



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**April 9, 2019**

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

***-Original Signed-***

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

**DATE:** March 27, 2019

**SUBJECT:** **Case 21605: Appeal of Variance Approval – 2740 Deacon 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 shall 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 permit application was received and approved for 2740 Deacon Street in Halifax to create a two-unit dwelling by internal conversion. Subsequent to that permit issuance, the owner proposed to revise the plans to include raising the dwelling creating additional building volume. However, the conditions attached to the approved internal conversion prohibit additions to building volume and the property and the building do not otherwise comply with minimum Land Use Bylaw requirements for a two-unit dwelling.

The owner applied for a variance to allow the inclusion of a second dwelling unit in the basement in conjunction with the increased building volume. Specifically, the variance requests include a reduction of the required minimum lot area, minimum lot frontage, and minimum side yard setback. In addition, during a site inspection in response to the variance application, it was identified that an additional variance of the front yard set back was necessary to accommodate new exterior front stairs. All other requirements of the LUB are met.

### **Site Details:**

#### **Zoning**

The property is located within the R-2 (General Residential) Zone of the Halifax Peninsula Land Use Bylaw. The relevant requirements of the LUB and the related variance request is as identified below:

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Lot Area</b>	5,000 square feet	3,745 square feet
<b>Minimum Lot Frontage</b>	50 feet	32 feet
<b>Minimum Front Yard</b>	15 feet, 12-foot non-conforming setback*	9 feet
<b>Minimum Right Yard</b>	5 feet	0 feet

\*A 15-foot front yard setback is required in the Land Use By-Law. However, the front steps prior to the renovation were lawfully located 12 feet from the front property line. Should this variance request not be successful, compliance can be achieved based on a non-conforming 12-foot setback.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). Five property owners within the 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 staff recommendation. The recommendation section of this report contains the wording of the appeal motion for consideration as well as a staff recommendation.

For the reasons outlined in this report, staff recommends that Community Council deny the appeals and uphold the decision of the Development Officer to approve the request for 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*.

The *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 should 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?**

a) Variance for Additional Units

The R-2 Zone permits up to four dwelling units based on minimum lot and setback requirements that increase relative to the number of proposed units. Alternatively, the bylaw also allows additional dwelling units to be created as an internal conversion regardless of lot and setback requirements. This provision allows additional units to be created in buildings that existed on a date specified in the bylaw provided there is no increase to the volume of the existing building.

The intent of the bylaw in this context is two-fold. Firstly, the bylaw generally intends to regulate unit density by requiring increased lot sizes and greater setbacks for structures containing additional units. Notwithstanding this general intent, the bylaw also intends to allow similar increases in unit density in situations that do not comply with lot size and setback requirements if existing building stock can be retained. Staff note the lot and building in question cannot comply with the minimum lot and setbacks for a second unit. It also should be noted that the structure has been altered by raising it approximately 26 inches and therefore it no longer qualifies for the addition of a second unit through the internal conversion clause.

Under these circumstances, it is reasonable to conclude that a variance to permit a second unit could be inconsistent with the intent of the land use bylaw with respect to lot size and setbacks. However, it would also be reasonable to conclude the same development would not violate the overall intent of the bylaw if the additional unit could be achieved in a manner that retained the existing housing stock.

Therefore, when considering the proposed variance, the test for the presence and materiality of any violation of the intent of the bylaw was based on whether or not the 26-inch height increase and the corresponding volume change represents a material impact on the bylaw's intent relative to retaining existing housing stock.

Noting that the proposal to create two additional units within the building will not result in any material exterior changes 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.

b) Variance for Front Steps

The front setback of the LUB is intended to provide a standard amount of space for parking, landscaping and utilities. The front setback that applies to the R-1 Zone is a minimum of 15 feet, but 2740 Deacon Street has a non-conforming 12 foot setback. The request to reduce from the non-conforming 12 foot setback to 9 feet stems from the raising of the house by 26 inches. An additional 2-3 steps have been added to lengthen the stairs, extending them by the three feet into the front yard. As the request is for a minimal three feet of reduced setback, and as the request is relative to an unenclosed structure and not the main wall of the building, and as there remains ample yard to provide for the amenities intended by the LUB, it is

the Development Officer's opinion that the front yard variance does not violate the intent of the Land Use By-law.

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

a) Variance for Additional Units

Many of the properties within the notification area contain single unit dwellings. However, there are two-unit dwellings in this area and additional two-unit dwellings slightly outside the notification area on Almon Street. As can be seen on Map 1, the lots within the notification area are generally consistent in size and dimension with some larger lots on the east side of Deacon Street and the west side of Summit Street. Capacity for the creation of two-unit dwellings does exist in the notification area but the majority of this capacity would be via the internal conversion provisions.

The difficulty meeting minimum lot and setback requirements for two-unit dwellings could be seen to be general to the area. However, the inability to create two-unit dwellings via internal conversions while retaining existing housing stock is not a difficulty that is general to properties in the area.

In this specific case, the difficulty being experienced is a direct result of a 26-inch height alteration and the corresponding volume increase that eliminated the capacity for an internal conversion which is otherwise broadly available throughout the area. Under these circumstances, it is reasonable to conclude the difficulty being experienced is not general to properties in the area.

b) Variance for Front Steps

The front yard relaxation results from additional steps required due to the raising of the house. The proposal to raise the house is relatively unique and is not a condition that is broadly present within the neighbourhood. It is the opinion of the Development Officer that the front setback difficulty is not 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?**

a) Variance for Additional Units

In reviewing a proposal for intentional disregard for the requirements of the LUB, 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 property owner applied for and received a permit for a second unit under internal conversion provisions and appears to have been initially unaware that the desire to raise the structure would have a material impact on the capacity for a second unit. This led to the substantial completion of the unit prior to the decision on the proposed variance. While there was construction undertaken contrary to approved permits, that activity appears to be the result of confusion about the implications of the bylaw as opposed to a clear knowledge and intentional disregard of the bylaw. Upon being formally informed of the applicable requirements, the applicant appears to have complied with the regulations in good faith. The dwelling unit remains in place pending the results of this process.

At the time the variance was proposed, the Development Officer was unaware of any material evidence of intentional disregard for the requirements of the LUB and the approval was granted on that basis.

b) Variance for Front Steps

The property owner did not anticipate the need for the front setback variance for the front steps in advance of the initial proposal to raise the house. As this was an unintended oversight, it is the Development Officer's opinion that the front setback variance is not caused by intentional disregard for the requirement.

**Appellant's Submission:**

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>Permitting these 4 variances are not in keeping with the nature of this neighbourhood.</i>	The lot size and setback requirements are not felt to be general to the neighbourhood. The disqualification for internal conversion makes this variance request unique.
<i>Permitting these variances will further erode the intent of the Land Use By-Law.</i>	The intent of the Land Use By-law is to encourage density while retaining existing housing on the Peninsula. The variance requests stems from a slight increase in height, not from substantial redevelopment of the site. It was felt that this variance request does not violate the intent of the Land Use By-Law.
<i>The Variances were required only due to, what appears to be, a disregard of the existing Land Use By-Law</i>	Questions have been raised regarding intentional disregard in the appeal letters. At the time of approval, intentional disregard was not a consideration as the building was under construction.
<i>The property does not contain enough parking (2) for the intended use.</i>	Parking is not part of the variance process and the requirements will have to be met regardless of Community Council's decision. It should be noted that options such as providing bicycle parking can reduce the amount of vehicular parking.
<i>The additional unit will be used as an Air B &amp; B unit.</i>	It is possible to lease one or more dwellings units while adhering to the requirement of the LUB. If there are concerns about compliance in future, residents are encouraged to bring those to the attention of staff.
<i>The increased height has led to the owner constructing an enormous, unsightly front stair.</i>	The front step setback is subject to approval through the variance process.

**Conclusion:**

Staff has reviewed the relevant information in this variance proposal. As a result of 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. The administration of the variance appeal can be carried out within the approved 2019/20 operating budget and with existing resources.

**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, appellants, 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 context of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

1. Denial of the appeal motion would result in approval of the variance. This would uphold the Development Officer's decision and this is staff 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 Elevations
Attachment B:	Variance Approval Letter
Attachment C:	Letters of Appeal

---

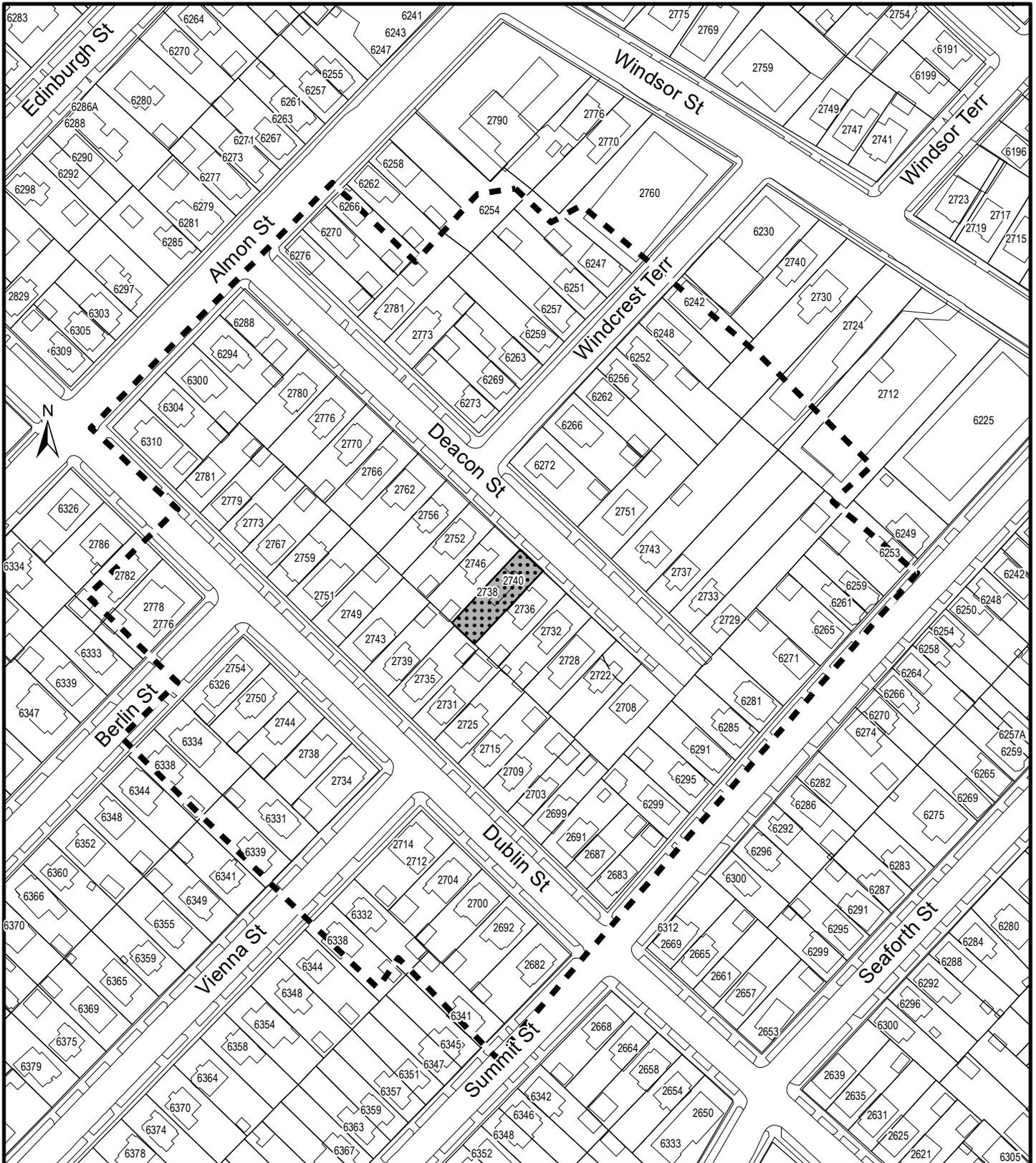
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902-490-4210.

Report Prepared by: Sean Audas, Principal Planner, 490-4402

***-Original Signed-***

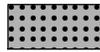
Report Approved by: Erin MacIntyre, Manager, Land Development and Subdivision, 902-490-1210

---



### Map 1 - Notification Area

2740 Deacon Street,  
Halifax



Subject Property



Notification Area

**HALIFAX**



Halifax Plan Area

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

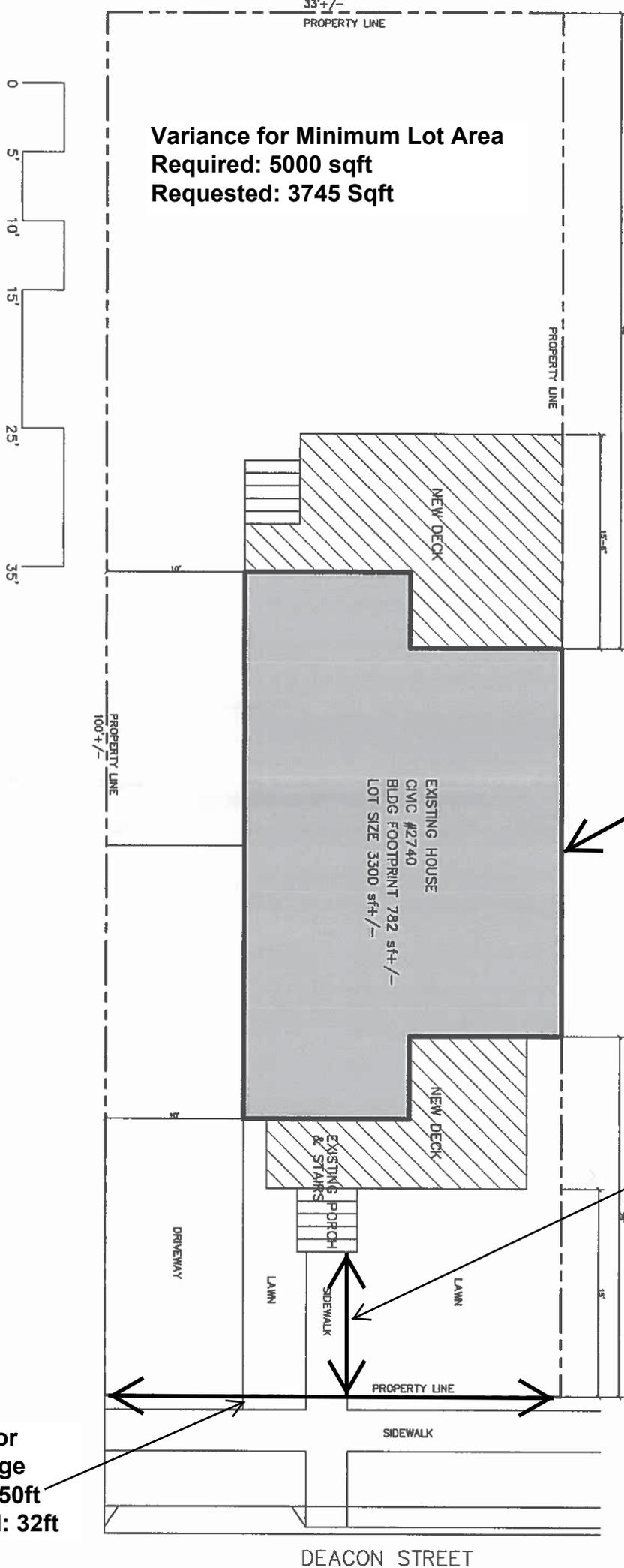
**Case 21605  
Map 2 Site Plan**

**Variance for Minimum Lot Area  
Required: 5000 sqft  
Requested: 3745 Sqft**

**Variance for Right Yard Setback  
Required: 5 ft  
Requested: 0 ft**

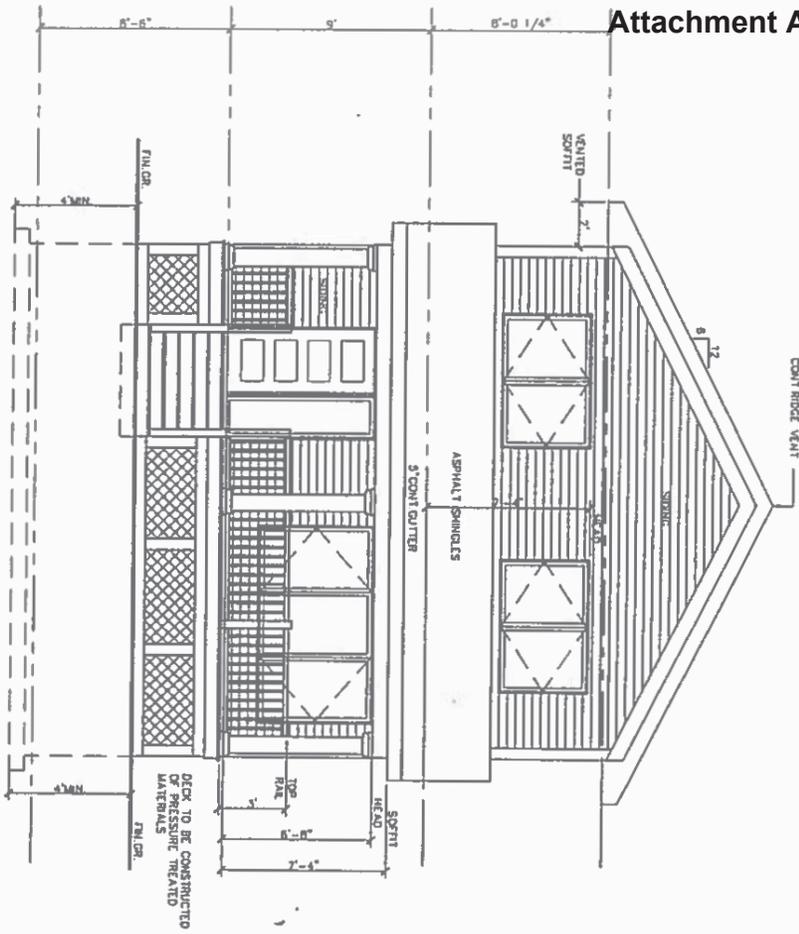
**Variance for Front Yard Setback  
Required: 15 ft  
Requested: 9 ft**

**Variance for Lot Frontage  
Required: 50ft  
Requested: 32ft**

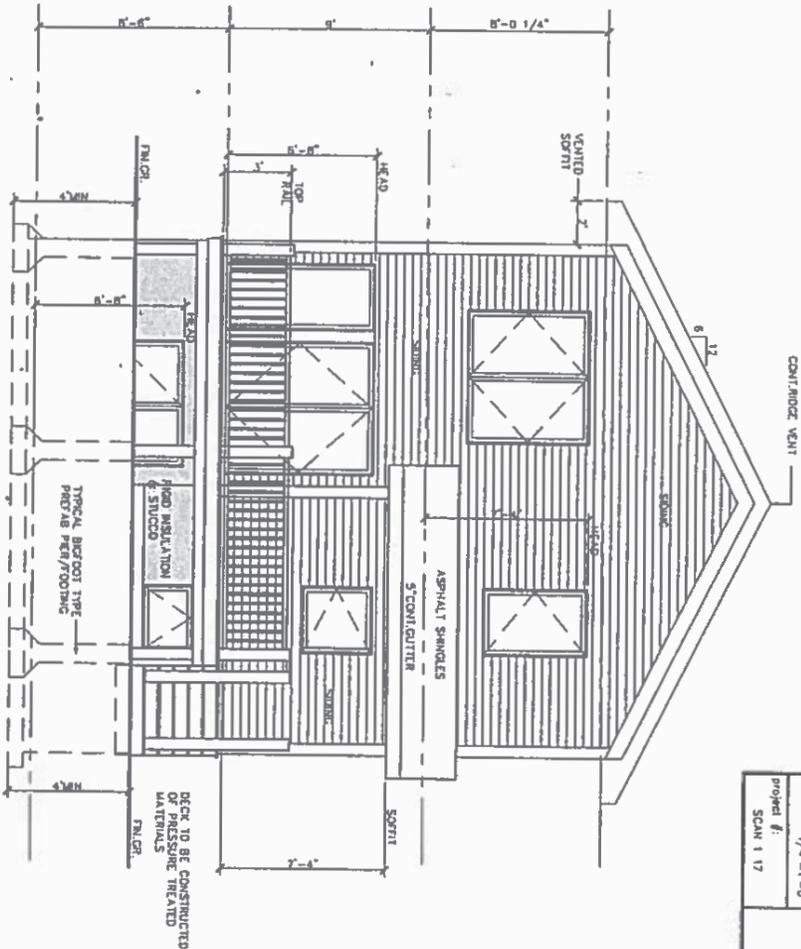


TITLE: SITE PLAN		checked: OWNERS
drawn by: STAFF	approved: OWNERS	
date: MAR.13/17	owner: OWNERS	
ecol: NTS	desig. f.:	
project f.:		
SCAN 1 17		

FRONT ELEVATION



REAR ELEVATION



PROJECT		HOUSE RENOVATION 2740 DEACON ST HALF AX, MS	
TITLE		BUILDING ELEVATION	
date:	FEB. 1/17	checked:	OWNERS
approved:	OWNERS	scale:	1/4"=1'-0"
proj. f.:	SCAN 1 17	sheet:	A3



May 4, 2018

Dear Sir or Madam:

**RE: VARIANCE #21605, 2740 DEACON STREET, HALIFAX, NS, PID #00123471**

It has come to our attention that not all properties owners within 100 metres of the above noted address received the original notice of this variance application, sent on April 27, 2018. Due to this error, a new notification has been distributed and the appeal period will now expire on May 21, 2018.

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:** 2740 DEACON STREET, HALIFAX, NS, PID #00123471  
**Project Proposal:** Vary lot area, lot frontage, front yard setback and right yard setback to accommodate a second dwelling unit.

LUB Regulation	Requirements	Proposal
Minimum Lot Area:	5000 square feet	3745 square feet
Minimum Lot Frontage:	50 feet	32 feet
Minimum Front Yard Setback:	15 feet	9 feet
Minimum Right Yard Setback:	5 feet	0 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 May 21, 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 Megan Backos, Planner 1 at (902) 490-4793.

Yours truly,

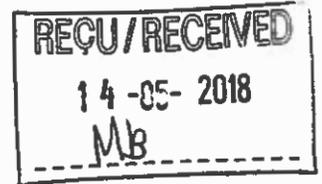


Sean Audas, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councilor Lindell Smith, District 8

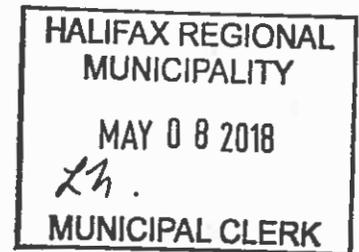
**Stewart, April**

**From:** Brian Hawkins  
**Sent:** May-07-18 5:04 PM  
**To:** Office, Clerks  
**Cc:** Smith, Lindell  
**Subject:** Appeal Variance 21605 2740 Deacon Street PID 00123471



May 7, 2018

Municipal Clerk  
Halifax Regional Municipality  
P O Box 1749  
Halifax, NS B3J 3A5



**Attention: Sean Audas, Principal Planner / Development Officer**

**Re: VARIANCE #21605, 2740 DEACON STREET, HALIFAX, NS PID #00123471**

Dear Mr. Audas:

I am a long time resident of Deacon Street, residing at [redacted] Deacon Street. I am writing to appeal the request for a variance for 2740 Deacon Street.

Deacon Street is an unusual street in Halifax. It is a short dead end street that is very quiet and made up of principally single family homes. There are a couple of properties that are 2 units and over the more than 30 years that my family has lived here the occupants of the 2 unit properties have rarely joined in to any activities on the street. This street has a very low turnover rate. People buy here and stay for many years because this street is a neighbourhood. We know our neighbours, not like many areas where you have no idea who lives around you. As an example, a number of years ago a young family was looking to purchase a home, they drove down this street late one evening after all the kids had gone in and they saw bikes and toys lying around the front yards. They knew then that this was a safe place to live and an area they would like to raise their young family in.

The owner of the property in a conversation with me said that his intent was to renovate the property for his children to use while attending university here and also to use as a summer home. This is certainly different from converting to 2 units, one for his daughter to use while in university and the other to use, as I have heard, as an Air B and B rental. This certainly does not fit into the tranquil family neighbourhood that is Deacon Street. The people using Air B and B's would have no connection to the neighbourhood.

Parking is limited in the area with many cars being parked here and left all day by people who don't live here leaving their cars while they go to work else. This creates some congestion. Adding more vehicles from

transients at an Air B and B will negatively alter the neighbourhood and make traffic flow on the street less safe.

### SPECIFICS OF THE REQUESTED VARIENCE

**Project Proposal: 2740 DEACON STREET, HALIFAX, NS, PID #00123471**

**Vary lot area, lot frontage, front yard setback and right yard setback to accommodate a second unit.**

LUB Regulation	Requirments	Proposal	My calculations Percentage undersized
Minimum Lot Area	5000 sq feet	3745 sq feet	25%
Minimum Lot Frontage	50 feet	32 ft	36%
Minimum Front Yard Setback	15 feet	9 ft	40%
Minimum Right Yard Setback	5 feet	0 ft	100%

In this area, as in much of the City, lots are small. On Deacon Street most lots would not meet current regulations for single family homes and certainly not for 2 unit homes. 2740 Deacon Street has a lot area of 3745 sq. ft.

In fact, based on the Land Use Bylaw minimum lot size for a single family residential unit is REDUCED to 3000 square feet for properties existing before that particular Bylaw was enacted.

*Two unit conversion is permitted where:*

- 41 *A building in existence on or before the 11<sup>th</sup> of May, 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following:*
- (a) A duplex building containing not more than a total of six habitable rooms be permitted on a lot containing an area of not less than 3,300 square feet.*
  - (b) A duplex dwelling containing not more than eight habitable rooms be permitted on a lot containing not less than 4,000 square feet.*
  - (c) There is no increase in height or volume and that the external dimensions of the building have not changed since 25 October 1985.*

*(d) One separately accessible parking space of least 8 feet by 16 feet shall be provided for each of the two dwelling units.*

### **Minimum Lot Area and Minimum Lot Frontage**

In this situation, the property is adequate for the reduced lot size of 3,000 square feet as a single residential unit. *At 3745 sq. ft. the lot is 25% undersized for 2 units.*

The lot frontage is only 32 feet. The minimum required frontage is 50 feet. *Thus the frontage is 36% undersized.*

If no changes were made to the height, volume or external dimensions (41(c) above) then it may have qualified for conversion under (a) or (b) assuming that there were no more than eight habitable rooms.

A permit had been issued previously to allow for conversion to 2 units, using 41(a) or (b).

**Then, without obtaining a permit the owner had the building raised by approximately 3 feet. When this was brought to the attention of the planning department a stop work order was issued as the original permit was no longer valid. This was because by raising the building (as mentioned before, without a permit) the property violated 41(c), by increasing both height and volume.**

### **Front Yard Setback**

The required setback is 15 feet. This is in character for most of the property in the area.

The original house had a small enclosed front porch with a set of steps going to the door. There was no landing outside the door. The new front of the house has a much larger roofed in front deck with a landing outside the roofed in deck and a longer set of stairs. It appears from the way the roofed in front deck is framed in that the intent would be to enclose this area. As the new roofed in deck and landing and stairs are significantly larger than the previous enclosed porch the owner has reduced the setback.

The new stairs stick out significantly further than the old stairs.

The owner has requested a variance to reduce front setback to 9 feet. *This is 40% less than the required 15 foot setback.*

### **Minimum Right Yard Setback**

The house is on the lot line giving no setback. The LUB requires a minimum of 5 feet. I assume this is for a number of reasons, including fire separation and noise separation.

*This is 100% less than the required setback.*

The current owner of the property is a professional engineer living in Ontario. He knew or should have known that a permit would be required to raise a house by approximately 3 feet.

He knew or should have also known that by changing the height and volume of the house that he could no longer rely on the provisions of LUB 41 (a) and (b) to convert a single family house to 2 units.

September 6, 2017 the Planning Department became aware that he had raised the property without the required permits.

September 14, 2017 a Stop Work Order was issued as the original permit was no longer valid for converting the house to 2 units.

The residents of the area received letters dated April 27, 2018 regarding a request for multiple variances to the Land Use Bylaw. This was 7 months after the Stop Work Order.

- Why did he not obtain a permit to raise the house by 3 feet?
- Why did he then wait for approximately 7 months to request a variance?

In conclusion:

- Permitting these 4 variances (area, frontage, front setback and side setback) are not in keeping with the nature of this neighbourhood.
- Permitting these variances will further erode the intent of the Land Use Bylaw.
- The variances were required only due to, what appears to be, a disregard of the existing Land Use Bylaw.

Therefore, this variance or variances should not be permitted.

Sincerely,

Brian Hawkins

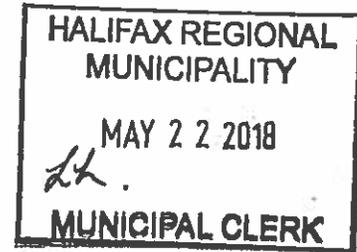
Stewart, April

---

**From:** The Camerons [REDACTED]  
**Sent:** May-21-18 4:46 PM  
**To:** Office, Clerks  
**Cc:** Smith, Lindell  
**Subject:** variance #21605, 2740 Deacon Street

May 21, 2018

Municipal Clerk  
Halifax Regional Municipality  
clerks@halifax.ca



Attention Sean Audas  
re: variance #21605, 2740 Deacon Street

Dear Sean Audas,

We reside at [REDACTED] Windcrest Terrace, and are writing to appeal the request for a variance for 2740 Deacon Street.

We feel that the four variances (minimum lot area, minimum lot frontage, minimum front yard setback, minimum right yard setback) are being requested due to a complete disregard of existing land use bylaw.

#### TWO UNIT CONVERSION

41 A building in existence on or before the 11th of May, 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following:

- (a) A duplex dwelling containing not more than a total of six habitable rooms be permitted on a lot containing an area of not less than 3,300 square feet.
- (b) A duplex dwelling containing not more than a total of eight habitable rooms be permitted on a lot containing an area of not less than 4,000 square feet.
- (c) There is no increase in height or volume and that the external dimensions of the building have not changed since 25 October 1985.
- (d) One separately accessible parking space at least 8 feet by 16 feet shall be provided on the lot for each of the two dwelling units.

I do not know the number of rooms for (a) and (b), but for (c) the height was increased last year, therefore increasing volume for the basement unit, and (d) there is not one separately accessible parking space at least 8 feet by 16 feet on the lot for each of the two dwelling units. For these two reasons alone, 2740 Deacon Street should not be approved for two unit conversion, and the variance should NOT BE ALLOWED.

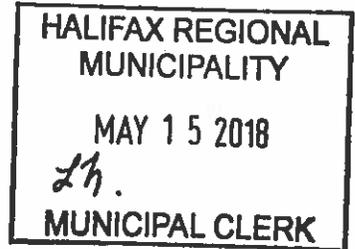
In conclusion, this variance (or 4 variances) should not be permitted.

Sincerely,



May 7, 2018

Municipal Clerk  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS B3J 3A5



ATTENTION: Sean Audas, Principal Planner/Development Officer, HRM

RE: VARIANCE #21605, 2740 DEACON STREET, HALIFAX, NS, PID #00123471

Dear Mr. Audus,

My husband and I and our four children live at 2732 Deacon Street, Halifax, NS. I am writing to you to appeal the aforementioned request for a variance.

As per the Land Use By-laws laid out for the peninsula of Halifax of the Halifax Municipal Charter, it is our assertion that the variance requested for 2740 Deacon Street, Halifax, NS, Variance #21605, PID #00123471 does NOT meet the criteria to grant this variance request. According to the by-law, a variance WILL NOT be granted if:

A) the variance violates the intent of the related Land Use By-law, which we believe is effectively to have sufficient space for multiple units. The requirements of the land use by-law for the properties on the west side of Deacon Street and proposed variance are as follows:

	Requirement	Proposed Variance	Percentage of Variance
Minimum Lot Area	5000 square feet	3745 square feet	33%
Minimum Lot Frontage	50 feet	32 feet	56%
Minimum Front Yard Setback	15 feet	9 feet	66%
Minimum Right Yard Setback	5 feet	0 feet	unlimited

The proposed variance is in violation of the intended land use by-law as it is set out in the Halifax Municipal Charter. The requested variances are inconsistent with R2 Zoning which while it allows existing buildings to be converted to two-unit dwellings, it does not do so without regard to lot coverage provisions. The homeowner in question ALSO increased the height of the dwelling by approximately 3 feet without the required Halifax Regional Municipal building permit to do so. It was only due to the fact that a neighbour inquired as to the construction being carried out to jack up the structure that the City was made aware of the circumstance and a stop work order was then enforced.

This height increase alters the external appearance and volume of the structure. As well, due to the increased height, the front stairs had to be constructed in such a way which resulted in an obstruction of the original sight lines of the street as all other houses are set back. What once was a clear view of the sidewalk to Almon Street is now entirely obstructed. (See photo below).

B) The difficulty experienced is general to the properties in the area.

The properties on the west side of the street appear to be of similar size and we feel there is no credible reason to warrant the requested variance. Permitting multiple units on these small lots on a quiet dead-end street changes the character of the neighbourhood.

C) The difficulty experienced results from the intentional disregard for the requirements of the Land Use By-Law.

It concerns us that this variance appears to have been requested after the fact which raises the question, what did the homeowner know? It appears to be a case of "don't ask permission, ask for forgiveness later". One also questions why when there was a stop work order enforced, did the homeowner not look into any further questions if they applied to his property or at the very least be questioned and informed of the relevant land use by-laws?

We purchased our property in this neighbourhood based on the fabric of the neighbourhood which was based on land use as set out in the by-laws and now we are being prejudiced by this homeowner's actions. The homeowner's breach of the rules impacts us and all of our neighbours in the neighbourhood. It seems that we are left to suffer the consequences of this person's actions, rather than the homeowner who breached the rules and the onus is put on us to fight to protect our rights as homeowners which are already set out in the Charter.

We wish you to fully understand that Deacon Street is somewhat of a unique gem as it is a quiet dead-end street. Having multiple units, which generally attract transients, causes concerns around increased traffic and safety.

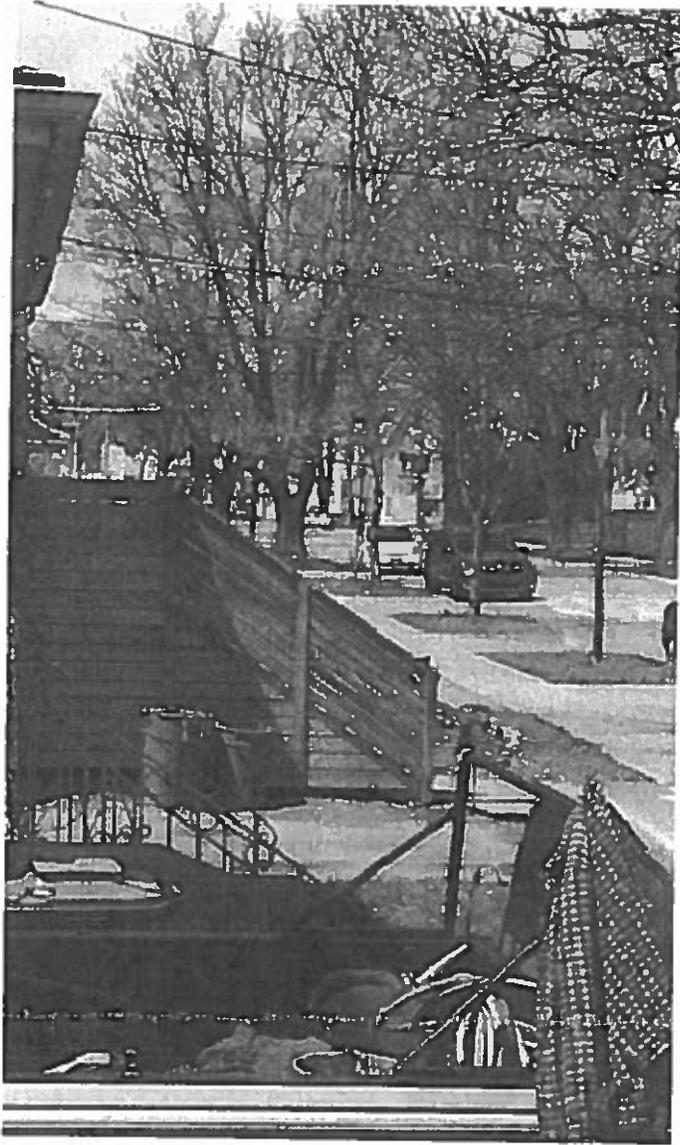
In closing, land use by-laws are put in place for a reason, to protect the rights of other homeowners, so that no one property owner can proceed without regard to those by-laws. We are VERY concerned about the precedent it would set if this property owner is permitted to circumvent the by-laws. We respectfully request that you consider all of the above mentioned information and deny the variance request.

Sincerely,

Original Signed

Christine Burke

Current photo of stairs constructed at 2740 Deacon Street — obstructing view and changing sight line



Cc Councillor Lindell Smith, District 8

May 8, 2018

Municipal Clerk  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, N.S. B3J 3A5



Attention: Sean Audas  
Re: Variance #21605, 2740 Deacon Street, Halifax, NS, PID #00123471

Dear Mr. Audas,

I am the owner and resident of [REDACTED] Deacon St., Halifax, NS and I am writing to appeal the above-mentioned request for a variance for 2740 Deacon Street.

I'd like to start my letter by stating that there are several houses on our street that will enter the housing market soon and buyers of these properties will take into consideration the variance #21605 and will turn this single house neighborhood into a street of rental units. This will change the character of Deacon street and the community spirit that exists now.

Also, based on the **Land Use By-law for Halifax Peninsula**, in particular **Section 250(3) of the Halifax Regional Municipal Charter**, variance #21605 (PID #00123471) should not be allowed because it meets all three of the criteria for **not** granting it.

**Section 250(3) states a variance may not be granted if (a) The variance violates the intent of the development agreement**

This variance violates the following provisions of the Charter:

**37 - Buildings erected, altered, or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:**

LUB Regulation	Requirements	Proposal	% undersized
Lot Area	5000 sq. ft	3745 sq. ft	25%
Lot Frontage	50 feet	32 feet	36%
Front Yard Setback	15 feet	9 feet	40%
Right Yard Setback	5 feet	0 feet	100%

**41 - Duplex Conversions: A building in existence on or before the 11th of May 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following:**

**(a) There is no increase in height or volume and that the external dimensions of the building have not changed since 25 October 1985.**

The property was raised three feet without a permit.

**(b) One separately accessible parking space at least 8 feet by 16 feet shall be provided on the lot for each of the two dwelling units.**

There is no accessible parking space for two or more units.

**35(2) No person shall in any R-2 Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).**

**35(3) No person shall in any R-2 Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).**

There is a dozen of children on Deacon Street and another eight on Windcrest Terrace. These children actively play and ride bikes in this neighbourhood, especially in the area that starts in front of this dwelling and extends to the dead-end. Additionally, there is a daycare on Windcrest Terrace which walks upwards of 18 toddlers up and down the same section twice daily. Any increase to the population density, especially transients using an Air B&B, will make the street less safe because of additional traffic flow.

**Section 250(3) states a variance may not be granted if (b) the difficulty experienced is general to properties in the area;**

This property is standard-sized lot for all properties on the west side of the street and is subject to no special or unique conditions such as irregular shape or features that would warrant a variance.

**Section 250(3) states a variance may not be granted if (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.**

The owner of the above property disregarded the Land Use By-law for Halifax Peninsula and raised the house without a permit, build a covered porch and an oversize deck in the back yard.

Permitting the above variance violates the Land Use By-law for Halifax Peninsula which is put in place to protect the neighbourhoods of the city of Halifax .

Sincerely,

Pantelis Andreou

**Stewart, April**

---

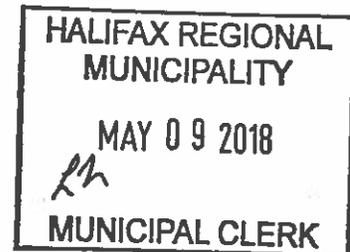
**From:** AM@coolen [REDACTED]  
**Sent:** May-08-18 5:41 PM  
**To:** Office, Clerks  
**Subject:** Appeal of request for variance of 2840 Deacon St. Halifax, NS

Municipal Clerk

Halifax Regional Municipality

Attention: Sean Audas

Re: Variance #21605, 2740 Deacon Street, Halifax, NS, PID #00123471



Dear Mr. Audas,

I reside at [REDACTED] Deacon St., Halifax, NS and I am writing to appeal the above-mentioned request for a variance.

I have researched the Land Use By-law for Halifax Peninsula, in particular Section 250(3) of the Halifax Regional Municipal Charter. From a lay person's perspective, I feel that variance #21605 (PID #00123471) should not be allowed because it meets all three of the criteria for not granting it. My concerns are in underlined italics below.

Section 250(3) states a variance may not be granted if (a) The variance violates the intent of the development agreement

This variance violates the following provisions of the Charter:

**37 - Buildings erected, altered, or used for R-1 and R-2 uses in an R-2 Zone shall comply with the following requisites:**

LUB Regulation	Requirements	Proposal	% undersized
Lot Area	5000 sq. ft	3745 sq. ft	25%
Lot Frontage	50 feet	32 feet	36%
Front Yard Setback	15 feet	9 feet	40%
Right Yard Setback	5 feet	0 feet	100%

Quoting Case 19016: Appeal of Variance Refusal – 6271 Duncan Street, Halifax

The R-2 Zone already contains a provision that allows existing buildings to be converted to two unit dwellings notwithstanding the requirements for lot area, frontage, setbacks, building height and lot coverage. This provision, however, only applies where the external dimensions of the building have not changed since October 25, 1985. The intent of this is to enable the addition of a second unit without it resulting in an alteration to the external appearance of the building. An addition made to the dwelling in 2011 which increased the building volume does not allow for this provision to be applied. The requested variances are significant and are inconsistent with the standards of the R-2 Zone. As such, it is the Development Officer's opinion that the proposed variances violate the intent of the Land Use By-law.

In this case the 3-foot height increase and expanded foot print has increased the building volume and resulted in a significant alteration to the external appearance of the building. See photos below.

41 - Duplex Conversions: A building in existence on or before the 11th of May 1950 may be converted into a duplex dwelling provided that the building, after conversion, complies with the following:

(a) There is no increase in height or volume and that the external dimensions of the building have not changed since 25 October 1985.

This property has recently been raised approximately three feet and therefore has had an increase in both height and volume.

(b) One separately accessible parking space at least 8 feet by 16 feet shall be provided on the lot for each of the two dwelling units.

There is no capacity for this property to provide a separately accessible parking space for both units and street parking is already limited due to a high volume of 'off street' parking by commuters and people attending events at the Halifax Forum.

35(2) No person shall in any R-2 Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).

35(3) No person shall in any R-2 Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

The owner has expressed his intention to maintain his residence in Ontario and to use one of the units as an Air B&B rental. While I was unable to find reference to this specific use in the Halifax Planning Charter, it is clear that an Air B&B operation does not meet the following definition of Bed and Breakfast.

"Bed and Breakfast" means a home occupation within a one family dwelling house where not more than three sleeping rooms are rented to the travelling and vacationing public, and where breakfast is served only to those who rent the sleeping rooms.

Furthermore, Deacon Street is a rarity in the city because as a short dead-end street in the middle of the peninsula, it has provided a quiet, affordable oasis that attracts young families.

One of the goals in the Halifax Peninsula Planning Strategy is to maintain the character and stability of established neighbourhoods like this.

We currently have a dozen children on Deacon Street and another eight on Windcrest Terrace. These children actively play and ride bikes in this neighbourhood, especially in the area that starts in front of this dwelling and extends to the dead-end. Additionally, there is a daycare on Windcrest Terrace which walks upwards of 18 toddlers up and down the same section twice daily. Any increase to the population density, especially transients using an Air B&B, will make the street less safe because of additional traffic flow.

The stability and market value of the neighbourhood is also negatively impacted by the aesthetics of having an oversized building on a small lot. Because of the dwelling's increased height, the owner had to construct an enormous, unsightly front stair.

Section 250(3) states a variance may not be granted if (b) the difficulty experienced is general to properties in the area;

This property appears to be a standard-sized lot for all of the properties on the west side of the street and is subject to no special or unique conditions such as irregular shape or features that would warrant a variance

Section 250(3) states a variance may not be granted if (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.

While I appreciate that it is difficult to know what was in the mind of the property owner, I know from my personal conversation with him in October 2016—before the project started—he conveyed to me his intention to turn the property into two units; one for his use when he vacationed in Halifax and one a rental.

The owner is an experienced professional engineer. As such, it seems implausible to me that he would not be aware of the need for a variance to allow for the conversion to a duplex and yet he went ahead with the construction without applying for the variance. I also understand that he proceeded with increasing the height of the property without the necessary permit which resulted in a stop work order. The owner had ample time to apply for the variance during the work stoppage which lasted for several months and yet he chose to continue with constructing the second unit without a variance, once the stoppage ended.

I'd like to conclude by stating that my reasons for opposing this variance—in spite of the fact that my property is several houses away and thus may be deemed not directly impacted by the project—are the result of having to endure negative impacts of having an adjacent neighbour construct an oversized property to accommodate multiple units.

At the time, I was ignorant of the way city planning by-laws are administered and I failed to take action to protect my home and my family from the ongoing trials of dealing with having a rooming house at 2728 Deacon Street. These challenges have included dealing with late night noise, damage to my property, repeated exposure to lewd conduct by a boarder, cigarette smoke entering my home and increased traffic and parking challenges.

As a lifelong resident of this lovely street, I would like to see Deacon Street preserved as a safe, enjoyable, cohesive neighbourhood for generations to come. I can't see that happening if more properties are converted to duplexes and rooming houses by allowing variances to the laws that were put in place by the Land Use By-law for Halifax Peninsula to protect it.

Sincerely,

A M Coolen

Anne Marie Coolen

Photo of 2840 Deacon St. taken in 2015, it's the white house on the left.



Photo taken May 8, 2018, it's the brown house on the left.



Anne Marie

