



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

Item No. 5.2
Halifax and West Community Council
January 19, 2020

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Steve Higgins, Manager, Current Planning

DATE: November 26, 2020

SUBJECT: **Cases 23041 and 23042: Appeal of Variance Refusal – 5956 and 5964
Emscote Drive, Halifax, N.S.**

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

Two variance requests have been submitted for adjacent properties at 5956 and 5964 Emscote Drive, to permit the construction of an addition to each single unit dwelling on their respective lots. The request is to reduce the right-side yard setback for civic 5956 and left side yard setback for civic 5964 from the required 6 feet to a zero (0) foot side yard setback, as shown on Map 2. The properties are currently in common ownership.

Permit 139884 was issued in July of 2014 to construct a single unit dwelling on the lot at 5964 Emscote Drive. Occupancy of that building has been issued. In July of 2017, permit 159761 was issued to construct a single unit dwelling on the adjacent property at 5956 Emscote Drive. Construction of that building is ongoing, and occupancy has not yet been issued. In August of 2020, two variance requests were submitted, one for each civic address, to propose an addition to the existing dwellings. The additions are proposed to be built to the shared lot line, creating a zero-foot setback for each property on each of their respective sides. The proposed additions to the dwellings would create a connection at the shared lot line, being an enclosed structure allowing internal access between the dwellings.

The Land Use By-law (LUB) for Halifax Peninsula requires a minimum side yard setback of 10% of the lot width, to a maximum of 6 feet. The two subject properties are greater than 60 feet in width, resulting in a minimum side setback of 6 feet. Section 10(1) of the LUB states that in no case shall there be more than one building on one lot or one building on more than one lot except as otherwise provided in the by-law. There are no provisions within the LUB that would provide an exception to Section 10(1) to allow for consideration of the proposal outside of the variance process. The proposed developments meet all other requirements of the LUB.

Site Details:

Zoning

The properties are located within the R-1 (Single Family) Zone of the Halifax Peninsula LUB and are within Sub-Area 3 of the South End Secondary Plan Area. The relevant requirements of the LUB for a single unit dwelling and the related variance request are identified below:

| | Zone Requirement | Variance Requested |
|----------------------------------|-------------------------|---------------------------|
| Minimum Side Yard Setback | 6 feet | 0 feet |

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment B). The applicant has subsequently 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 requested 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?

Section 31 of the LUB determines the minimum side yard setback for proposed developments within the R-1 zone. The section states that a side yard setback of 10% of the lot width shall be required on each side of the lot. The section further outlines that the side yard setback need not exceed 6 feet. This means a proposed development on a lot 60 feet in width or wider must have a 6-foot side yard setback. The subject lots on Emscote Drive have widths of approximately 100 feet (civic 5964) and 160 feet (civic 5956). The proposed applications are requesting that the required 6-foot side yard setbacks be reduced to 0 feet on one side of each lot, along the shared side lot line.

Setback requirements are in place for both aesthetic and practical reasons. Zones within the Land Use By-law stipulate minimum setbacks for development from front, side, and rear property lines. Minimum side yard setbacks provide for adequate separation from neighbouring structures and allow for privacy, access around the building and a consistent visual makeup within neighbourhoods.

The General Provisions of the Land Use By-law also require that one building cannot be on more than one lot except in specified zones. In some areas of the Peninsula Land Use Bylaw, it is common for individual buildings to share wall structures located on common property boundaries. This is compliant with the land use bylaw but results in the appearance of a single building on more than one lot. However, those circumstances are not common in neighborhoods such as the one containing the houses in question. While technically compliant with the above referenced clause in the bylaw, an enclosed corridor between the two dwellings separated with a partition wall and code compliant doorway on the common property boundary results in what could be considered as a single building on more than one lot.

The zoning in the area limits the permitted land uses to single unit dwellings only. While individually the proposed structures technically satisfy this requirement, the proposed adjacency of the two buildings effectively results in two dwelling units contained within what would appear to be a single structure. Staff believe that outcome would be inconsistent with the intent of the bylaw.

Noting the above referenced circumstances, 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?

The average lot width on Emscote Drive is approximately 119 feet. Therefore, most lots in the area have a minimum 6-foot side yard setback requirement consistent with the lots in question. The subject lots are 45,017 square feet (civic 5964) and 42,900 square feet (civic 5956) in area and the average size of lots in the area is 16,362 square feet. The lots requesting variance are the largest in the neighbourhood and are close to or larger than the average lot width. These conditions result in ample opportunity for development in accordance with the land use bylaw and in compliance with the minimum side yard regulations.

Furthermore, there would not appear to be any physical or topographical constraints on the subject properties that would result in difficulties that would require relaxation of the side yard requirements to allow appropriate development to proceed.

The difficulty being experienced in this case is related to the bylaw's limitation on the applicant's desire to utilize the two dwellings as a single structure. In the context of this difficulty, and noting the capacity for compliant development outlined above, it is the Development Officer's opinion that the difficulty is general to properties in this area and also general to all R1 zoned properties in the plan 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 new 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 outlined and staff's response is provided in the following table:

| Appellant's Appeal Comments | Staff Response |
|--|---|
| The applicable land use by-laws did not foresee the circumstances of this case: a single owner / occupant of two adjacent properties that are to be used in the manner of a single occupancy and therefore require a physical link in order to meet the needs of the owner/occupant. | <p>As outlined in this report, the LUB intends to limit the ability for a building to be located on more than one lot and intends to limit buildings in the area to a single dwelling unit. All other lots in the area are subject to the same requirements and the properties in question have no unique physical conditions that require a variance to allow orderly development.</p> <p>The appropriate response to the desire to link the two buildings for a single occupancy is to connect the structures, consolidate the lots and remove one of the two kitchens.</p> |

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 2020-2021 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 100 metres of the subject properties 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 contact of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

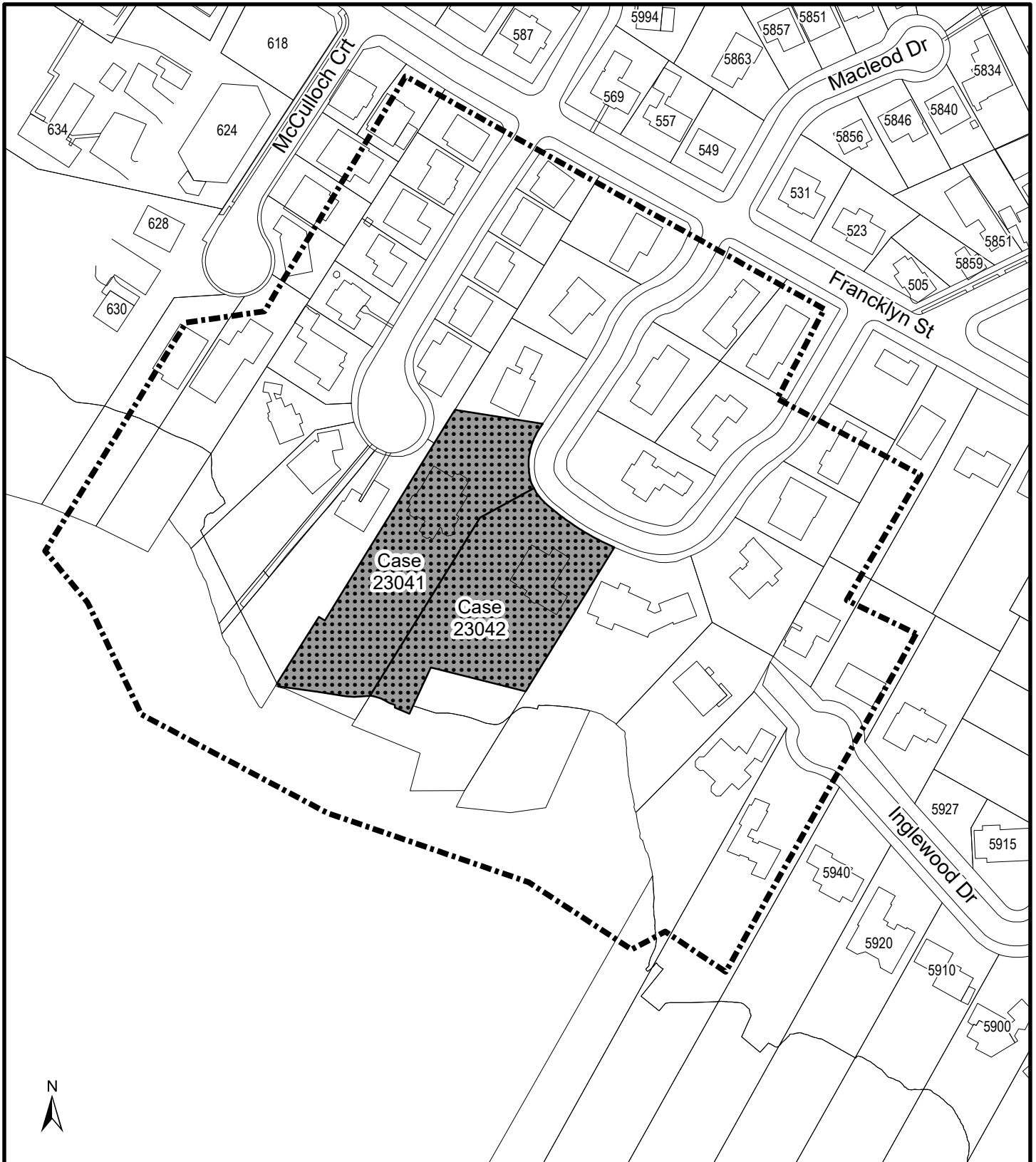
1. Denial of the appeal motion would result in the refusal of the variance. This would uphold the Development Officer's decision. This is staff's recommended alternative.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development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

ATTACHMENTS

| | |
|--------------|---------------------------------|
| Map 1 | Notification Area |
| Map 2 | Site Plan |
| Attachment A | Building Elevations |
| Attachment B | Variance Refusal Letter |
| Attachment C | Letter of Appeal from Applicant |

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: Matthew Conlin, Planner I, 902.719.9457
Rosemary MacNeil, Development Officer & Principal Planner, 902.476.6776



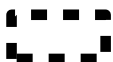
Map 1 - Notification Area

5956 & 5964 Emscote Dr.,
Halifax

HALIFAX



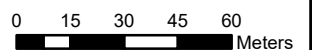
Subject Properties

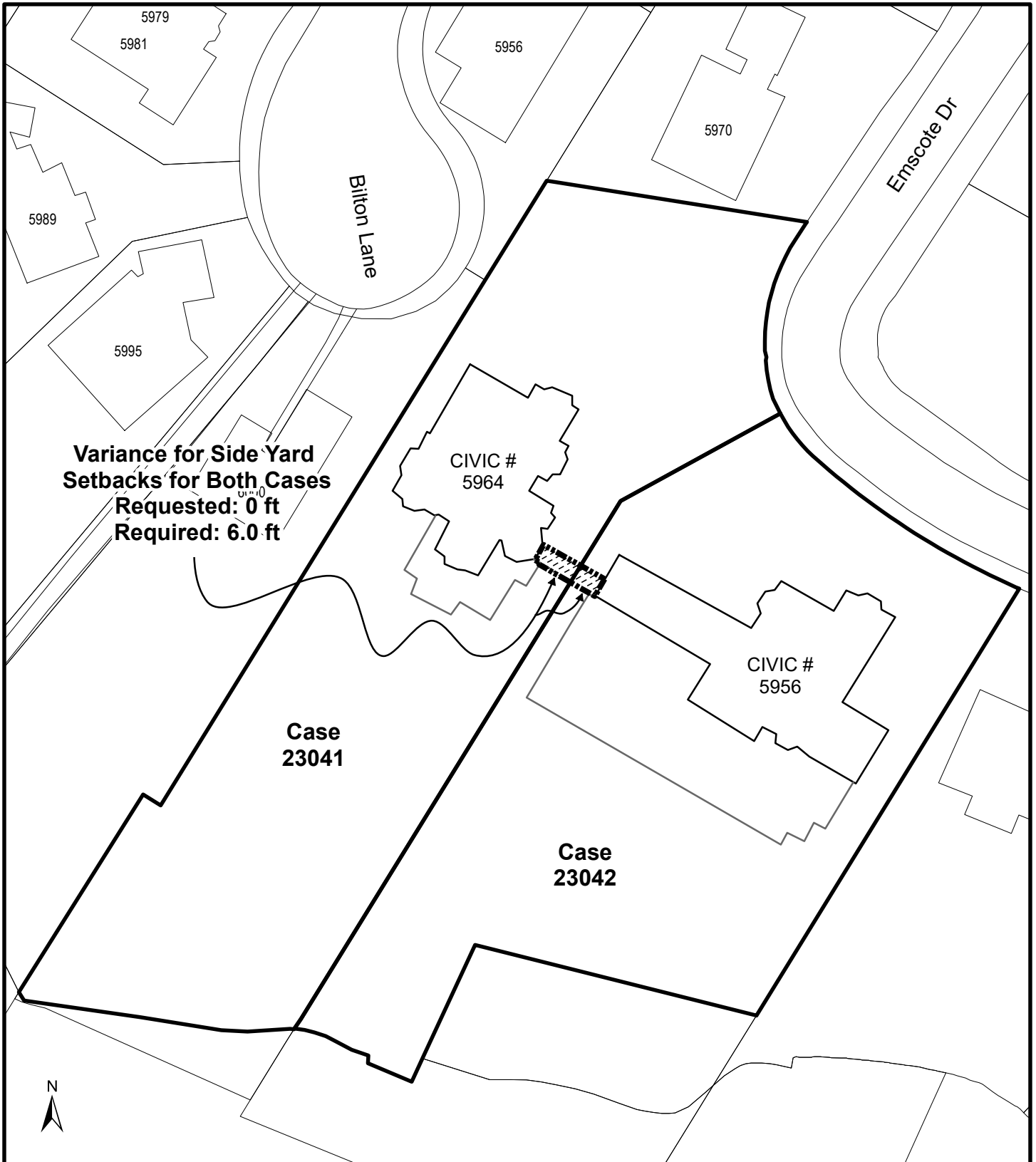


Notification Area

Halifax Plan Area

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





Variance for Side Yard Setbacks for Both Cases
Requested: 0 ft
Required: 6.0 ft

Case 23041

Case 23042


CIVIC # 5964

CIVIC # 5956



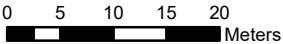
Map 2 - Site Plan
 5956 & 5964 Emscote Dr.,
 Halifax

HALIFAX

 Subject Properties

Halifax Plan Area

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

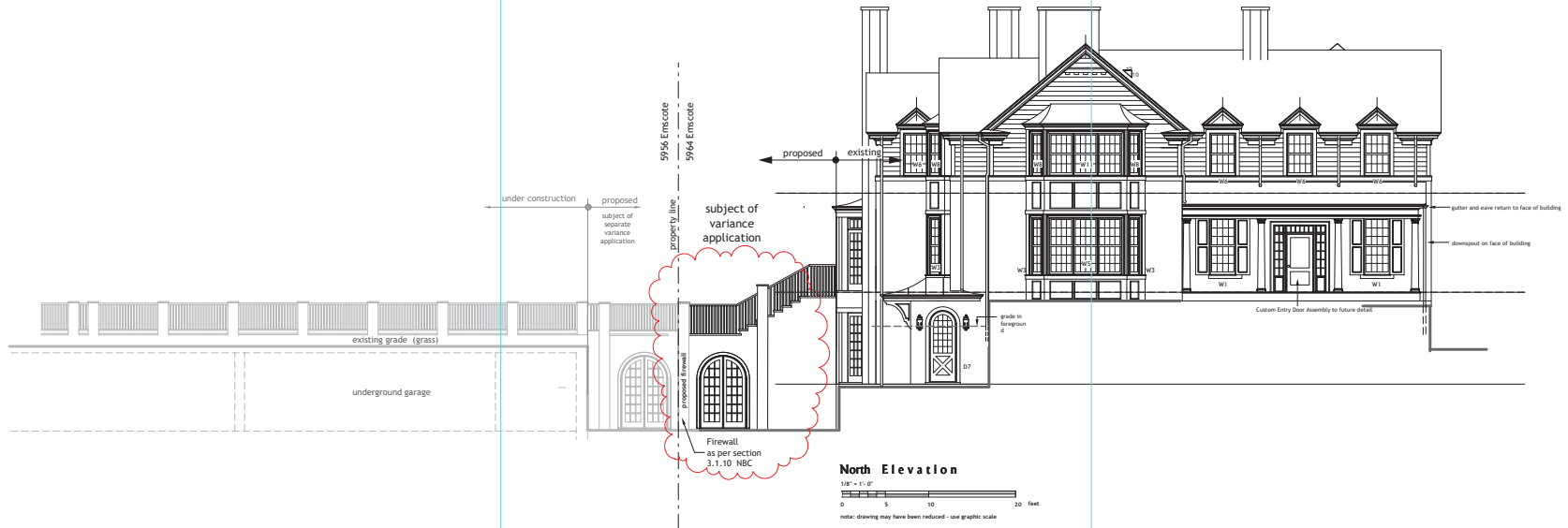
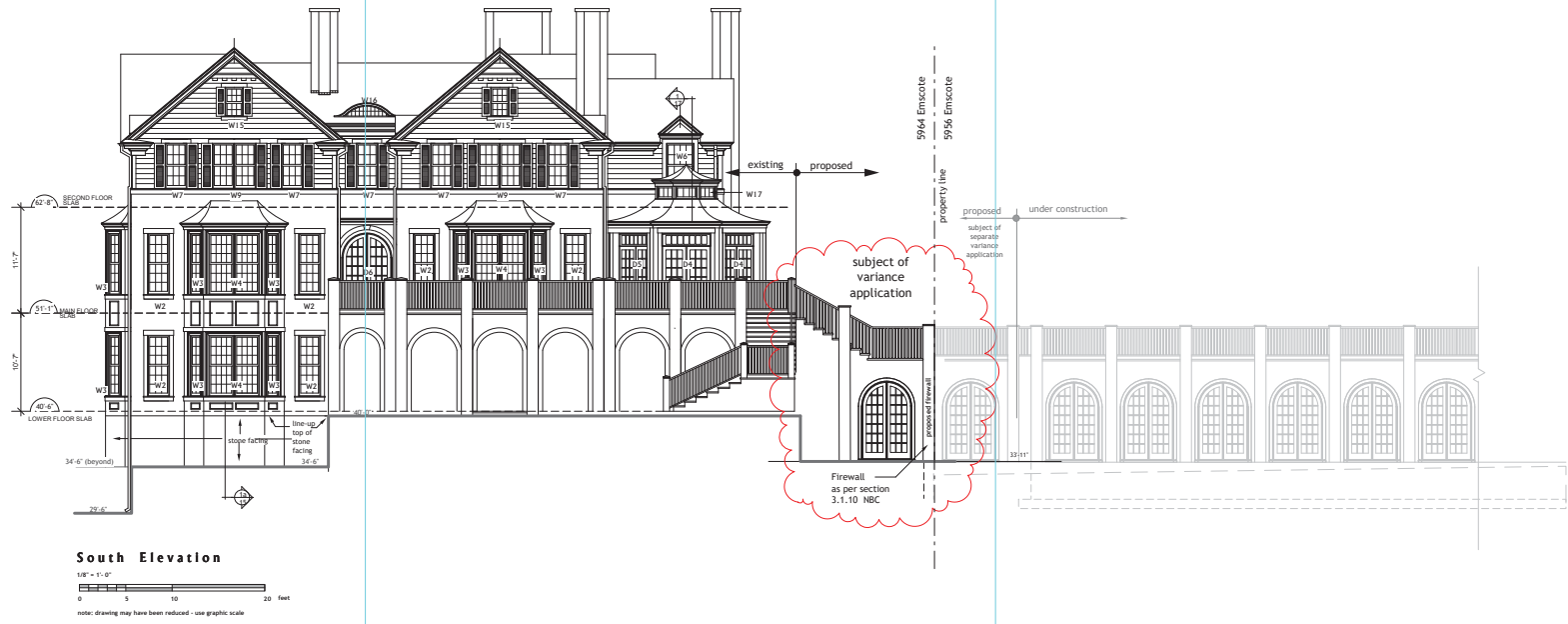


17 November 2020

Case 23041 & 23042

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Attachment A- Elevation Plans



5964 Emscote Drive
 Halifax NS
 PID 00000935

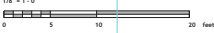
preliminary

date: July 21, 2020

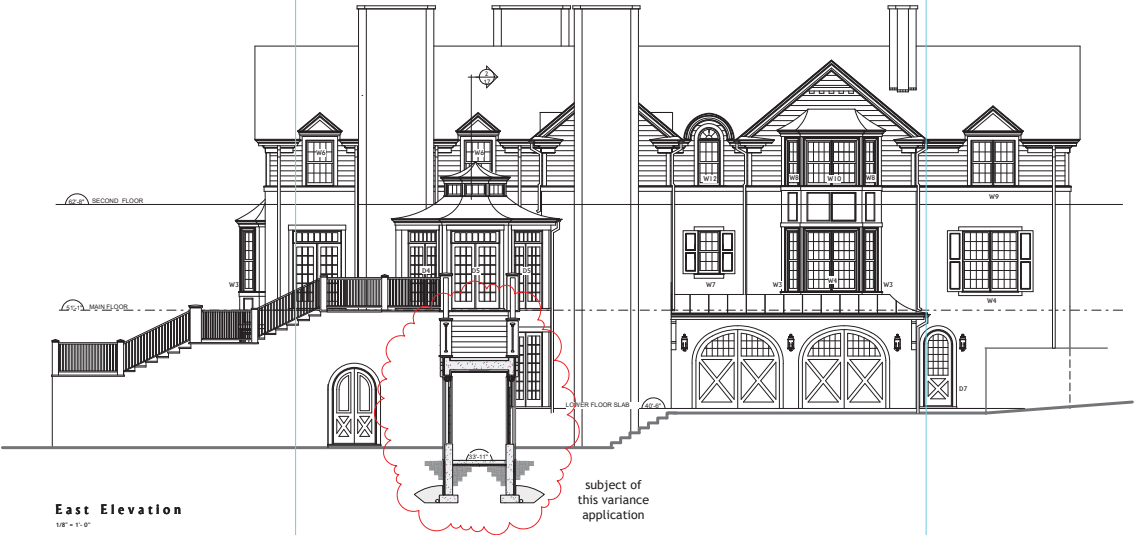
Attachment A- Elevation Plans



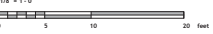
West Elevation



note: drawing may have been reduced - use graphic scale



East Elevation



note: drawing may have been reduced - use graphic scale

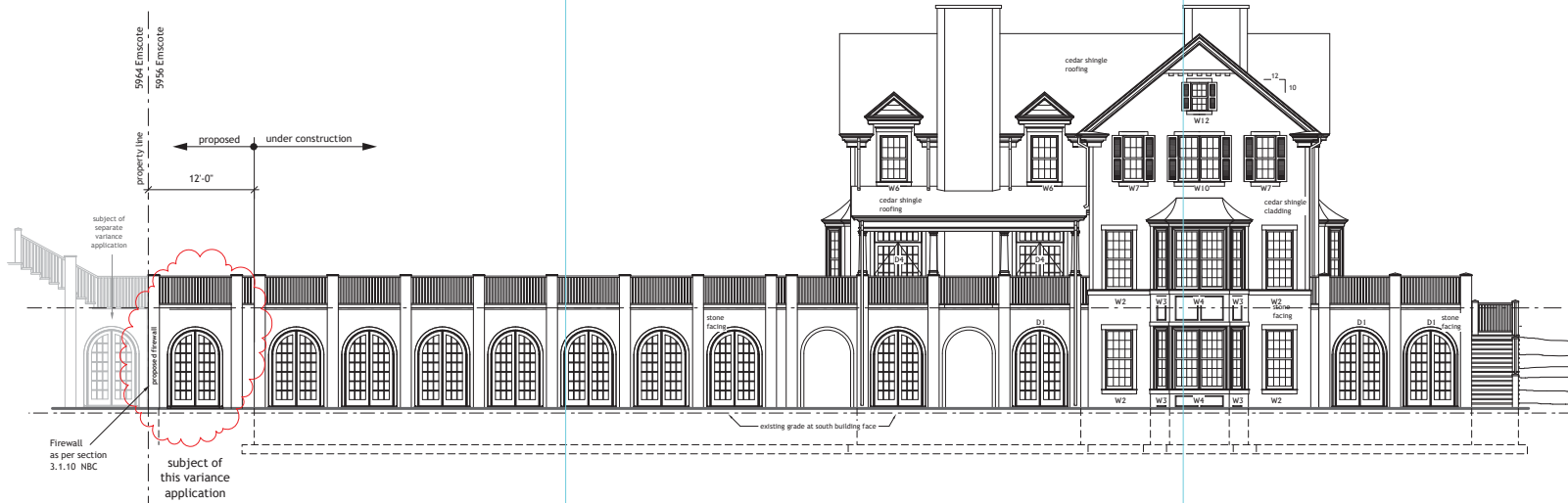
subject of this variance application

5964 Emscote Drive
Halifax NS
PID 00000935

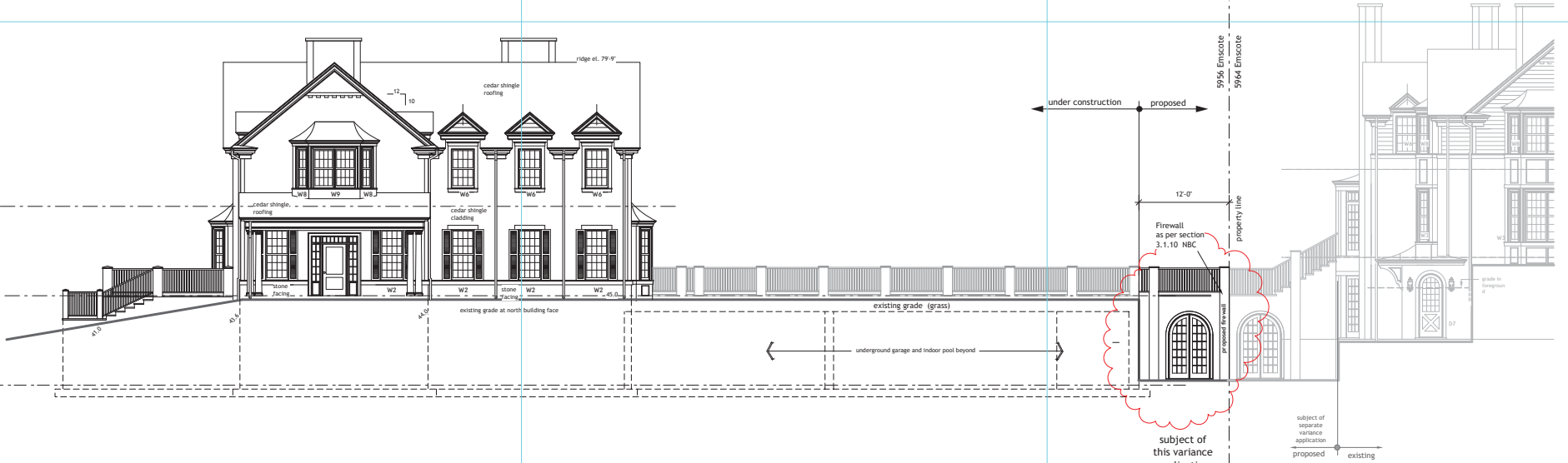
preliminary

date: July 21, 2020

Attachment A- Elevation Plans



South Elevation
 1/8" = 1'-0"
 0 5 10 20 feet
 note: drawing may have been reduced - use graphic scale



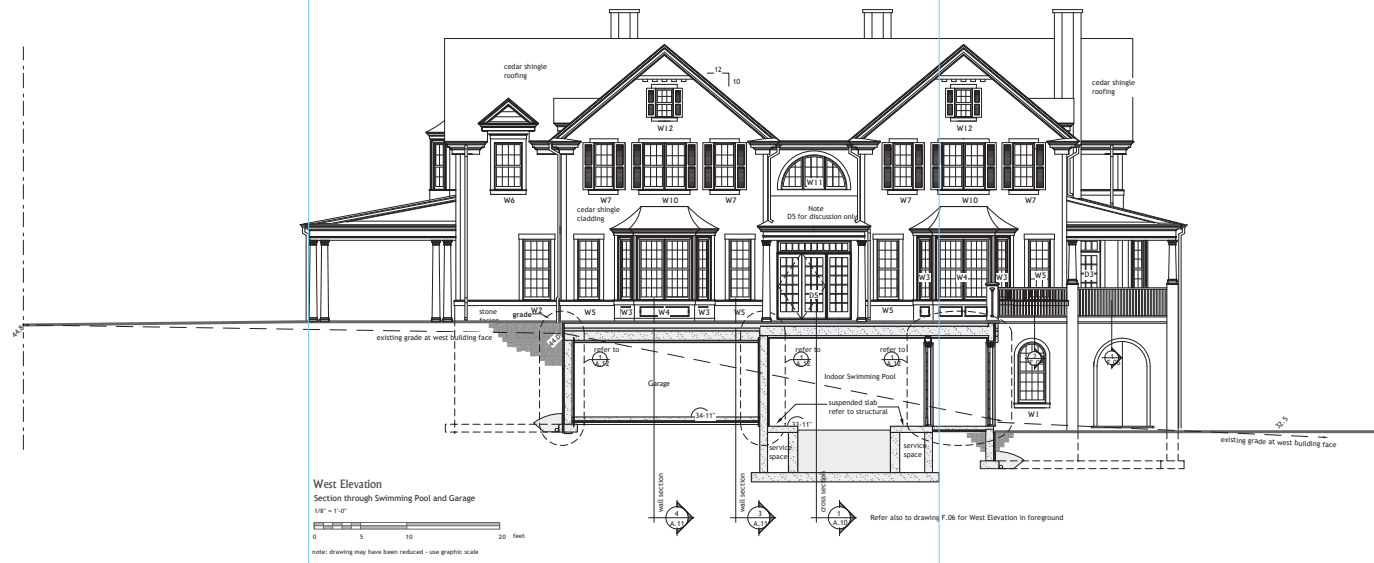
North Elevation
 1/8" = 1'-0"
 0 5 10 20 feet
 note: drawing may have been reduced - use graphic scale

5956 Emscote Drive
 Halifax NS

date: July 21, 2020

preliminary

Attachment A- Elevation Plans



5956 Emscote Drive
Halifax NS
PID 00000927

date: July 21, 2020

preliminary

September 2, 2020

Michael Grunsky
Michael Grunsky Architects
795 Tower Rd.
HALIFAX NS B3H 2X9

Dear Mr. Grunsky:

RE: VARIANCE APPLICATIONS 23041 AND 23042, 5956 AND 5964 EMSCOTE DRIVE., HALIFAX N.S., PIDS 00000927 AND 00000935

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

Location: 5956 and 5964 Emscote Drive, Halifax, N.S.
Project Proposal: Building an addition on to each dwelling to a 0 ft side yard setback, creating an indoor walkway, connecting one dwelling to the other

| LUB Regulation | Requirement | Proposed |
|---|-------------|----------|
| Minimum Left Side Setback (Civic 5964) | 6 feet | 0 feet |
| Minimum Right Side Setback (Civic 5956) | 6 feet | 0 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 these variance applications do 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:

.../2

PAGE 2
MR. M. GRUNSKY
SEPTEMBER 2, 2020

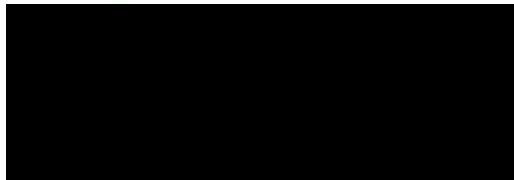
**Municipal Clerk
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5
clerks@halifax.ca**

Your appeal must be filed on or before **September 14, 2020**.

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. 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-Planner I at (902) 719-9457.

Sincerely,



Rosemary MacNeil, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Sherryl Murphy- Acting Municipal Clerk
Waye Mason, Municipal Councillor, District 7



September 10, 2020

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

RE: Variance Application 23041 and 23042, 5956 and 5964 Emscote Drive, Halifax, NS
PIDs 00000927 and 00000935

To whom it may concern:

On behalf of the owner of the above mentioned properties, we wish to exercise the option of appealing the decision of the Development Officer to the Municipal Council as outlined in the refusal letter dated Sept. 2, 2020. The feeling is that the applicable land use by-laws did not foresee the circumstances of this case, namely: a single owner / occupant of two adjacent properties that are to be used in the manner of a single occupancy and therefore require a physical link in order to meet the needs of the owner / occupant.

We would ask that the building floor plans be considered “personal” information and not form part of the information posted “on-line”.

Sincerely

Michael Grunsky
NSAA

Michael Grunsky Architect Inc.

795 Tower Road
Halifax, NS
B3H 2X9