone, including setbacks. Such internal conversions are limited to buildings constructed prior to October 14, 1982, provided there has not been an addition since that date. In this case, the existing dwelling predates 1982, but there was an addition in 2001, and so it is not eligible for an internal conversion.

The Halifax Municipal Planning Strategy (MPS) provides insight into the intent of the LUB. The property is designated as "Medium Density Residential" on the Generalized Future Land Use Map of the Peninsula Centre Area Plan. Policy 1.1.2 of the MPS states that "the diverse physical and social elements of residential areas should be respected through the selective application of several forms of compatible infill housing." This policy is implemented in the land use by-law by allowing up to four residential units as-of-right, and by providing for internal conversions to existing buildings. Although the proposal does not meet the side yard setback requirement of the LUB, it does fulfill the intent of the Medium Density Residential designation. Additionally, while the property in question does not meet the requirements of the internal conversion clause, the variety of options available to create buildings containing up to four units clearly demonstrates that this zone is intended to see a mix of dwelling types, and to preserve the character of existing neighbourhoods by allowing flexibility in converting older housing stock.

Noting that the proposal to create two additional units within the building will not result in any exterior change to the building and the proposal otherwise meets the LUB requirements, it is the Development Officer's opinion that the requested setback variance does not violate the intent of the Land Use By-Law.

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

In evaluating variance requests, staff must consider the characteristics of the surrounding neighborhood to determine if general application of the by-law creates a specific difficulty or hardship that is not broadly present in the area. If these circumstances exist, then consideration can be given to the requested variance. If the difficulty is general to properties in the area, then the variance should be refused.

The lot fabric in this area consists of properties of varying sizes, shapes, and configurations. Many of the lots were created prior to the effective date of the LUB. While it is not uncommon for properties in the area to be unable to meet one or more requirements of the LUB, the variety of the lot fabric in this area means that the difficulties experienced are unique to each property.

Many of the buildings on the block were originally built as two-unit dwellings, or were able to be converted to four-unit buildings through an internal conversion clause. The inability to meet the side-yard setback is a result of the age of the dwelling, and appears to be unique to this property. It is not a problem that 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.

The applicant has applied for a Development Permit and requested the variance in good faith prior to commencing any work on the property. Intentional disregard of Bylaw 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>Opposed to the fact that there will be underground parking.</i>	The proposal is for the conversion of the existing dwelling to three-units; no underground parking is proposed.
<i>The six-foot setback requirement is there for a reason.</i>	The side-yard setbacks exist to ensure adequate separation between buildings on adjacent lots. The proposal is for the conversion of an existing building, which pre-dates the land use by-law, and therefore did not have to meet any setbacks when it was constructed. Regardless of whether the variance is granted, the existing structure will remain 2 feet from the lot line. Granting the variance will simply allow a different use to be made of the existing structure.
<i>Too many apartments in this area and too many students.</i>	The R-2 Zone allows for buildings containing up to four apartments. The proposal is for a building containing three apartments, and does not exceed the maximum number of units permitted in a building under the Land Use Bylaw.  The Municipality does not regulate tenancy. The Land Use Bylaw stipulates the maximum number of apartments which can be contained in a building, but does not speak to who shall be permitted to live in the units.

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. Resulting from 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 recommendation 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 100 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**

As noted throughout this report, Administrative Order One requires that Community Council consideration of this item must be in the context of a motion to allow the appeal. Council's options are limited to denial or approval of that appeal motion.

- 1) Denial of the appeal motion would result in the approval of the variance. This would uphold the Development Officer's decision and this is staff's recommended alternative;
- 2) Approval of the appeal motion would result in the refusal of the variance. This would overturn the Development Officer's decision.

### **ATTACHMENTS**

Map 1: Notification Area  
Map 2: Site Plan

Attachment A: Building Photos  
Attachment B: Variance Approval Notice  
Attachment C: Letters of Appeal from Abutters

---

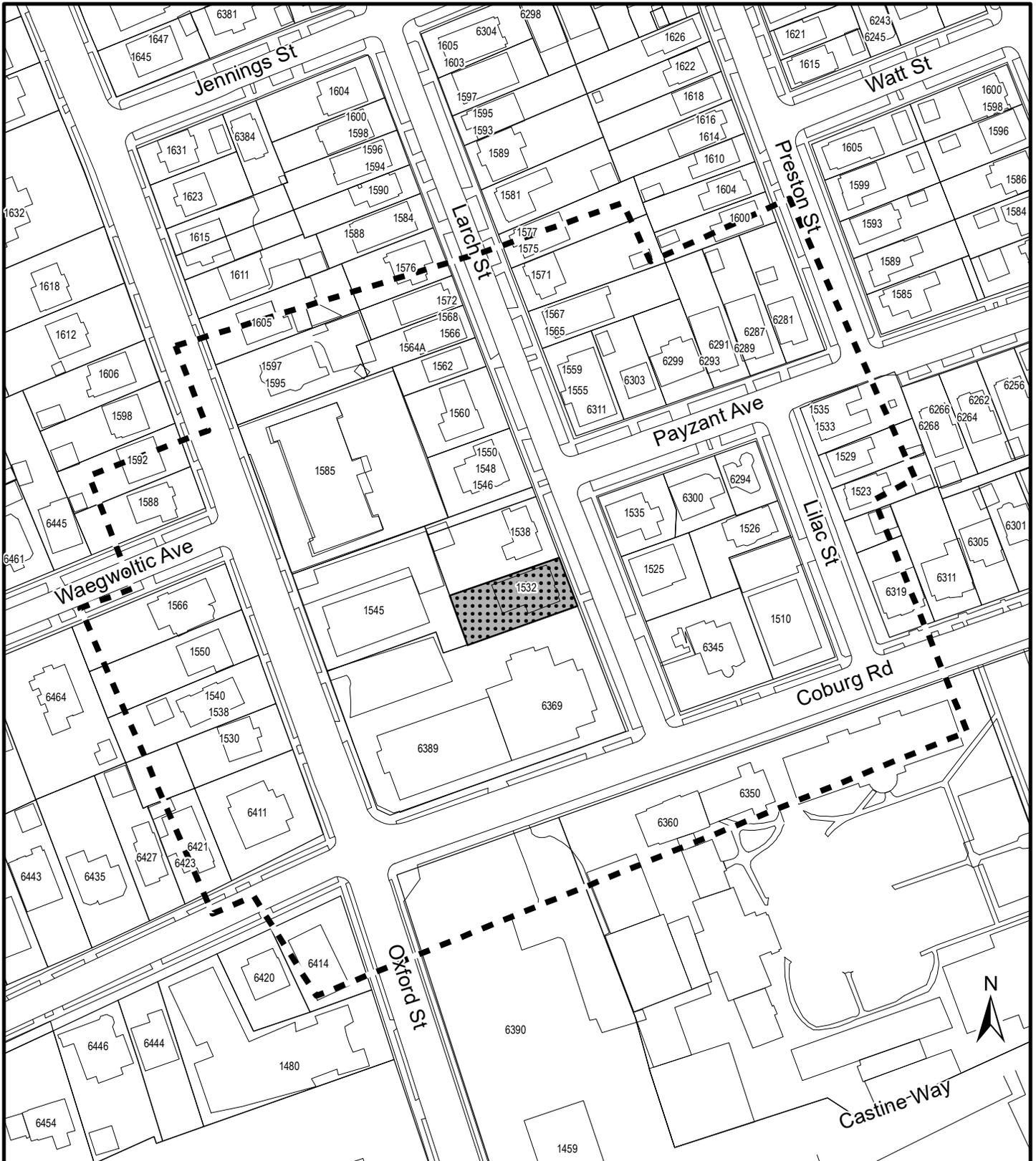
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Peter Nightingale, Planner I, 902.490.6492  
Andrew Faulkner, Development Officer, 902.476.2982

***-Original Signed-***

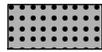
Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.490.1210

---



**Map 1 - Notification Area**

1532 Larch Street,  
Halifax

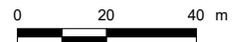


Subject Property

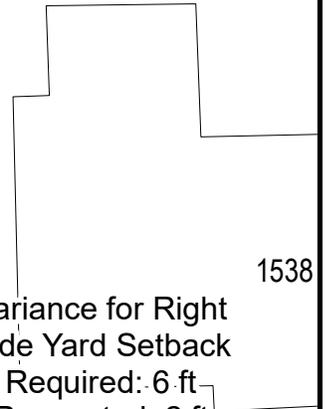
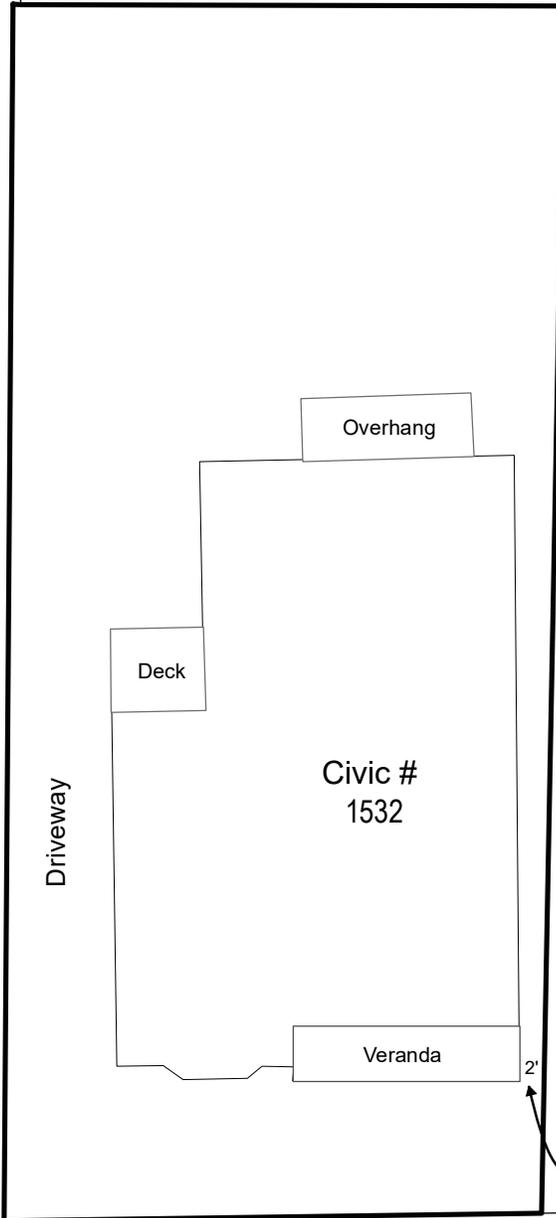
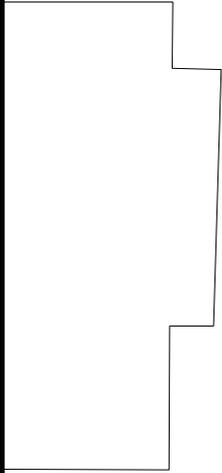


Notification Area

**HALIFAX**



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



Variance for Right Side Yard Setback  
Required: 6 ft  
Requested: 2 ft

2'

Larch St

**Map 2 - Site Plan**

1532 Larch Street,  
Halifax



Subject Property



Halifax Plan Area

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

**Attachment A- Building Photos**

Front elevation of existing dwelling:



Right-side yard of existing dwelling:



Attachment B- Variance Approval Notice

March 23, 2018

**RE: Variance Application #21645, 1532 Larch St., Halifax (PID 00048215)**

Dear Sir or Madam:

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:** 1532 Larch St., Halifax (PID 00048215)  
**Project Proposal:** Convert Single Unit Dwelling to Three Unit Dwelling

LUB Regulation	Requirements	Proposal
Right-side yard setback	6 feet	2 feet

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 **Monday, April 9, 2018** 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 Peter Nightingale at 902-490-6492.

Yours truly,



Andrew Faulkner  
Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councillor Wayne Mason

**HALIFAX**

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

halifax.ca

**Stewart, April**

---

**From:** [REDACTED]  
**Sent:** April-07-18 11:06 AM  
**To:** Office, Clerks  
**Subject:** Re: Re:Variance Application#21645,1532Larch Stret ,Halifax NS

Dear Sir/Madam,

This in reference to your above memo re: Variance.

I am a property owner within 100 metres of the following address, 1532 Larch St. Halifax, NS (PID 00048215).

I am APPEALING and OBJECT to the proposed 2 feet right-side setback .

Kindly adhere to the Halifax Peninsula Use bylaws. The 6 feet requirement is there for a reason.

Warm Regards,

[REDACTED]

[REDACTED]

HALIFAX REGIONAL  
MUNICIPALITY  
APR 09 2018  
*LH.*  
MUNICIPAL CLERK

Stewart, April

---

**From:** [REDACTED]  
**Sent:** April-06-18 2:32 PM  
**To:** Office, Clerks  
**Cc:** Mason, Waye  
**Subject:** Re:Variance Application#21645,1532Larch Stret ,Halifax NS

Dear Sir/Madam,

This in reference to your above memo re: Variance.

I am a property owner within 100 metres of the following address, 1532 Larch St. Halifax, NS (PID 00048215).

I am APPEALING and OBJECT to the proposed 2 feet right-side setback .

Kindly adhere to the Halifax Peninsula Use bylaws. The 6 feet requirement is there for a reason.

Warm Regards,

[REDACTED]  
[REDACTED]

HALIFAX REGIONAL  
MUNICIPALITY  
APR 06 2018  
*LH.*  
MUNICIPAL CLERK

## Stewart, April

---

**From:** [REDACTED]  
**Sent:** April-06-18 1:42 PM  
**To:** Office, Clerks  
**Cc:** Mason, Wayne  
**Subject:** Re: Variance Application #21645 - 1532 Larch St. Halifax, NS ( PID 00048215)

Hi,

I am a property owner within 100 metres of the following address, 1532 Larch St. Halifax, NS ( PID 00048215).

I am APPEALING and OBJECT to the proposed 2 feet right-side setback.

Kindly adhere to the Halifax Peninsula Use bylaws. The 6 feet requirement is there for a reason.

Kind Regards,

[REDACTED]



HALIFAX REGIONAL  
MUNICIPALITY

APR 05 2018

Lh

MUNICIPAL CLERK

March 23, 2018

**RE: Variance Application #21645, 1532 Larch St., Halifax (PID 00048215)**

Dear Sir or Madam:

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:** 1532 Larch St., Halifax (PID 00048215)  
**Project Proposal:** Convert Single Unit Dwelling to Three Unit Dwelling

LUB Regulation	Requirements	Proposal
Right-side yard setback	6 feet	2 feet

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 Monday, April 9, 2018 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 Peter Nightingale at 902-490-6492.

Yours truly,

Andrew Faulkner  
Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councillor Wayne Mason

March 30, 2018

To MUNICIPAL CLERK,

I VOTE NO ON THIS.  
- TOO MANY APPLS IN THIS AREA.  
& TOO MANY SQUAKES.  
#3308100 NOVA SCOTIA LIMITED.  
Robbie Brown (PRES.)

**HALIFAX**

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

halifax.ca

APRIL 4 - 2018

SIR.

- \* I am opposed to the project
- \* I am opposed to the fact that there will be underground parking
- \* I am opposed to giving the developer any setback

[REDACTED]

[REDACTED]