



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**December 11, 2019**

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

**-ORIGINAL SIGNED-**

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

**DATE:** November 14, 2019

**SUBJECT:** Case 21833: Appeal of Variance Refusal – 1423 Henry 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 shall be placed on the floor:

**That the appeal be allowed.**

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

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

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

## **BACKGROUND**

A variance request has been submitted for 1423 Henry Street to add a third storey and a rear addition to a single unit dwelling, resulting in a four-unit apartment building, as shown in Attachment 1. In order to facilitate this project, a request has been made to relax the lot area, lot frontage, lot coverage, setback and gross floor area (GFAR) requirements of the R-2 Zone of the Halifax Peninsula Land Use By-law.

### **Site Details:**

#### **Zoning**

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

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Lot Area</b>	6,000 square feet	3,400 square feet
<b>Minimum Lot Frontage</b>	60 feet	34 feet
<b>Maximum Lot Coverage</b>	35%	37.6%
<b>Minimum Front Yard Setback</b>	15 feet	5.5 feet
<b>Minimum (Right) Side Yard Setback</b>	6 feet	2.4 feet
<b>Minimum Lot Area to support GFA</b>	6,000 square feet, which would allow up to 2,550 square feet gross floor area	8,026 square feet, which would allow 4,013 square feet of Gross Floor Area

Council should note the variances outlined above are not identical to those referred to in the original refusal letter between HRM and the applicant. After the original refusal, the applicant submitted revised plans to demonstrate compliance with minimum requirements for open space. Those revised plans impacted the nature and extent of some of the proposed variances. The Development Officer reassessed the variance decision based on those revised plans and determined the alterations would not have resulted in a different outcome. All public notifications associated with this appeal contained accurate descriptions of the proposed variances as outlined in the table above.

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (Attachment 2). The applicant has appealed the refusal 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 that 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 refuse 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, within the context of the criteria provided in the *Halifax Regional Municipality Charter*.

The *Charter* sets out the following criteria under 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?**

#### Lot Area and Frontage

The R-2 Zone of the Land Use By-law (LUB) permits one, two, three and four unit buildings. The minimum lot size and frontage for apartment buildings (three and four units) is larger than the minimum requirements for one and two unit dwellings. The subject property has 34 feet of frontage and 3,400 square feet of area which only permits up to a duplex dwelling (two units). The typical minimum lot requirements for three and four unit apartment buildings in the R2 zone are 80 feet of frontage and 8000 square feet of area. However, the subject property is within the Peninsula Centre Secondary Area which includes reduced requirements to 60 feet of frontage and 6,000 square feet of area.

The general intent of the bylaw is to require increased lot areas and dimensions as the number of dwelling units in a building increases. The bylaw already acknowledges that a reduction from the standard R2 requirements is appropriate in this area. Noting the existing reduction and acknowledging the relatively large extent of the proposed variance, the Development Officer considered this request to be inconsistent with the intent of the land use bylaw.

#### Building Setbacks

Building setbacks ensure that structures are separated appropriately from the street and from abutting properties. The intent of the land use bylaw is that three and four unit apartment buildings be set further back from abutting properties than a single family dwelling or duplex. The proposed building meets the rear and left side yard setback requirements for the proposed four unit use. However, at 2.4 feet, the right yard setback is already less than the minimum permitted by the LUB for a single unit dwelling and materially less than the 6 feet required by the LUB.

The Development Officer believes reducing the setback for a four-unit dwelling to less than the requirement for a single unit dwelling would violate the intent of the land use bylaw.

#### Gross Floor Area and Lot Coverage

Maximum gross floor area (GFA) and maximum lot coverage requirements of the LUB intend to limit the footprint and massing of structures that can be developed to avoid unduly large structures on relatively smaller parcels of land.

The maximum permitted GFA is set at a ratio relative to the lot's size. The subject lot has 3,400 square feet of lot area and the GFA ratio is 0.75 resulting in a maximum GFA on all floors in the building of 2,550 square feet. The proposed building contains a total of 4,018 square feet which results in an actual GFA ratio of 1.18 which represents a significant increase (1468 sq. ft.) in mass and volume compared to what would be permitted as-of-right on a lot of this size.

The maximum permitted lot coverage is also a ratio relative to the lot's size. The subject lot has 3,400 square feet of lot area and the lot coverage GFA ratio is 35% (1190 sq. ft.) The and the proposed lot coverage equates to 37.6% (1278 sq. ft.). Staff acknowledge this request in isolation could be considered

a minor variation to the LUB. However, the Development Officer feels the variance should be assessed in the context of the overall proposal which includes a relatively large structure that is materially out of compliance with multiple bylaw provisions related to building size.

It is the Development Officer's opinion that the variances violate the intent of the Land Use By-Law, and the variance was refused on this basis.

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

In considering variance requests, the Development Office 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 due consideration must be given to the requested variance. If the difficulty is general to properties in the area, then the variance must be refused.

Except for lots owned by Dalhousie University, the vast majority of the properties in the vicinity have lot areas less than 5,000 square feet with less than 50 feet of frontage. Therefore, only single and two unit dwellings would be permitted. There appears to be only one R-2 Zoned property within the 100m notification area where a four unit apartment building would be permitted as-of-right. Under these circumstances, it is reasonable conclude that the difficulty being experienced on the subject property is not unique in the area.

It is the Development Officer's opinion that the difficulty experienced is general to the properties in the area, and so the variance was refused on this basis.

**3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?**

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

That is not the case with this request. This variance request was submitted prior to commencing construction. Therefore, intentional disregard for the land use bylaw was not a consideration in the decision to deny 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 3) 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>The Development Officer did not take into consideration all the properties in the surrounding and immediate area.</i>	Staff has evaluated the properties in the surrounding area and acknowledges that other variances have been granted on Henry St to enable similar conversions. This demonstrates the reality that a variance would be required for virtually all the properties in the surrounding area in order for three or four unit apartment buildings to be permitted. Continuing to grant variances such as these will significantly change the established character of the neighbourhood. The Halifax Municipal Planning Strategy mandates that this area be comprised of primarily single and two-unit dwellings, and apartment buildings where appropriate. The lots in this area are not large enough to appropriately permit apartment buildings.

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts with the statutory criteria provided by the *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 form 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 refusal of the variance. This would uphold the decision of the Development Officer. This is staff's recommended alternative.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Office.

**ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment 1:	Building Elevations
Attachment 2:	Variance Refusal Letter
Attachment 3:	Letter of Appeal

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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: Rachael Groat, Planner I, 902.490.5380  
Sean Audas, Principal Planer & Development Officer, 902.490.4402

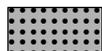
Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.490.1210

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**Map 1 - Notification Area**

1423 Henry Street,  
Halifax

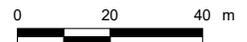


Subject Property



Notification Area

**HALIFAX**



Halifax Plan Area

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



1435

Henry St

Front Yard 5.8ft

Driveway

Wood Deck

Proposed Dwelling Civic #1423

Side Yard 2.4ft

Variance Request:	
Min. Lot Area	Min. Lot Frontage
Required 6,000sqft	Required 60ft
Proposed 3,400sqft	Proposed 34ft
Max. Lot Coverage	Front Yard Setback
Required 35%	Required 15ft
Proposed 35.3%	Proposed 5.8ft
Max. GFAR	Right Yard Setback
Required 2,550sqft	Required 6ft
Proposed 4,328sqft	Proposed 2.4ft

1413

### Map 2 - Site Plan

1423 Henry Street,  
Halifax



Subject Property

**HALIFAX**



**REAR ELEVATION**  
SCALE: 1/8" = 1'-0"



**LEFT ELEVATION**  
SCALE: 1/8" = 1'-0"

**NOTES:**

1. All work to conform to NBCC 2010 and in compliance with local building codes.
2. Contractors to verify all dimensions before starting any work.
3. Discrepancies on the drawing to be discussed with construction manager prior to continuing.
4. Changes made during construction are the responsibility of the construction manager.
5. Contractors are responsible for cleanup of the job site.
6. Do not scale drawings.

Visual Home Studio's sole liability is for the drafting service associated with these plans. No responsibility is implied or assumed for the design and subsequent performance of this structure.

  
**VISUAL HOME STUDIO**  
RESIDENTIAL DESIGN

Ph: (902) 266-8098  
email: msphees.hfs@gmail.com

NO.	REVISION:	DATE:

**TITLE:**  
1423 HENRY STREET, HALIFAX  
**ELEVATIONS**

**OWNER:**  
METRO PREMIER PROPERTIES

**DATE:**  
JUNE 2018

**DRAWN BY:**  
VISUAL HOME STUDIO

<b>SCALE</b> 1/8" = 1'-0"	<b>SQ. FT.</b>
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**SHEET NO.**

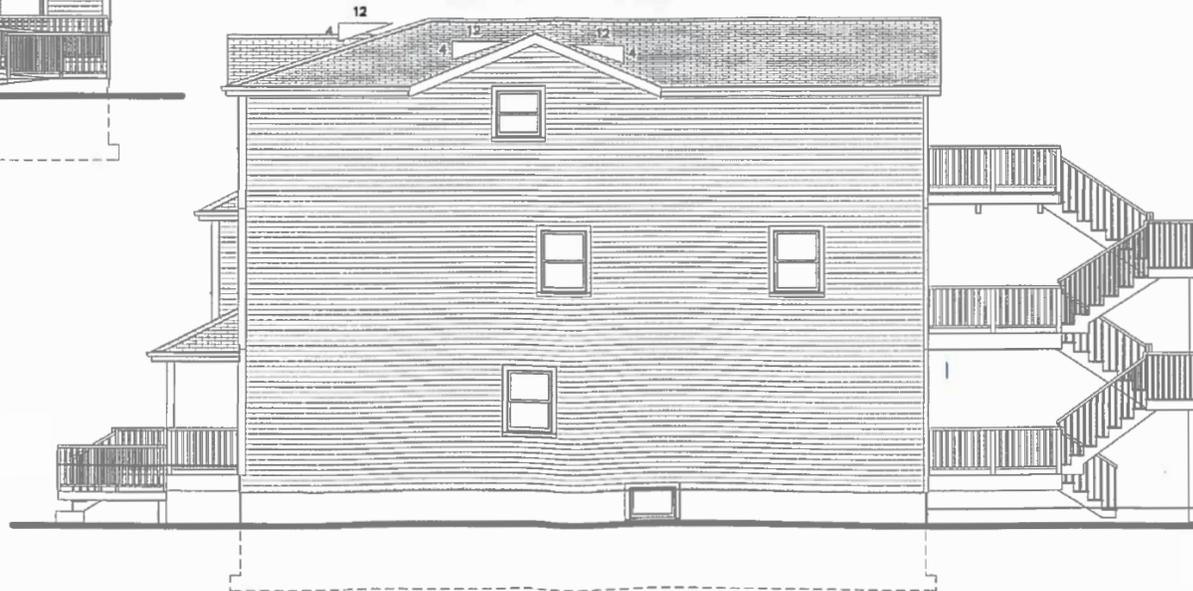
A6

VHS Directory / VHSStudio Project / VHS231



**FRONT ELEVATION**  
SCALE: 1/8" = 1'-0"

**MIN. CONSTRUCTION REQ. for EXPOSING BUILDING FACES**  
WALLS - 1,171.5 SF  
GLAZING - 33.05 SF  
TOTAL = 2,82%



**RIGHT ELEVATION**  
SCALE: 1/8" = 1'-0"

- NOTES:**
1. All work to conform to NBCC 2010 and in compliance with local building codes.
  2. Contractors to verify all dimensions before starting any work.
  3. Discrepancies on the drawing to be discussed with construction manager prior to continuing.
  4. Changes made during construction are the responsibility of the construction manager.
  5. Contractors are responsible for cleanup of the job site.
  6. Do not scale drawings.

Visual Home Studio's sole liability is for the drafting service associated with these plans. No responsibility is implied or assumed for the design and subsequent performance of this structure.



**VISUAL HOME STUDIO**  
RESIDENTIAL DESIGN

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NO.	REVISION:	DATE:

TITLE:  
1423 HENRY STREET, HALIFAX

**ELEVATIONS**

OWNER:  
METRO PREMIER PROPERTIES

DATE:  
JUNE 2018

DRAWN BY:  
VISUAL HOME STUDIO

SCALE: 1/8" = 1'-0"      SQ. FT.

SHEET NO.

**A5**

VIS Directory: /VHStudio Projects/VH221

**COPY**

September 24, 2018



Dear Mr. Wilkins,

**RE: VARIANCE APPLICATION #21833, 1423 HENRY ST, HALIFAX, NS (PID #00134452)**

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

**Location:** 1423 Henry St, Halifax  
**Project Proposal:** Convert a single unit dwelling to a four-unit apartment building by varying the lot area, lot frontage, lot coverage, setback and gross floor area (GFAR) requirements of the R-2 Zone.

LUB Regulation	Requirement	Proposed
Minimum lot area	8,000 square feet	3,400 square feet
Minimum lot frontage	80 feet	34 feet
Maximum lot coverage	35%	35.3%
Minimum front yard setback	15 feet	5.8 feet
Minimum right side setback	6 feet	2.4 feet
Maximum GFAR	0.75 or 2,550 square feet	1.27 or 4,328 square feet

Section 250(3) of the Halifax Regional Municipality Charter states that a variance may not be granted if:

- (a) the variance violates the intent of the 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
- (b) the difficulty experienced is general to properties in the area.

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**HALIFAX**

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

halifax.ca

COPY

Pursuant to Section 251 of the Halifax Regional Municipality Charter 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  
Planning and Development Services  
P.O. Box 1749  
Halifax, NS B3J 3A5  
clerks@halifax.ca**

Your appeal must be filed on or before **October 4, 2018**.

If you have any questions or require clarification of any of the above, please call Rachael Groat at 902-490-5380.

Sincerely,

**Original Signed**

Sean Audas, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councillor Wayne Mason

**Stewart, April**

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**From:** Clark Wilkins  
**Sent:** September-27-18 12:58 PM  
**To:** Office, Clerks  
**Cc:** Clark Wilkins; Clark Wilkins - Eastlink  
**Subject:** Variance Application #21833

Please consider this my appeal to the above based on the grounds the development officer did not take into consideration all the properties in the surrounding / immediate area.

Clark Wilkins

HALIFAX REGIONAL  
MUNICIPALITY  
SEP 27 2018  
*Sh*  
MUNICIPAL CLERK