



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

Item No. 10.2.2
Halifax and West Community Council
June 11, 2019

TO: Chair and Members of Halifax and West Community Council

-Original Signed-

SUBMITTED BY: _____
Steve Higgins, Manager, Current Planning

DATE: May 27, 2019

SUBJECT: Case 21855: Appeal of Variance Approval – 1624/26 Henry 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 variance has been requested to allow an addition to the rear of an existing two-unit dwelling at 1624/1626 Henry Street in Halifax (Map 2). The addition will replace and expand upon an existing one-storey portion of the building. The addition is proposed to contain expansions to the kitchens and living rooms of the two units on the main and second levels and renovation to create a dormer for a bedroom on the third level.

The proposal does not comply with bylaw requirements for maximum lot coverage and gross floor area (GFA.). The applicant has requested a variance to increase the maximum permitted lot coverage and to increase the minimum lot area required to calculate gross floor area. All other requirements of the Land Use By-law are met.

Site Details:

Zoning

The property is 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 relevant requirements of the LUB and the related variance requests are as identified below:

	Requirement	Existing	Variance Requested
Max. Lot Coverage	35%	35.6%*	38%
Min. Lot Area to support GFA	5,000 square feet lot area (which would permit up to 3,000 square feet GFA)	3,300 square feet lot area (non-conforming 2,783 square feet GFA)	6,030 square feet lot area (to support the proposed 3,315 square feet GFA)

* approved in accordance with previous variance, Case 13677

Maximum permitted GFA is calculated as a ratio relative to the lot area. The subject lot has an area of 3,300 square feet. Based on a GFA ratio of 0.75, the maximum permitted GFA is 2,475 square feet. Council should note the existing building predated GFA requirements and its GFA of 2,783 square feet does not comply with the LUB. Notwithstanding this non-compliance, the existing GFA is considered lawful pursuant to the non-conforming provisions of the HRM Charter. The proposed GFA would be 3,315 square feet, which is equivalent to a lot area of 6,030.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). Three property owners within the notification area have appealed the approval (Attachment C) and 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 the motion is in opposition to the staff recommendation. The recommendation section of this 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 variances.

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 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?

a) Lot coverage

Lot coverage requirements in the LUB regulate the two-dimensional size of roofed structures based on a percentage of lot size. The LUB limits the lot coverage to a maximum of 35% of the lot area. For the subject property, that equates to a maximum of 1,155 square feet of roofed structure on the lot. A variance to increase the permitted maximum lot coverage on this property from 35% to 35.6% was approved in 2007 to accommodate a storage shed. The proposed addition will result in a further increase in lot coverage to 38%, which is equivalent to an additional 144 square feet of roofed structure.

As that additional area is minimal in size and the application does not result in a change of use, it is the Development Officer’s opinion that the proposed variance does not violate the intent of the LUB.

b) GFA

The gross floor area requirement is intended to limit the mass of residential buildings. The existing building footprint is irregularly shaped including a one-storey projection from the rear of the two storey main wall. The proposed addition would square off the footprint by utilizing the existing recess abutting the current one storey projection at the rear. The proposed construction includes removal of the one storey projection and its replacement with a two storey structure across the full rear of the dwelling including a third level roof dormer and balcony.

The proposed addition is at the rear of the dwelling and the existing roof line will be maintained. The additional mass of the building should have no visual impact when the property is viewed from the street. It is the Development Officer’s opinion that this proposal 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 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.

a) Variance for lot coverage

The proposed building would remain relatively small compared to the average within the notification area. The lot is also relatively small creating a disadvantage in terms of its ability to accommodate development on a scale similar to the general area.

b) Variance for GFA

The average lot size in the notification area is approximately 3900 square feet. The average GFA of the residences in the notification area is approximately 4200 square feet. The proposed GFA for this project is 885 square feet less than the average GFA.

This proposal would not be considered out of character in the neighbourhood, therefore it is the Development Officer's opinion that the difficulty experienced is not one that is general to properties in the area.

3. Is the difficulty experiencing 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.

That is not the case in this request. The applicant has applied for the variance in good faith prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

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:

Appellant's Appeal Comments	Staff Response
<i>This renovation is directed towards maximizing occupancy and the presumption would be that this project is directed towards students.</i>	The use of the building as a 'two unit dwelling' will not change as a result of this application. HRM does not regulate the identity or individual characteristics of tenants.
<i>Once the renovation is complete it becomes very difficult to enforce by-laws and more importantly these dwellings significantly negatively impact the neighbourhood.</i>	Other than the proposed variances, there is no evidence of any lack of compliance with municipal bylaws associated with the proposed addition. If there is non-compliance with an issued permit or with LUB regulation, staff will forward the matter to Municipal Compliance for investigation and appropriate action.
<i>What mechanism is used to specifically communicate with the owners that the renovation must not violate by-laws regarding occupancy?</i>	Issuance of construction permits certifies that the submitted plans meet all applicable regulations. The permits require construction in accordance with those plans. Departure from the approved plans requires a resubmission of revised plans and a full review for compliance with regulations.

<p><i>From the drawings it looks as this dwelling may have up to 3 apartments although floor plans were not included in the letter. How many bedrooms are planned for this renovation?</i></p>	<p>The plans submitted with the application indicate a two-unit dwelling.</p> <p>There are six (6) bedrooms in the whole of the dwelling house (4 in one unit and 2 in the other). This is permitted in the LUB.</p>
<p><i>The gross floor area is 34% larger than permitted and violates the intent of the land use bylaw.</i></p>	<p>The proposed GFA is 25% larger than the permitted GFA. The proposed GFA is proposed to increase by 16%, as compared to the existing, non-conforming GFA of the building. For reasons detailed above, the Development Officer did not believe that the proposed increase violated the intent of the LUB.</p>
<p><i>The requested variance would establish a precedent allowing other homeowners to build out their houses and convert them into rooming houses.</i></p>	<p>The proposed plans indicate two relatively typical dwelling units. Neither the proposed plans nor the proposed variances suggest or condone conversion to a rooming house, which is not permitted in the R-2 Zone.</p> <p>Each variance application is considered on its own merits based on the circumstances in the immediate area. While Development Officers endeavour to apply consistency when evaluating similar types of applications, previous approval of variances does not establish a precedent.</p>
<p><i>Although the property is currently owner-occupied, this may not continue since the current owner's family size is decreasing, not increasing</i></p>	<p>The LUB does not require that a dwelling unit be occupied by the owner of the property.</p>
<p><i>The difficulty experienced is general to properties in the area.</i></p>	<p>For reasons detailed above, the Development Officer did not feel that the difficulty experienced was general to properties in the area. The subject property is among the smaller lots in the neighbourhood.</p>

Conclusion:

Staff have reviewed all 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.

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 the 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 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 decision of the Development Officer.

ATTACHMENTS

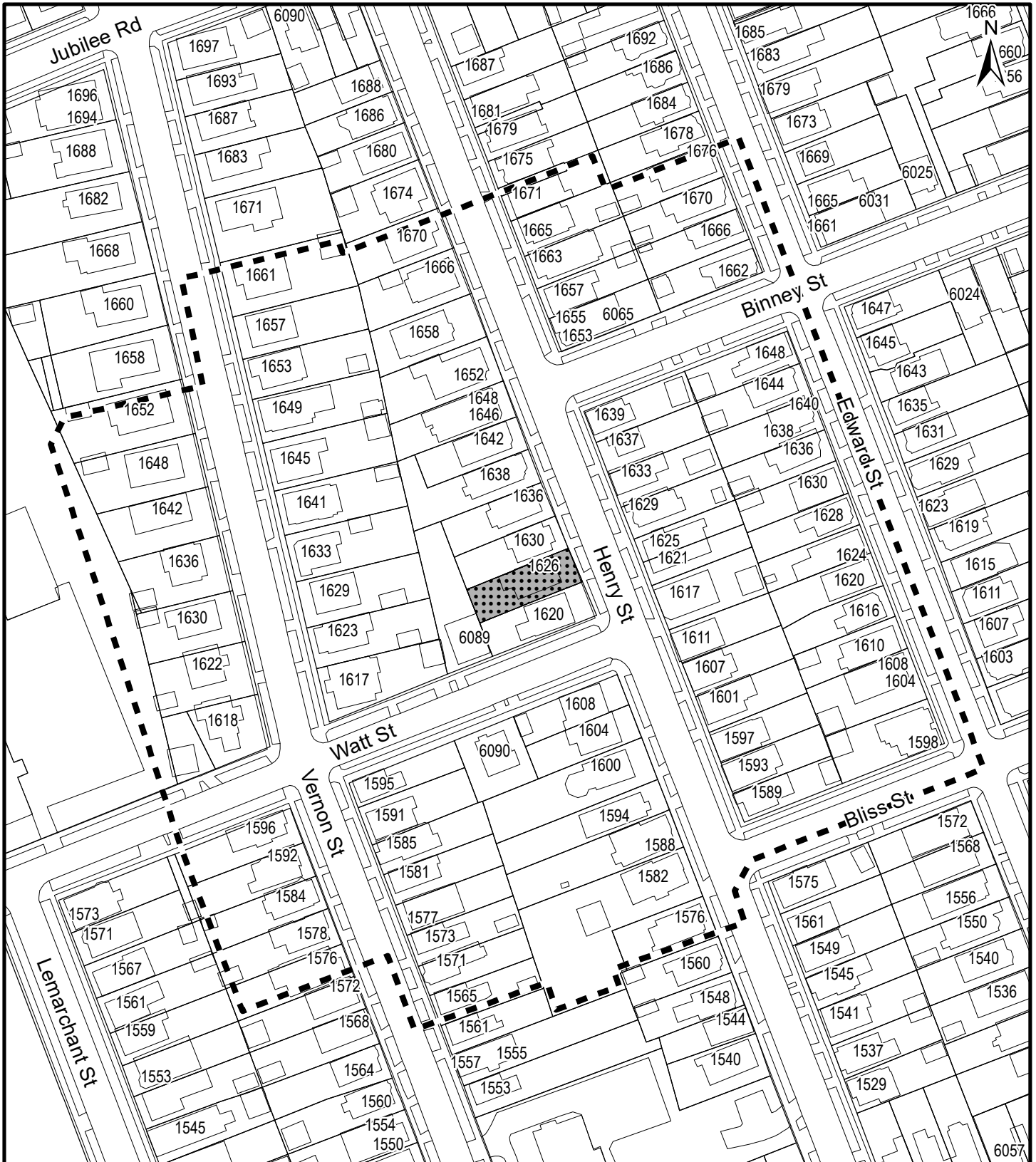
Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevations
Attachment B:	Variance Approval Notice
Attachment C:	Letters of Appeal from Abutters

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: Laura Walsh, Planner, 902-490-4462,
Janice MacEwen, Principal Planner/Development Officer, 902-490-3993

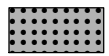
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Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902-490-1210

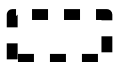


Map 1 - Notification Area

1626 Henry Street,
Halifax

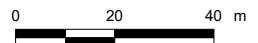


Subject Property



Notification Area

HALIFAX



Halifax Plan Area

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



1634

1630

<p>Variance Request: GFAR Required 2475sqft Requested 3315sqft</p> <p>Lot Coverage Required 35% Requested 38%</p>	<p>Proposed Addition</p>	<p>Existing Dwelling</p>	<p>1626</p>
		<p>1624</p>	<p>1624</p>

Henry St

6089

1620

Watt St

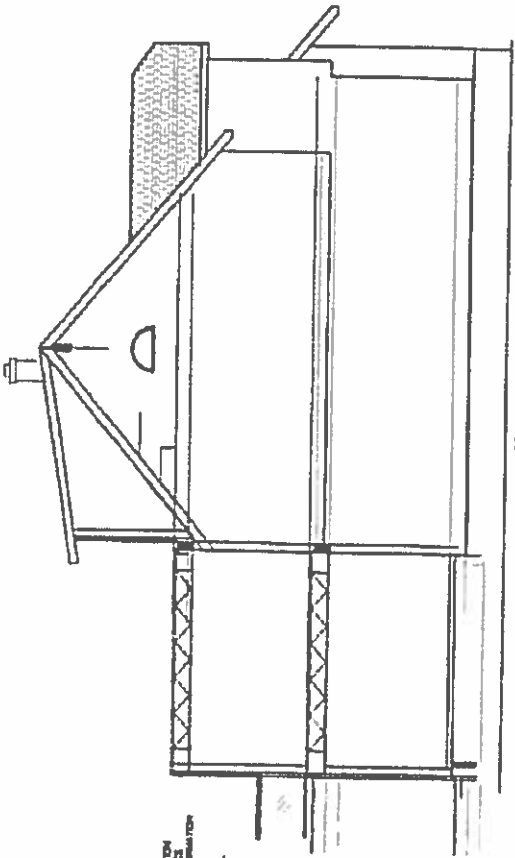
Map 2 - Site Plan

1626 Henry Street,
Halifax



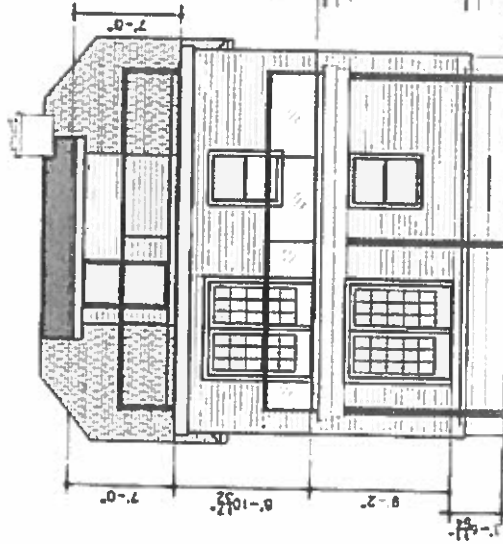
Subject Property



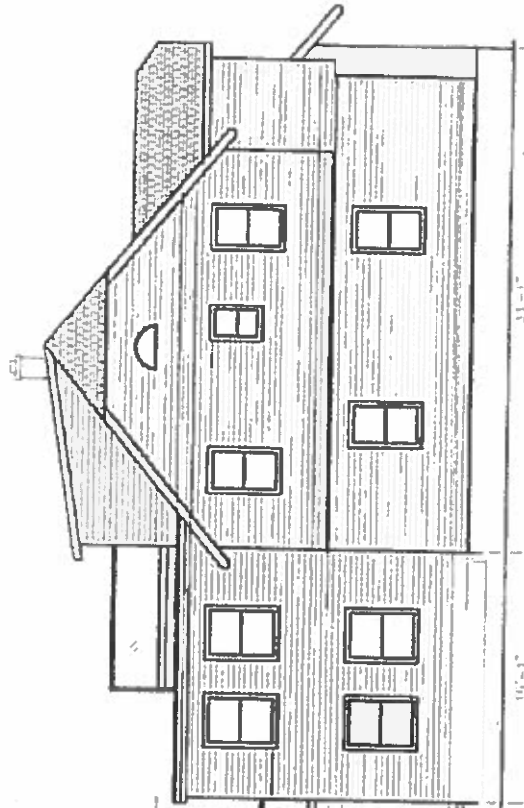


SECTION

NOTE: THIS SECTION IS INTENDED TO SHOW THE PROPOSED CONSTRUCTION OF THE ROOF TRUSS SYSTEM. ALL DIMENSIONS ARE TO INCLUDE EXISTING STRUCTURE. DIMENSIONS SHOWN ARE APPROXIMATE.

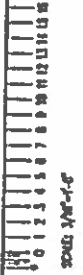


WEST ELEVATION
SCALE: 3/16" = 1'-0"



SOUTH ELEVATION
SCALE: 3/16" = 1'-0"

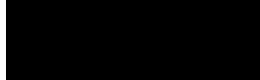
REVISED
PRELIMINARY DESIGN
NOT FOR CONSTRUCTION



Attachment A

November 8, 2018

Andrew Tilley



COPY

Dear Mr. Tilley:

RE: Variance Application #21855, 1624/1626 Henry Street, Halifax, PID # 00143453

You are receiving a revised letter regarding variance application #21855 – 1624/1626 Henry Street as it has been brought to our attention that previous variance notice letter provided was incorrect. The previous letter did not have the correct appeal date.

Location: 1624/1626 Henry Street, Halifax, PID # 00143453
Project Proposal: Construct an addition on a two-unit dwelling

LUB Regulation	Requirements	Proposal
Maximum Lot coverage	35%	38%
Maximum Gross Floor Area	2475 sqft	3315 sqft (would require a lot area of 6030 sqft)

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before **November 25, 2018**

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Laura Walsh, Planner 1 at (902) 490-4462.

Sincerely,

Original Signed

 Janice MacEwen, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk
Councillor Wayne Mason

Stewart, April

From: George Kovacs
Sent: November-05-18 7:40 PM
To: Mason, Wayne; Office, Clerks
Cc:
Subject: Appeal Variance 1624/1626 Henry st

Dear Wayne and Janice

I received a variance application notification (#21855) regarding a major renovation accruing at 1624/1626 Henry street. In the letter Janice MacEwen states that the variance has been approved. I have reviewed the accompanying drawings and it seems that this renovation is directed towards maximizing occupancy and the presumption would be that this project is directed towards students. As you are aware our neighbourhood has seen numerous renovations that passed planning oversight and went on to be problemated pseudo-rooming hoses. One of these cases is now proceeding to court. Once these renovations are complete it becomes very difficult to enforce by-laws and more importantly these dwellings significantly negatively impact the neighbourhood. From the drawings it looks as this dwelling may have up to 3 apartments although floor plans were not included in the letter. How many bedrooms are planned for this renovation? and what mechanism is used to specifically communicate with the owners that there renovation must not violate by-laws regarding occupancy? Please consider this letter an appeal to the application. We will be soliciting feedback from other neighbours in the meantime. Of note the letter states to appeal "on or before December November 16, 2018". I'm not sure what the correct date is. It is also concerning that construction has already begun.

George

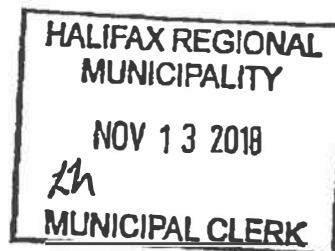


Stewart, April

From: michael bolton
Sent: November-10-18 1:47 PM
To: Office, Clerks
Subject: re. variance application #21855, 1624/1626 Henry Street, PID #00143453

November 10, 2018

Janice MacEwen, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5



Dear Ms. MacEwen,

re. variance application #21855, 1624/1626 Henry Street, PID #00143453

I received your letter dated November 2, 2018 stating that you had approved a request for a variance for the above noted property.

I am writing to make a formal appeal of your decision.

My reasons for appealing the decision are as follows:

1. The Gross Floor Area is 34% larger than permitted and violates the intent of the Land Use Bylaw.
2. If approved, the requested variance would establish a precedent allowing other homeowners to build out their houses and potentially convert them into rooming houses.
3. Although the property is currently owner-occupied, this may not continue since the current owner's family size is decreasing, not increasing.

Best Regards

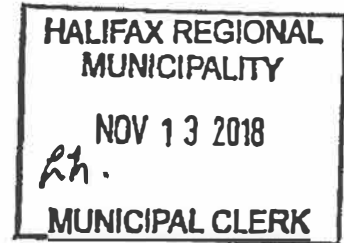
Michael Bolton

Stewart, April

From: Brad Abernethy
Sent: November-12-18 2:33 PM
To: Office, Clerks
Subject: re. variance application #21855, 1624/1626 Henry Street, PID #00143453

November 12, 2018

Janice MacEwen, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5



Dear Ms. MacEwen,

re. variance application #21855, 1624/1626 Henry Street, PID #00143453

I received your letter dated November 2, 2018 stating that you had approved a request for a variance for the above noted property. I am writing to formally appeal your decision.

My reasons for appealing the decision are as follows:

- The requested variance, if approved, would a) itself cause the neighbourhood to lose a bit of its character, and b) be a precedent allowing other homeowners to build out their houses and potentially convert them into rooming houses.
- While I am glad that the property is currently owner-occupied, the property may not continue to be owner-occupied, as the current owner's family size is decreasing, not increasing.
- The Gross Floor Area is 34% larger than permitted. Such a large increase violates the intent of the Land Use Bylaw.
- The difficulty experienced is general to properties in the area.

Yours,
Brad Abernethy