



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**March 11, 2020**

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

Original Signed

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

**DATE:** February 20, 2020

**SUBJECT:** **Case 22607: Appeal of Variance Refusal – 6303 Yale Street, Halifax**

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**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 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 6303 Yale Street to reduce the minimum lot frontage and lot area requirements to permit the construction of a two-unit dwelling on a vacant lot.

The lot previously contained a single unit dwelling that was demolished in 2010. In October of 2019, a development permit application and associated variance application were submitted to construct a two-unit dwelling as shown in Attachment A. The current zoning permits two-unit dwellings subject to minimum lot area, lot frontage and sideyards. The subject lot does not meet minimum requirements for lot area or frontage. The proposed development meets all other requirements of the land use by-law.

### **Site Details:**

#### **Zoning**

The property is located within the R-2 (General Residential) Zone of the Halifax Peninsula Land Use By-Law (LUB) and is within Sub-Area 1 of the Peninsula North Secondary Plan Area. The relevant requirements of the LUB for a two-unit dwelling and the related variance request are identified below:

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Lot Area</b>	5000 square feet	3400 square feet
<b>Minimum Lot Frontage</b>	50 feet	34 feet

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment B). The applicant has appealed the refusal (Attachment C). Property owners within the notification area (Map 1) have been notified of the appeal of 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 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 refuse the request for 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?**

The Halifax Peninsula Land Use By-law allows a range of unit counts within the R2 zone. Minimum requirements for lot area, lot frontage and sideyards increase based on the number of dwelling units proposed. Under these circumstances, it can be concluded that the by-law generally intends to limit housing with higher numbers of dwelling units to larger lots with greater sideyards to mitigate impacts resulting from the increased intensity associated with additional dwelling units.

This application proposes to vary both lot area and lot frontage for the existing vacant lot by a material amount resulting in the construction of a two unit dwelling on a lot that the by-law intends to limit to a single unit dwelling only.

It is the Development Officer's opinion that this proposal violates the intent of the land use by-law.

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

This variance proposal indicates that application of the minimum lot area and frontage requirements in the land use by-law creates a difficulty developing the subject property. The HRM Charter requires that the Development Officer determine if that difficulty is general to the area or if the property in question is subject to unique difficulties that would warrant relief from the standard by-law requirements through the variance process.

The subject lot has an area of approximately 3400 square feet and 34 feet of frontage. The average lot size among the 30 lots on the same street and block is 3370 square feet and 59% of those lots are equivalent in size or smaller than the subject lot. Of those same 30 lots, only one meets the minimum requirements to construct a new two-unit dwelling meaning all but one of the lots in the immediate area would be subject to the same minimum requirements to construct a new two-unit dwelling.

Under these circumstances, it is the Development Officer's opinion that the difficulty experienced is general to the area.

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

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

This is not the case in this request. The applicant has applied for a Development Permit in good faith and requested the variance 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>Constructing a two-unit dwelling on this property is congruent with other properties in the neighbourhood.</i>	As outlined in this report, nearly every lot in this neighbourhood is undersized relative to the LUB requirements for a new, two-unit dwelling.  Notwithstanding minimum lot size requirements, staff estimate approximately 1/3 of the lots in the immediate area contain 2-units. The majority of those are long standing uses that predate current regulations and one was approved in 2004 as an internal conversion not subject to minimum lot size limitations.
<i>The proposed design has purposely sought to meet all controllable land use by-laws within the same allowances as a Single-Family Dwelling.</i>	The land use by-law provides a specific provision to allow for single unit dwellings on lots with reduced frontage and/or area. This ensures that most undersized lots are not undevelopable. 6303 Yale Street can support a single unit dwelling under Section 16C(1). The land use by-law requires that lot area and frontage meet a larger minimum standard of 50 feet of frontage and 5000 square feet of area in order to be eligible for development as a two-unit dwelling.
<i>A variance was approved by HRM Council in 2018, for the construction of a similar two-unit dwelling on a similar sized lot, at 6267 Yale Street.</i>	The Development Officer initially refused that application, which is consistent with the decision pertaining to the subject proposal. The lot size for this current variance request is smaller than the previous variance case (3630 sq ft. vs 3400 sq ft.).

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. Resulting from that review, the variance request was refused, as it was determined that the proposal 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. The administration of the variance proposal can be carried out within the approved 2019-2020 budget 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners

within 30 metres of the variance and anyone who can demonstrate that they are specifically affected by the matter, to speak.

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications.

### **ALTERNATIVES**

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

1. Denial of the appeal motion would result in the denial of the variance. This would uphold the Development Officer's decision and this is staff's recommended action.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Officer.

### **ATTACHMENTS**

Map 1: Notification Area  
Map 2: Site Plan  
  
Attachment A: Left and Front Elevations  
Attachment B: Variance Refusal Letter  
Attachment C: Letter of Appeal

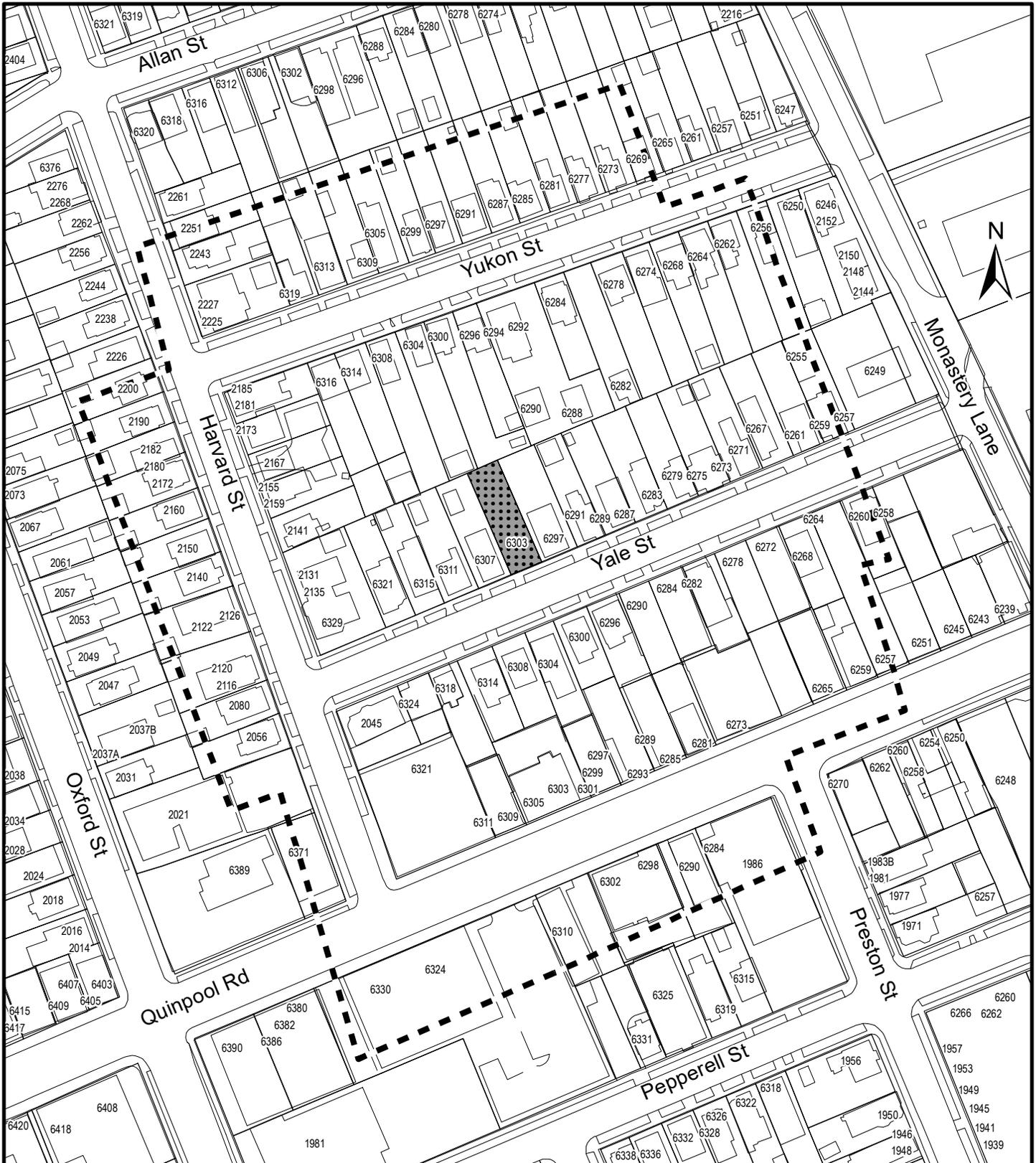
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Matthew Conlin, Planner I, 902.490.4843  
Rosemary MacNeil, Development Officer & Principal Planner, 902.490.4650

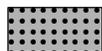
Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.490.1210

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**Map 1 - Notification Area**

6303 Yale St.,  
Halifax

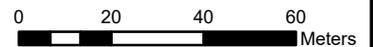


Subject Property



Notification Area

**HALIFAX**



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

**Variance Request for  
Lot Area  
Required: 5000 sq ft  
Requested: 3400 sq ft**

**Proposed  
2-Unit  
Dwelling**

Driveway

**Variance Request for  
Lot Frontage  
Required: 50 ft  
Requested: 34 ft**

34 ft

Yale St



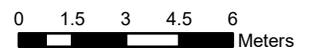
**Map 2 - Site Plan**

6303 Yale St.,  
Halifax



Subject property

**HALIFAX**



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

# Attachment A - Left and Front Elevations

**GENERAL NOTES:**

THIS PLAN IS INTENDED FOR USE BY PERSONS WHOSE PROFESSIONAL ABILITY AND LICENSE IS NECESSARY FOR THE CONSTRUCTION OF THIS STRUCTURE. BUILDINGS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT NATIONAL BUILDING CODE (NBC) OF CANADA, AND ALL APPLICABLE LOCAL ORDINANCES, BY-LAWS, ETC. SHALL BE CONSIDERED AS SPECIFICATIONS FOR THE CONSTRUCTION OF THIS STRUCTURE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL BUILDING DEPARTMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL BUILDING DEPARTMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL BUILDING DEPARTMENT.

ITEM	REVISION	DATE	MONTH/DAY/YEAR
1	Revised	11/14/2019	
2	Revised	11/01/2019	
3	ISSUED FOR DP	10/21/2019	
4	ISSUED FOR CONSTRUCTION		
5	ISSUED FOR CONSTRUCTION		
6	ISSUED FOR CONSTRUCTION		



PROJECT NAME:  
**6303 YALE ST  
 NEW  
 CONSTRUCTION**

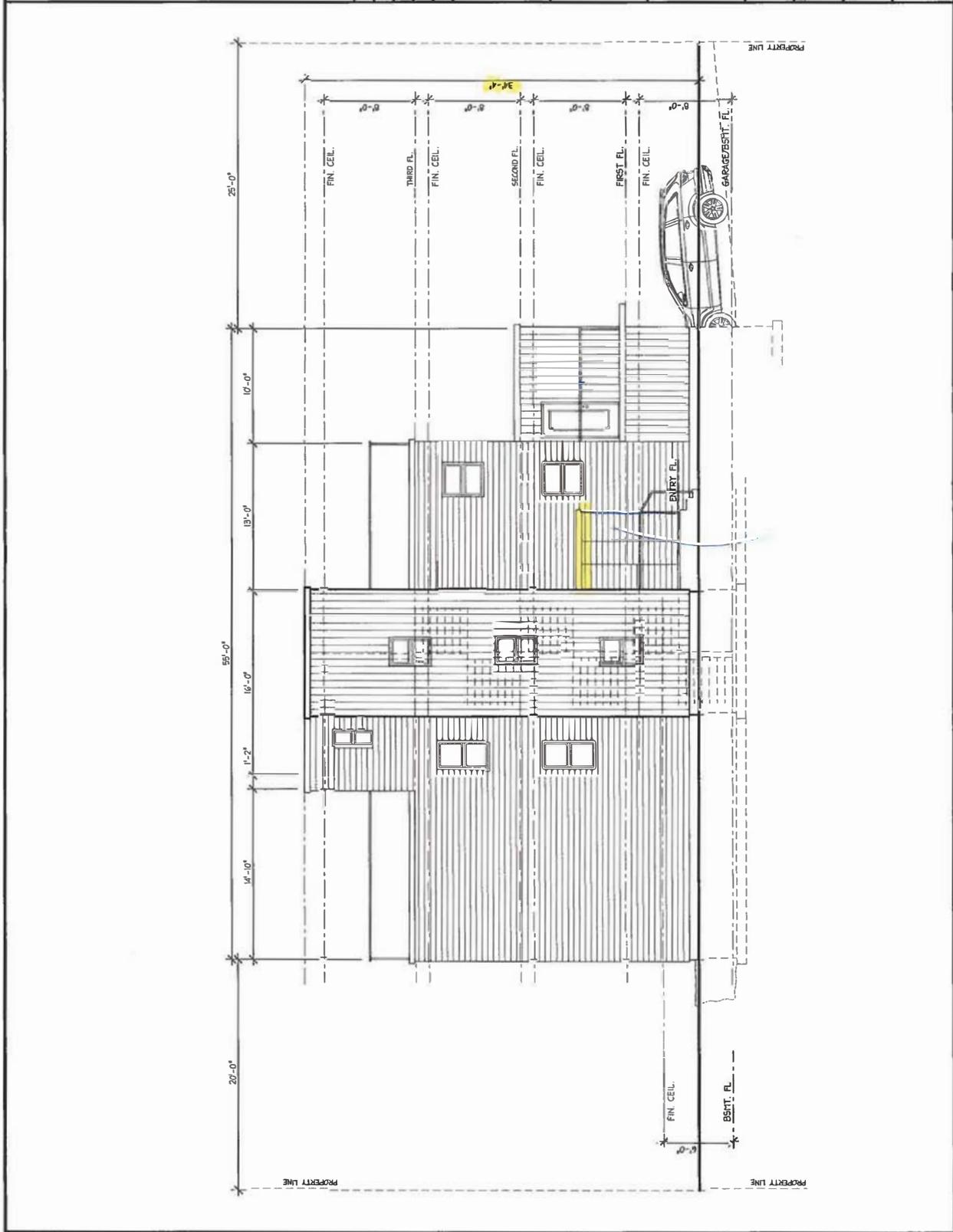
DRAWING NAME:  
**LEFT  
 ELEVATION**

DRAWN BY:  
 BRH

SCALE:  
 1/8" = 1'-0"

DATE:  
 NOVEMBER 14, 2019

PROJECT NO.  
 ODconst19999





## Attachment B - Variance Refusal Letter



November 22, 2019

Ms Anne-Louise Dauphinee

Halifax N.S.

Dear Ms. Dauphinee:

**RE: VARIANCE APPLICATION #22607, 6303 YALE STREET, HALIFAX, N.S. PID #00177402**

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:** 6303 Yale St, Halifax, N.S.  
**Project Proposal:** To construct a two-unit dwelling on a vacant lot with less lot area and frontage than is required (R-2 zone)

LUB Regulation	Requirement	Proposed
Minimum Lot Area	5000 square feet	3400 square feet
Minimum Lot Frontage	50 feet	34 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 the variance violates the intent of the land use bylaw

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  
Development Services - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
clerks@halifax.ca**

Your appeal must be filed on or before Monday, December 2, 2019

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**Nov 25/2019**  
**VARIANCE # 22607**

If filing an appeal, be advised that your submission and appeal documents will form part of the public record, and will be posted on-line at [www.halifax.ca](http://www.halifax.ca). If you feel that information you consider to be personal is necessary for your appeal, please attach that as a separate document, clearly marked "PERSONAL". It will be provided to the committee and/or council members and staff, and will form part of the public record, but it will not be posted on-line. You will be contacted if there are any concerns.

If you have any questions or require clarification of any of the above, please call Matthew Conlin at (902) 490-4843.

Sincerely,

Original Signed

Rosemary MacNeil, Principal Planner / Development Officer  
Halifax Regional Municipality

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

## **Attachment C - Letter of Appeal**

The Municipal Clerk  
Halifax Regional Municipality  
Development Services – Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
Sent to: clerks@halifax.ca

November 27, 2019

Regarding: Appeal of the decision for Variance Application #22607  
6303 Yale Street, Halifax, PID #00177402

Proposal: To construct a two-unit dwelling on a vacant lot with less lot area and frontage than is required (R-2 zone).

To HRM Council Members,

We would like to appeal the decision of the Principal Planner / Development Officer, HRM, on the grounds that:

- 1) Constructing a two-unit dwelling on this property is congruent with other properties in the neighbourhood;
- 2) The proposed design has purposely sought to meet all controllable land use bylaws within the same allowances as a Single Family home; and
- 3) A variance was approved by HRM Council in August 2018, for the construction of a similar two-unit dwelling on a similar sized lot, at 6267 Yale Street.

Respectfully,

Original Signed

Anne-Louise Dauphinee  
Kelly Walker  
Katie Wilson Day  
Doug Wilson