



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

Item No. 10.2.1
Halifax and West Community Council
November 14, 2018

TO: Chair and Members of Halifax and West Community Council

-Original Signed-

SUBMITTED BY: _____
Steven Higgins, Manager, Current Planning

DATE: October 9, 2018

SUBJECT: Case 21249: Appeal of Variance Refusal - 2548 Oxford Street, Halifax

ORIGIN

Appeal of the Development Officer's decision to refuse 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 approval of the variance.

Community Council denial of the appeal will result in a refusal of the variance.

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

BACKGROUND

A variance request has been submitted for 2548 Oxford Street to construct a third-floor addition to create a third dwelling unit within an existing two-unit dwelling. To facilitate this project, a variance has been

requested to relax the minimum lot area, lot frontage, and the left sideyard setback. The proposed third floor will not increase the existing footprint and will not further encroach within the established side yards. The proposal meets all other requirements of the Land Use By-law.

Site Details:

Zoning

The property is located in the R-2 (General Residential) Zone of the Halifax Peninsula Land Use By-Law (LUB). The requirements for a three-unit dwelling and the corresponding variance requests are identified in the table below:

	Zone Requirement	Variance Requested
Minimum Lot Area	8000 square feet	5742 square feet
Minimum Lot Frontage	80 feet	57 feet 7 inches
Minimum Side Yard	6 feet	2 feet

For the reasons detailed in the Discussion section of this report, the Development Officer has denied the requested variance (Attachment B). The applicant has appealed the refusal (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 must place a motion on the floor to “allow the appeal”, even if that motion is contrary to staff’s recommendation. For Community Council’s information and clarity, the Recommendation section of this report includes the motion required by Administrative Order Number One. It also includes an explanation of the implications of approval or refusal of that motion along with staff’s 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 refuse 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, within the context of the criteria provided in the *Halifax Regional Municipal Charter*. As such, the Charter sets out the following criteria by which the Development Officer may not grant variances to requirements of the LUB:

- “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?**

Minimum lot area, frontage and setback requirements are key components of a range of by-law regulations intended to allow moderate increases in density while maintaining the established character of existing

neighbourhoods and retaining viable housing stock in its current form. This intent is achieved through two regulatory approaches:

- Allow additional units in new buildings or additions to existing buildings only on lots with larger lot areas, increased frontages and bigger sideyards; or
- Allow additional units in buildings that existed prior to May 11, 1950 regardless of lot size, frontage and sideyards via internal conversion without any expansion of the existing building envelope

The bylaw intends to allow both additional density and increased building mass on larger lots with greater building separation. It also intends to allow additional density on smaller lots without creating additional building mass in older existing housing stock. The by-law does not intend to allow the combination of additional density and additional mass on smaller lots.

It should be noted that the draft Centre Plan contains policies that support limited additional density in established neighbourhoods regardless of lot size. However, approval of those documents remains subject to public consultation, Council review and public hearings. Staff believe it would be premature to presume approval of these draft policies and regulations in the context of considering a site-specific variance.

This application proposes both increased density and increased building mass on a property that does not meet several requirements related to minimum lot size and building separation. Under these circumstances, the proposed variance is seen to be contrary to the intent of the land use bylaw.

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 with varying sizes, shapes, and configurations many of which do not meet the by-law requirements for a three-unit dwelling. Municipal records indicate only one property within the notification area containing a three-unit dwelling. The subject property is not materially different than the surrounding area and it possesses no unique conditions that would warrant a relaxation of bylaw requirements that are broadly applicable in the neighbourhood.

Under these circumstances, the proposed variance is seen to be the result of conditions that are 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 relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case with this request. The applicant has applied for a Development Permit 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 appeal (Attachment C) 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>Adding one additional unit to an existing 2-unit dwelling will not change the character of the property or the existing footprint of the building.</i>	While the footprint of the dwelling would remain the same the proposal is to create a third storey addition. This adds building mass and is viewed as a change in character to the dwelling. The pitched roof would be replaced with a flat roof. The variety of roof pitches within the surrounding area compliment the streetscape.
<i>Non-conforming side yards are common throughout the Plan Area and variance requests to expand a building within an existing non-conforming side yard are not uncommon, as it allows for the existing house to be preserved rather than being demolished.</i>	Non-conforming side yards are common within the Halifax Peninsula Plan Area as so much of the residential development was done prior to the requirements of the Land Use By-law. The existing building is a "non-conforming structure" pursuant to Section 254 of the <i>HRM Charter</i> and if the request was an addition to a 2-unit dwelling, the reduced setbacks would be acceptable. When a third unit is added, the setback requirements increase, which is why the variance has been requested. Variance requests for side yard setbacks, lot size and frontage must be reviewed on a site-specific basis to determine if the request meets the Charter criteria.
<i>Some of the lots similar in size to the subject property already contain three- and four-unit dwellings (including one almost directly behind the subject property). These structures can be rebuilt without the need for variances to the frontage or lot area requirement.</i>	Municipal records indicate that 2561-2565 Kline Street is the only existing lawful 3-unit dwelling within the 100-metre variance notification area. This three-unit dwelling was in existence prior to the Land Use By-law and is therefore recognized as a non-conforming structure for residential purposes as per the <i>HRM Charter</i> . This section allows non-conforming structures to be repaired or reconstructed under specific conditions.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. Resulting from that review, the variance request was refused as it was determined that the proposal conflicted 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 refusal 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 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 refusal 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 approval of the variance. This would overturn the Development Officer's decision.

ATTACHMENTS

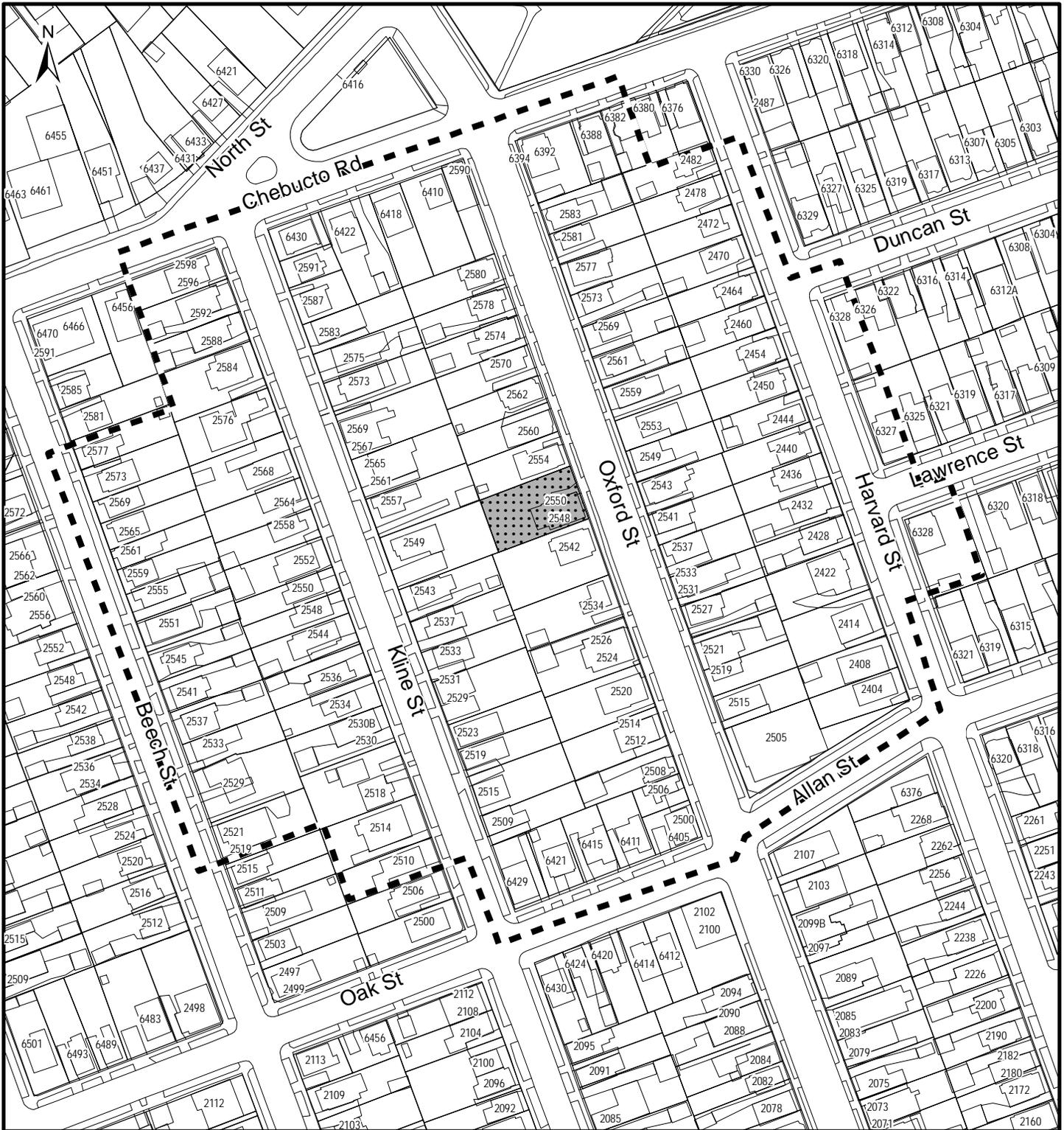
Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevations
Attachment B:	Variance Refusal Letter
Attachment C:	Letter of Appeal from Applicant

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Audas, Development Officer, 902.490.4402

-Original Signed-

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



Map 1 - Notification Area

2548 Oxford Street
Halifax



Subject Property



Notification Area

Halifax Plan Area

HALIFAX



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



Oxford St

Minimum Lot Frontage:
Required: 80'
Proposed: 57' 7"

57' 7"

2554

2550

2548

2542

Side Yard Setback
Required: 6.0'
Proposed: 2.0'

Minimum Lot Area:
Required: 8,000 sq ft
Proposed: 5,742 sq ft

Map 2 - Site Plan

2548 Oxford Street
Halifax

HALIFAX



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

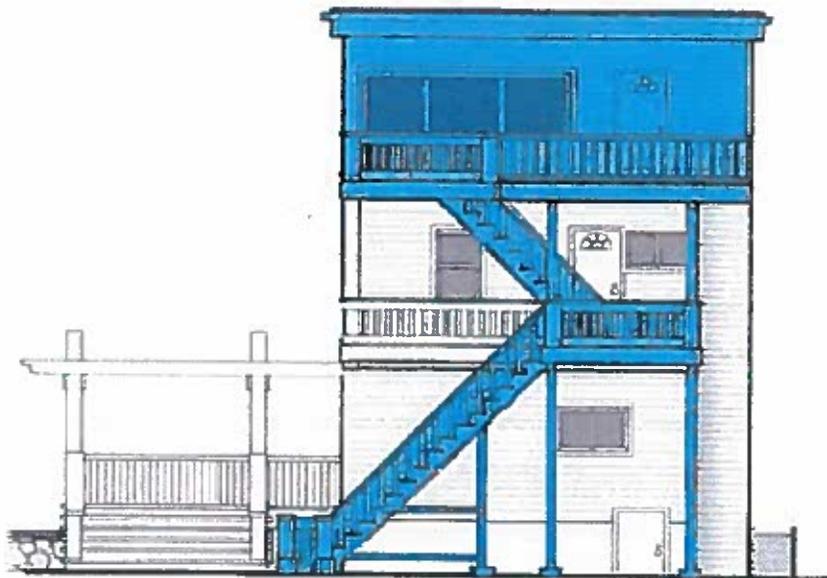
Halifax Plan Area

Proposed Elevations

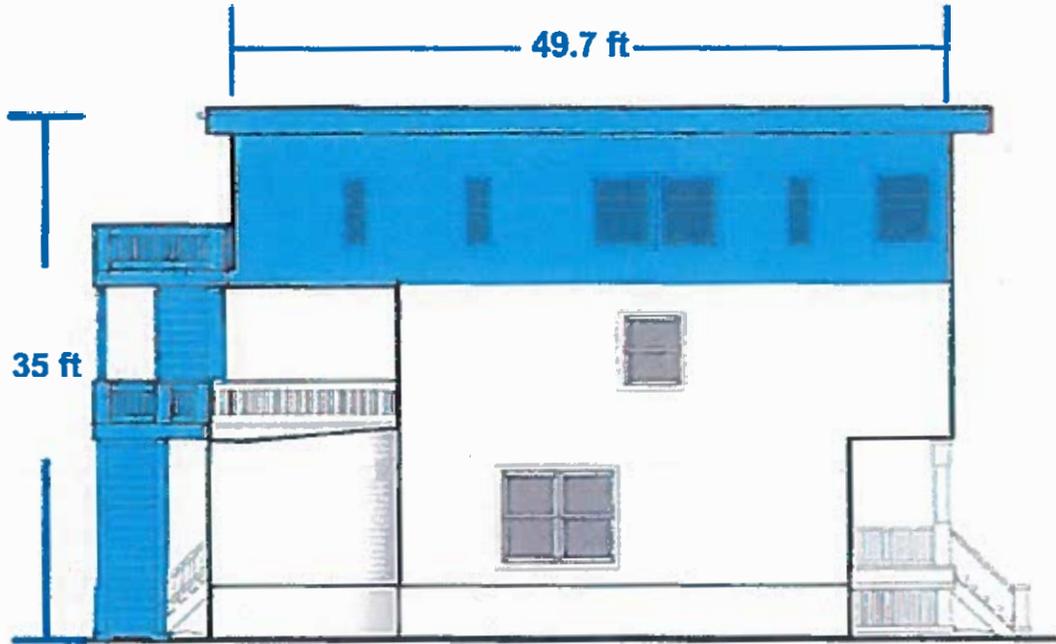
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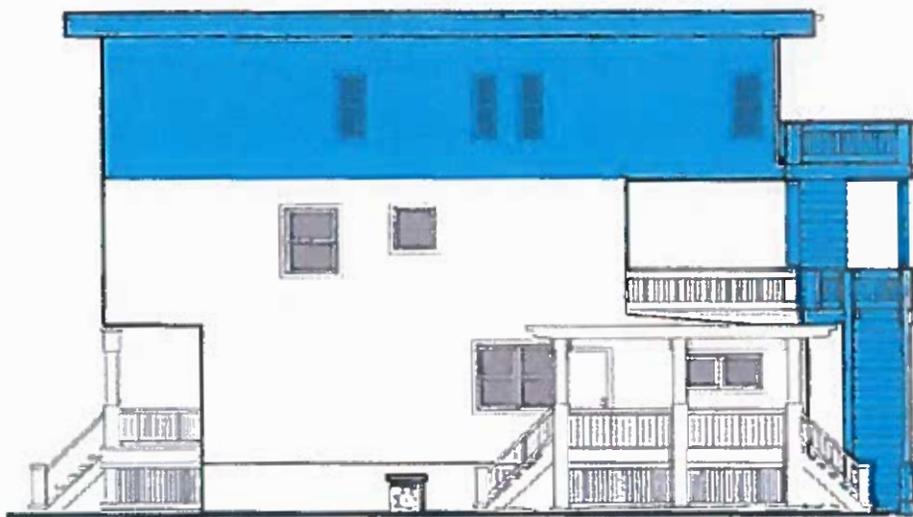
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Left



Right



Attachment B- Variance Refusal Letter

July 14, 2017

██████████
2548 Oxford Street
Halifax, NS
B3L 2T4

Dear Kevin,

RE: Variance Application #21249, 2548 Oxford Street, Halifax, PID #00024646

This will advise that I have refused your request for a variance from the requirements of the Halifax Peninsula Land Use By-Law as follows:

Location: 2548 Oxford Street, Halifax
Project Proposal: Lot area, lot frontage and left side yard setback variances required to construct an additional third floor onto existing dwelling, creating a third residential unit.

LUB Regulation	Requirement	Proposed
Minimum Lot Area	8000 Square Feet	5742 Square Feet
Minimum Lot Frontage	80 Feet	57'7" Feet
Minimum Left Side Yard Setback	6 Feet	2 Feet

Section 235(3) of the Municipal Government Act states that:

No variance shall be granted where:

- (a) the variance violates the intent of the land use bylaw;
- (b) the difficulty experienced is general to properties in the area; or
- (c) the difficulty experienced results from the intentional disregard for the requirements of the land use bylaw.

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (a) the variance violates the intent of the land use bylaw.

And

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(b) the difficulty experienced is general to properties in the area

Pursuant to Section 236(4) of the Municipal Government Act 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
P.O. Box 1749
Halifax, NS B3J 3A5
clerks@halifax.ca**

Your appeal must be filed on or before July 24, 2017.

If you have any questions or require clarification of any of the above, please call Megan Backos, Planner 1, at (902) 490-4793.

Sincerely,

ORIGINAL SIGNED

Sean Audas, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk
Waye Mason, Municipal Councillor

Attachment C- Letter of Appeal from Applicant



ENVIRONMENTAL DESIGN AND MANAGEMENT LIMITED
PLANNING • ECONOMICS • ECOLOGY • ENGINEERING • GEOMATICS

July 24, 2017

Kevin Arjoon
Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax NS B3J 3A

Re: Appeal of Refusal - Variance Application #21249, 2548 Oxford Street, Halifax (PID 00024646)

Dear Mr. Arjoon:

On behalf of the property owners of 2548 Oxford Street, please accept this letter in support of an appeal of the decision of a Development Officer for variance application #21249.

The rationale for appeal are outlined below, specific to the criteria noted in the refusal letter, as contained in Section 250(3) of the Halifax Regional Municipality Charter.

- (a) the variance violates the intent of the land use bylaw; and
- (b) the difficulty experienced is general to properties in the area

Variance Request

The variance request is to enable renovation of an existing two-unit dwelling to create a three-unit dwelling, as permitted in the R-2 zone (Halifax Peninsula Land Use Bylaw). The variances requested are to relax minimum lot area and lot frontage as required for three-unit buildings and one side yard setback (note: the side yard is already non-conforming with the existing structure) (see table 1).

Please note that the proposed renovation will not exceed the gross floor area or maximum lot coverage requirement of the zone. The resulting dwelling will not expand the existing footprint and will maintain its existing character and general form.

Table 1: Variance Requests

Description	Zone Requirement	Variance Requested
Min. lot area	8000 SF	5742 SF
Min. lot frontage	80 Feet	57'7"
Min. left side setback	6 feet	2 feet *
* existing dwelling has 2 foot left side yard (already non-conforming)		

Rational for Appeal

We submit the following for Council's consideration in support of the original variance requests and in this request for Council to overturn the decision of the Development Officer:

The proposed development aligns with the intent of the Bylaw for the R-2 zone in regard to anticipated density and intensity of land use.

The R-2 zone permits a variety of housing types, including single-unit detached homes, duplexes, semi-detached, and small three- and four-unit apartment buildings. The Bylaw controls density by setting minimum lot sizes for buildings based on the number of dwelling units contained within it. The minimum lot size, however is not directly proportional to the number of units contained in a building. Generally, less land area is required per unit as more units are added. There is an assumption that multiple unit buildings may have fewer bedrooms per dwelling unit than single family homes on detached lots. In this regard, the bylaw further limits the number of bedrooms permitted within semi-detached and multi-unit buildings to prevent rooming-house style development.

The proposed variances would permit a 3-unit building with a total of 8 bedrooms. Situated on a 5742 square foot lot, this equates to approximately 718 square feet of lot area per bedroom for the proposed development. In comparison, a semi-detached building constructed by-right on a 5000 square foot lot in the R-2 zone is permitted to have 10 bedrooms. This scenario would result in 500 square feet of lot area per bedroom. For semi-detached buildings constructed before 2005, the area per bedroom drops to 417 square feet.

The resulting development would create an owner-occupied three unit dwelling - adding one additional unit to an existing 2-unit dwelling - in an established residential area without any significant change to the character of the property and no change to the footprint of the structure (see Fig. 1 and 2). This is sometimes referred to as hidden density or gentle density, as the form of the proposed 3-unit dwelling that would result from the approved variances would not differ significantly from what is already there or what is permitted by-right if the building was used as a single family or two-unit dwelling. Given the size of the lot (5742 square feet), a 1350 square foot addition could be added by-right to the existing building if used as a single family home without the need for any frontage or lot area variance. This could include a nearly 1000 square foot ground level addition, significantly increasing the footprint of the building.

In this regard, we submit that the variances requested are only to allow for a modest renovation of an existing structure that will not result in additional density than is otherwise already anticipated and permitted by the Bylaw in the R-2 zone. The variances requested will not result in permission to construct an "oversized" structure, but instead allow for the thoughtful integration of an additional dwelling unit in a manner that respects the existing character of the property and surrounding area.

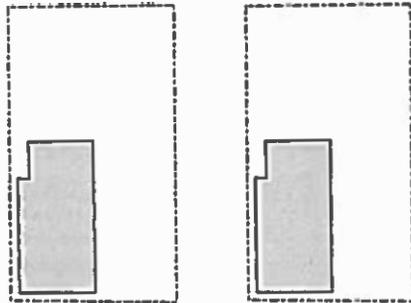


Fig. 1: (left) Existing building footprint; (right) footprint with proposed variances



Fig. 2: Dashed red line shows existing roofline, shaded blue area shows proposed change.

The proposed development aligns with the intent of the Bylaw in regard to site coverage and lot configuration in the R-2 zone. The two remaining variances requested concern the left side yard and frontage. The reduction of the left side yard is unavoidable as the existing house does not conform to the side-yard setback today (see Fig. 1). The variance for the side yard only involves extending the existing wall to gain a habitable space within the existing attic area, while ensuring the maximum height limit is not exceeded (see Fig. 2). We understand that non-conforming side yards are common throughout the Plan area and variance requests to expand a building with an existing non-conforming side yard are not uncommon, as it allows for the existing house to be preserved rather than being demolished.

The frontage requirement for three-unit buildings anticipates a much larger building occupying more of the site. In such cases, the frontage can ensure adequate access is maintained to the property and that the building is buffered from adjacent single and two-unit dwellings. However, As the resulting dwelling will not differ significantly from what is there now, the additional frontage is not needed for access to the property or to integrate a bigger building. As well, as the units are stacked, rather than vertically separated, there is not potential to subdivide in the future where frontage would be needed to create lots with adequate access.

The variance requested is exceptional to the subject property and is not general to the area. The approval of the requested variances will allow the property owner to address challenges - specific to the subject lot and a small number of oversized lots in the area - in carrying out infill that is complementary to the existing neighbourhood character. Some of the lots similar in size to the subject property already contain three- and four-unit dwellings (including one almost directly behind the subject property). These structures can be rebuilt without the need for variances to the frontage or lot area requirement. In this regard, we submit that the difficulty experienced on the subject property is not general to similar properties in the area, as the lot size is not common within the Plan area.

Summary

With lot coverage and gross floor area well-below the maximum permitted by-right, the variance requests are not about attempting to "squeeze" more building on a lot. It is about enabling an owner to create a third unit in an existing building through a modest change to the building envelope. This additional unit will allow the owners to reinvest in their property, living in one unit and having two quality rental units in a highly-desirable area. This type of improvement is supported by the Halifax MPS:

Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods. (Residential Environments, Section 2.4)

While we recognize it to be outside of the variance request criteria as contained in the Charter, we feel it important to note that the resulting development aligns with housing and settlement objectives of the Regional Plan and draft Centre Plan by providing quality units on or near to corridor areas, in a manner that respects the existing character and scale of the neighbourhood.

For the reasons outlined in this letter, we submit that the variance requested reasonably align with the intent of the Bylaw and are not general to the majority of properties in the area.

Sincerely,

EDM · Environmental Design and Management Limited

ORIGINAL SIGNED

Matt Neville, MCIP, LPP