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Item No. 11.3.1
Halifax Regional Council
November 17, 2020

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed

SUBMITTED BY: _____
for Erica Armstrong, Chair, Design Review Committee

DATE: October 6, 2020

SUBJECT: **Improvements to Downtown Halifax Substantive Site Plan Approval and Appeal Processes**

ORIGIN

September 24, 2020 meeting of the Design Review Committee, Item No. 6.1.2.

LEGISLATIVE AUTHORITY

As per Section 13(d) of the Terms of Reference of the Design Review Committee:

the Committee shall...

(d) advise Council on potential amendments to regulation and policy to carry out the role and responsibilities of the Committee or to further the intent of this By-law as may be required from time to time.

RECOMMENDATION

The Design Review Committee recommends Halifax Regional Council:

THAT the Design Review Committee recommend that Regional Council request a staff report outlining options to improve the downtown Halifax substantive site plan approval and appeal processes, with consideration given to:

- a) that staff submit a completed Site Plan Approval Application recommendation report to the Design Review Committee before the expiry of 40 days of the 60 day Charter time limit for DRC decisions, in order to enable the DRC sufficient time to consider an application;**
- b) the Design Review Committee receive written notification from the Clerk's Office when a notice of appeal is filed with respect to a decision made by the Design Review Committee;**
- c) Regional Council inviting a member of the Design Review Committee to attend the appeal hearing of a Design Review Committee decision;**
- d) when an appeal of a DRC decision is scheduled to be heard by Council, requiring the Design Review Committee to forward a memorandum to Regional Council outlining the decision of the committee with a summary of the reasons for the decision.**

BACKGROUND

The Design Review Committee listened to a public presentation from Ted Farquhar, a former Design Review Committee member, on September 10, 2020 regarding the appeal of the DRC decision in Case 22511 to Regional Council on January 14, 2020.

For further information, please refer to Farquhar's public presentation dated September 10, 2020.

DISCUSSION

The Design Review Committee listened to Farquhar's presentation which included a brief background of the substantive site plan application in Case 22511, staff's recommendations to the Design Review Committee, the reasons why the Committee refused the application and details regarding the appeal hearing at Regional Council which resulted in an appeal of the Design Review Committee decision and the approval of the site plan application.

Farquhar stated that Regional Council did not have sufficient information before them regarding the Design Review Committee's rationale for refusing the site plan approval application and did not engage in enough conversation around prominent civic frontage, which was an important factor in the Committee's decision.

Farquhar made several recommendations to the Design Review Committee in order to enable the Committee to help Regional Council during the hearing of Design Review Committee appeal:

- That the Design Review Committee issue a memo to Regional Council that emphasizes the reasons for the Committee's rejection or approval of a substantive site plan approval application,
- That the Design Review Committee offer to have a member of the Committee present at future appeal hearings held by Regional Council so that they can answer questions of clarification,
- That HRM staff notify the Design Review Committee of appeals of the Committee's decisions,
- That appeals be sent to all Design Review Committee members for review.

Members of the Design Review Committee spoke in favour of Farquhar's recommendations to allow the Committee to be aware of appeals of its decisions and to provide support to Regional Council in understanding the premise of the Design Review Committee's decision during the appeal process. During the discussion of Farquhar's recommendation, members of the Design Review Committee also expressed concern with the sixty (60) day timeframe in the *HRM Charter* for the Design Review Committee to render a decision regarding Downtown Halifax Land Use By-law site plan approval applications. The Design Review Committee discussed the concern that the Committee sometimes receives staff recommendation reports close to the end of the 60 day timeframe. Thus, members of the Design Review Committee expressed the need that the Committee have sufficient time prior to a meeting to review the staff recommendation report and the attached documents in order to allow for more robust discussions about an application during the Committee's meeting.

FINANCIAL IMPLICATIONS

There are no financial implications.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report.

COMMUNITY ENGAGEMENT

The agenda, reports, and minutes of the Design Review Committee are posted on Halifax.ca.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

The Design Review Committee did not discuss alternative recommendations.

ATTACHMENTS

Attachment 1 – Public presentation dated September 10, 2020.

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: Andrea Lovasi-Wood, Legislative Assistant, 902.490.6732

Appeals of DRC Decisions to Municipal Council Observations & Recommendations

September 10, 2020

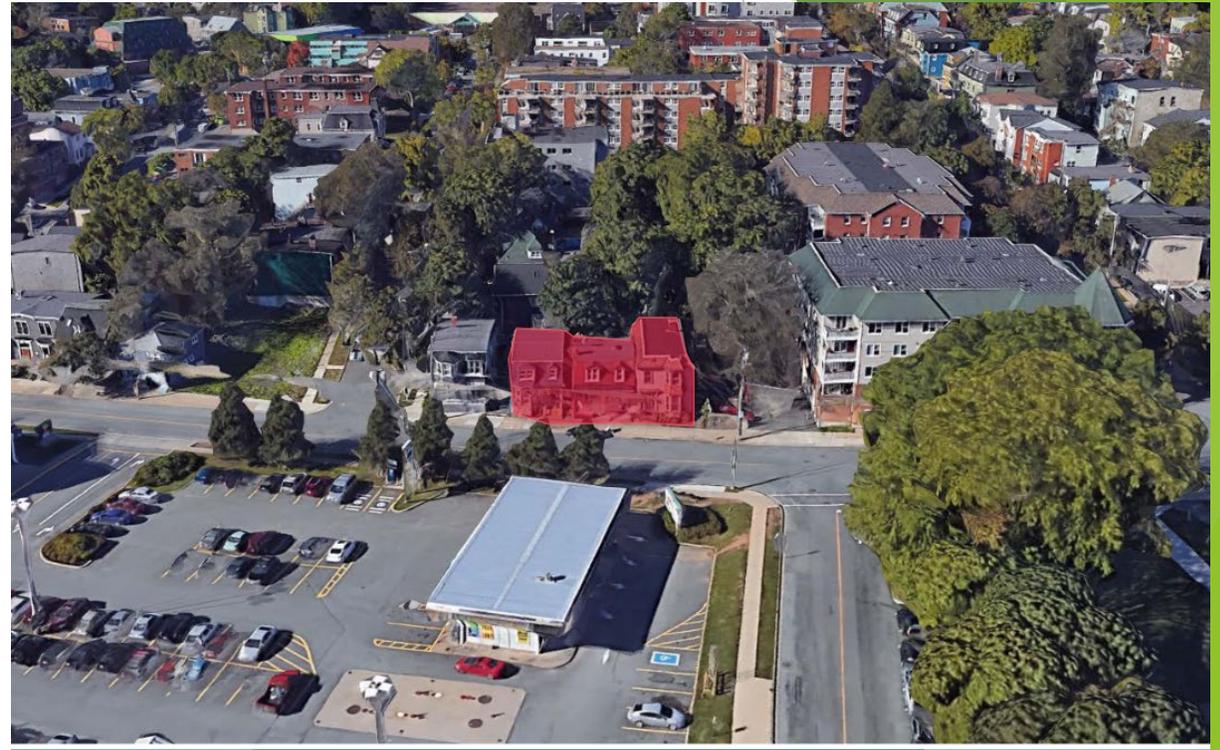
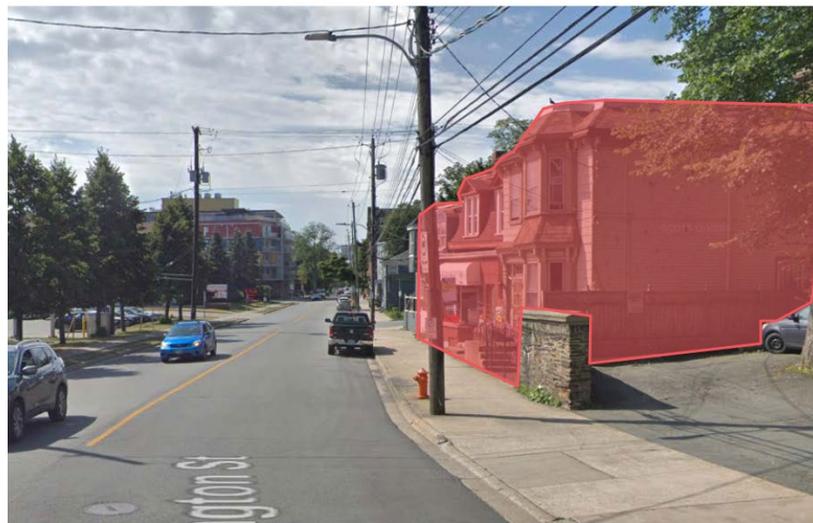
Ted Farquhar

OUTLINE

1. Case 22511, 1144-50 Barrington Street (Nov 14, 2019)
 1. City Staff Recommendation vs. DRC Decision
 2. 3.4.1 Prominent Civic Frontage
2. The Appeal (Jan 14, 2020)
 1. Process & Timing
 2. Meeting Observations
 3. Subsequent Correspondence with Municipal Councillors
3. Inferences & Conclusions
4. Recommendations for Future Appeals
5. Recommendations from a Former Committee Member

Case 22511 - 1144-50 Barrington Street

- ▶ Previously was a row of 2-story Late Victorian era homes/retail on the south side of Barrington, across from Superstore Parking Lot.
- ▶ Built 1890s
- ▶ 'Contributing Historical Resource' per Heritage Committee
- ▶ Not Registered Heritage Property
- ▶ Scheduled for tear down days after the meeting
- ▶ Demolition not allowed under OSS HCD



Case 22551- Proposal

- ▶ 5 story mixed use
- ▶ 26 units
- ▶ Retail on ground floor



Staff Recommendation

Staff recommend that Design Review Committee:

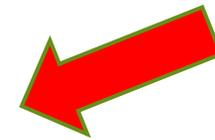
1. Approve the qualitative elements of the substantive site plan approval application for 5 storey mixed-use development at 1144, 1148, and 1150 Barrington Street, Halifax as shown in Attachment A of staff report; and
2. Approve the five variances to the Land Use By-law requirements regarding streetwall width, streetwall setback, side/rear yard setback, streetwall stepback, and upper storey stepback as contained in Attachment C of the staff report.

Staff Recommendation

Staff recommend that Design Review Committee:

1. Approve the qualitative elements of the substantive site plan approval application for a five mixed-use development at 1144, 1148, and 1150 Panton Street, Halifax as shown in Attachment A of staff report, and
2. Approve the five variances to the Land Use By-law requirements regarding streetwall width, streetwall setback, side/rear yard setback, streetwall stepback, and upper storey stepback as contained in Attachment C of the staff report.

DRC decided not to approve
The qualitative elements



Staff Recommendation

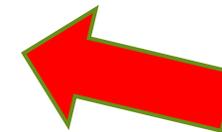
Staff recommend that Design Review Committee:

1. Approve the qualitative elements of the substantive site plan approval application for a five mixed-use development at 1144, 1148, and 1150 Fenton Street, Halifax as shown in Attachment A of staff report, and
2. Approve the five variances to the Land Use By-law requirements regarding streetwall width, streetwall setback, side/rear yard setback, streetwall stepback, and upper storey stepback as contained in Attachment C of the staff report.

DRC decided not to approve
The qualitative elements



DRC debated the variances but
ultimately decided to reject
project outright



3.4.1 Prominent Civic Frontage

- ▶ *3.4.1 Prominent Frontages and View Termini*
- ▶ *These are frontages and sites with exceptional visibility and opportunity for signature or landmark architectural treatments or features. These sites can enhance the quality of public areas, reinforce downtown or precinct identities, orient pedestrians and strengthen civic pride. Accordingly, development on these sites has a greater civic responsibility that obliges consideration for the highest possible design and material quality. The design of these buildings should provide distinctive massing articulation and architectural features so as to reinforce their visual prominence.*
- ▶ *Prominent Civic Frontage: These frontages identify highly visible building sites that front onto important public open spaces such as the Citadel and Cornwallis Park, as well as important symbolic or ceremonial visual and physical connections such as the waterfront boardwalks, the proposed Grand Promenade linking the waterfront to the Town Clock, and other east-west streets that connect the downtown to the waterfront. Prominent Civic Frontages are shown on Map 1 in Appendix A of the Design Manual*

Prominent Civic Frontage

- ▶ Exceptional visibility
- ▶ Signature or landmark architectural treatments
- ▶ Reinforce Precinct identity
- ▶ Greater civic responsibility
- ▶ Highest possible design
- ▶ Distinctive articulation
- ▶ Distinctive Architectural features

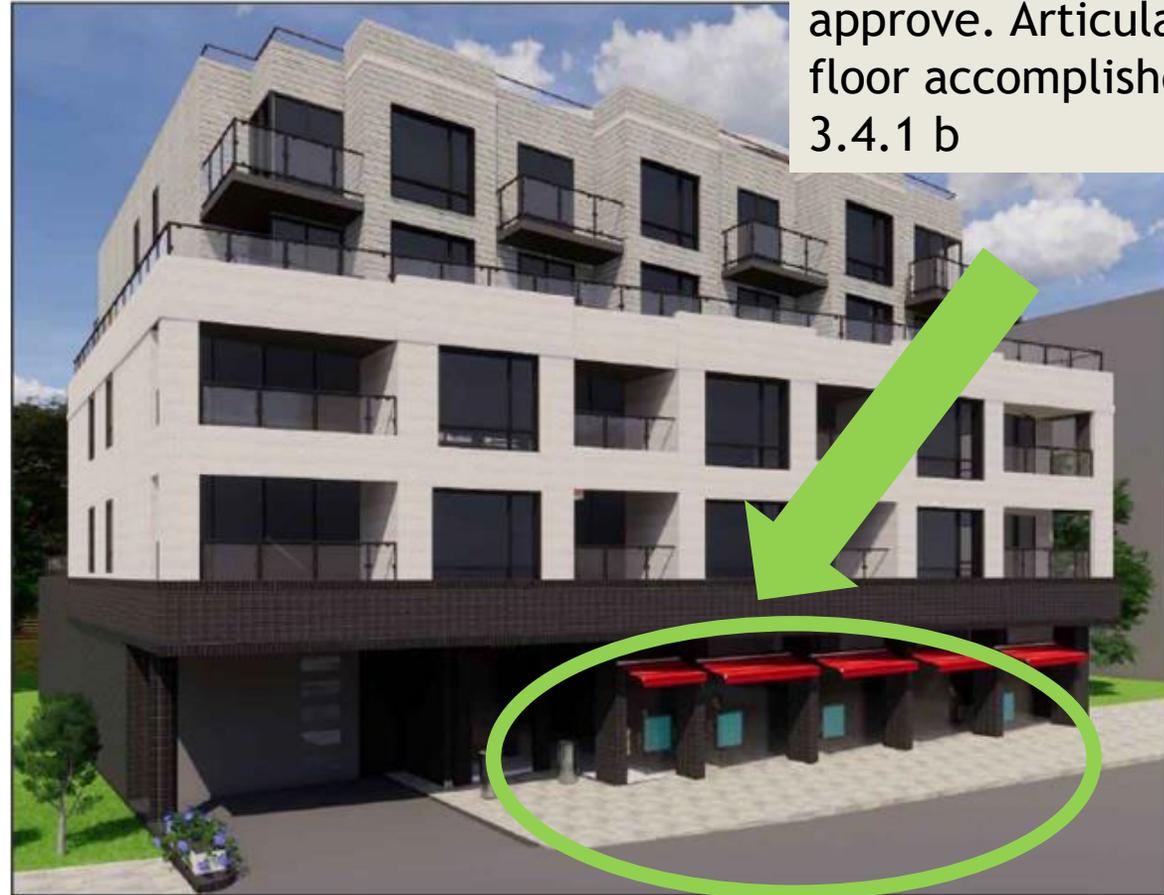
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Prominent Civic Frontage

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Staff recommendation was to approve. Articulation on main floor accomplished goal of 3.4.1 b

Prominent Civic Frontage

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- ▶ Distinctive Architectural features



DRC disagreed with staff recommendation.
DRC thought 3.4.1b sets a higher bar than this design.

Site Plan Approval Timeline - Case 22551

- ▶ October 2, 2019 - Application submitted to Municipality
- ▶ November 14, 2019 - DRC meeting. (Rejection)
- ▶ Late November, 2019 - Buildings torn down
- ▶ November 29, 2019 - Applicant filed appeal
- ▶ December 10, 2019 - First Reading of OSS HCD (Permit Deadline)
- ▶ January 14, 2020
 - ▶ Appeal heard at Regional Council (approved)
 - ▶ Old South Suburb Heritage Conservation District approved (appeal is now moot)
- ▶ January 28, 2020 - Letter to Regional Council

Appeal Process at Municipal Council

1. City Staff presentation
2. Questions of clarification from Council to Staff
3. Appellant presentation
4. Questions of clarification from Council to Appellant
5. Opportunity for affected owners to speak (<100 m only)
6. Solicitor Reviews Rules for Council
7. Motion on the Floor - “Allow the Appeal”
8. Debate
9. Vote

Appeal Process at Municipal Council

1. City Staff Presentation
2. Questions of clarification from Council to Staff
3. Appellant presentation
4. Questions of clarification
5. Opportunity for affected citizens
6. Solicitor Reviews Rules for
7. Motion on the Floor - "All
8. Debate
9. Vote

DRC Not Permitted to Speak

- Quasi-Judicial Process
- DRC role is finished
- Procedural Fairness
- Per A01

Appeal Observations, Jan 14, 2020

- ▶ City Staff Presentation (7 minutes)
 - ▶ Explained project & site plan approval process
 - ▶ Explained district, and applicable rules
 - ▶ Presented DRC reason for denial - as per minutes
 - ▶ OSS HCD impact on appeal
 - ▶ Did not advocate
 - ▶ Answered a lot of questions (but not about LUB or S-1)
- ▶ Appellant Presentation (6 minutes)
 - ▶ Directly addressed 3.4.1b, said not enough direction in S-1
 - ▶ Addressed each section in DRC motion
 - ▶ No questions from Councils

Appeal Observations cont.

- ▶ Councillor Mason, District 7
 - ▶ Placed motion on the floor
 - ▶ “These are common variances”
 - ▶ No comment on 3.4.1
 - ▶ Asked council to approve
- ▶ Councillor Hendsbee
 - ▶ Hoping for a bay window “Would have been nice” to pay homage
- ▶ Councillor Smith
 - ▶ Procedural questions
 - ▶ “What did DRC mean by ..”

Appeal Observations cont.

- ▶ Councillor Stretch
 - ▶ “What is the purpose of the DRC? Why don’t we just make these decisions?”
 - ▶ In support of appeal
- ▶ Councillor Nicholl
 - ▶ Regrets loss of heritage resources
 - ▶ Nothing can be done to save the buildings
 - ▶ Cladding could be more reflective of OSS (i.e. more character)

Appeal Observations cont.

- ▶ Variances were not discussed
- ▶ No discussion re: Prominent Civic Frontage
- ▶ Vote was 15-1 in favor of the appeal (District 15 - Paul Russell)

Subsequent Correspondence

- ▶ ‘Would have been helpful if DRC could respond directly’
- ▶ ‘Did not consider 3.4.1b to depth I should have’
- ▶ ‘Relied on staff report and Councillor Mason’
- ▶ ‘OSS HCD was in back of mind - made decision moot’
- ▶ ‘Design was adequate - not great.’
- ▶ ‘DRC has also approved stuff in the past that is also not great’
- ▶ ‘DRC is far too liberal with variances’

Inferences

- ▶ 3.4.1 b Prominent Civic Frontage was not suitably considered by council
 - ▶ Council decision was not fully informed
 - ▶ Decision not made exclusively on merits
- ▶ Council (likely) lacked full understanding of the powers, obligations and regulations that guide the site plan approval process
 - ▶ Approval process was negatively effected
- ▶ OSS HCD severely complicated the process
- ▶ Knowledge of imminent OSS HCD approval made appeal irrelevant.
 - ▶ Likely effected diligence
- ▶ Councillor for the area, District 7 - Waye Mason, takes a lead role.
- ▶ Council wanted to make amends to developer

Recommendations for Future Appeals

1. Ensure that the reason for a rejection and approval is clear in the final motion and meeting minutes. Be very very descriptive.
2. Issue memo to council that emphasizes the reasons for the rejection/approval
3. Offer to have a member of the DRC present at the appeal to answer questions if called upon during the appeal process
4. Have city staff notify the committee of appeals immediately
5. Have the appeals sent to all committee members for review
6. Know the rules - follow them to a 'T' and make sure your reasoning is bullet proof
7. Goal is to help council make informed decision! Not to advocate

Recommendations from a former member

- ▶ Learn as much as you can about the project - public info
 - ▶ Project website
 - ▶ Open House
 - ▶ Read Historical DRC agendas/reports & meeting minutes
 - ▶ Message Boards (<https://skyscraperpage.com/forum/forumdisplay.php?f=221>)
- ▶ Get the application right away (60 Day Rule)
 - ▶ Currently it take 40 to 50 days for staff to review
 - ▶ DRC received information only after city report is complete
 - ▶ DRC meeting is under duress. No ability to defer decision before time-out
- ▶ Have staff inform DRC “what is in the pipeline”

Recommendations from a former member

- ▶ Be prepared to spend many hours reviewing an application
- ▶ If new to LUB and S-1, it will take several applications to understand them and use them appropriately
- ▶ Handling Large/Multiple Applications
 - ▶ Big applications = Long meetings
 - ▶ Move big application to start of meeting
 - ▶ Add meetings/ Meet even when no applications for training, etc.
 - ▶ If agenda is overloaded, break into two nights

Recommendations from a former member

- ▶ Application Discussion & Debate
 - ▶ Projects are complex - break it into manageable pieces
 - ▶ Qualitative First
 - ▶ Read the articles out loud one at a time
 - ▶ Go around in a circle and get everyone's opinion - meet? Not meet?
 - ▶ Gain consensus then move on to the next until complete
 - ▶ Variances Second
 - ▶ Read each variance out loud and read the LUB
 - ▶ Go around in a circle and having give their opinion
 - ▶ Make decision one variance at a time, then move on to next one

Recommendations from a former member cont.

- ▶ Be bold with motions
 - ▶ Don't over rely on optional "recommendations" and "considerations given to" to achieve qualitative design goals of S-1
 - ▶ If it does not meet the rules deny it and send it back
 - ▶ You are the guardians of the design of downtown Halifax
 - ▶ Your decisions shape our city forever

Final Slide

► Thank you