




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

Item No. 10.2.1
Regional Centre Community Council
March 23, 2022

TO: Chair and Members of Regional Centre Community Council

SUBMITTED BY:  (Original Signed)
Erin MacIntyre, Manager, Current Planning

DATE: March 9, 2022

SUBJECT: Case 23782: Appeal of Variance Approval – 6069 Belmont Road, 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 Regional Centre Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 6069 Belmont Road in Halifax to allow for an addition to the front of an existing single-unit dwelling (Map 2 and Attachment A).

A prior variance in 1999 to allow a previous addition was approved, which reduced the side yard of the former Halifax Peninsula Land Use By-law from a required of 5.74 feet (10% of the lot width) to four feet. The existing side wall of the building is angled slightly towards the neighbouring lot meaning that any extension of the wall will further reduce the side yard setback. The purpose of the proposed addition is to create a single car garage on the ground floor with a home office above. The remainder of the building is proposed to meet all other requirements of the Regional Centre Land Use By-law (LUB).

A location certificate has confirmed that closest part of the addition's foundation is 4.3 ft. from the side property line. There is a small cantilever of the main and second floor which establishes the side yard at 3.8 ft. This existing cantilever can be seen in Attachment A, the extension of which is accounted for in the variance request of 3.6 ft. (1.1 m).

The side setback requirement within the Oakland Road Special Area is 10% of the lot width to a maximum of 2.0 metres, which would result in a 1.75 metre (5.74 feet), but the existing setback's approval through a separate, prior variance approval establishes the existing setback as non-conforming. It is the existing, non-conforming setback that must be varied in order to enable the requested building addition.

Site Details:

Zoning

The property is in the ER-1 (Established Residential 1) Zone of the Regional Centre Land Use By-law, and is within the Oakland Road Special Area. The requirements of the LUB and the related variance request is as identified below:

Minimum Side Yard	Requirement	Variance Requested
	Non-conforming setback of 1.16m or 3.8 ft	1.1 m. (3.6 ft.) – right side property line

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). A property owner within the notification area has appealed this decision (Attachment C) and the matter is now before Regional Centre 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 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?

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The proposed distance between both the neighboring building and the side property line are great enough that there are no concerns regarding safety or access. Regarding aesthetics, the building's width relates to the lot width in a manner which is consistent with the built form that the LUB's Oakland Road Special Area requirements dictates. Further, it is the opinion of the Development Officer that it is aesthetically preferable to maintain the line of the existing side wall of the house rather than to require the building wall be stepped back to meet the side setback requirement.

Notwithstanding the side setback, the proposed addition meets all other requirements. The side yard setback reduction is minor relative to the requirement. It is therefore 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.

When considering the properties in the area, it was determined that the orientation and location of the building on the lot is not a condition that's generally present for properties in the area. In this circumstance an extension of the existing building's side wall toward their front property line would be prohibited by a side yard setback.

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 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>"...Our primary concern with this variance is the precedence it may set in the future for similar variance requests. As property owners on Oakland Road, we believe the special set back rule is a good rule for Oakland Road. While we do not have an issue with this specific variance, we do not agree with granting the variance if it will weaken or eliminate the Oakland Road set back rule in the future."</i>	For reasons detailed in the Discussion section of this report, it has been determined that the difficulty experienced is not broadly present in the area. Approval of this variance request is in part due to the unique circumstances of the existing building's orientation relative to the side property line, which is not a condition that's broadly present within the area. Each variance application is evaluated based on the unique aspects of the property and the proposed development. The outcome of this variance will have no effect on the future implementation of the Oakland Road Special Area Side Setback Requirement.

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 request. The HRM cost associated with processing this application can be accommodated with the approved 2021/22 operating budget for Cost Centre C420, Land Development and Subdivision.

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 contact of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

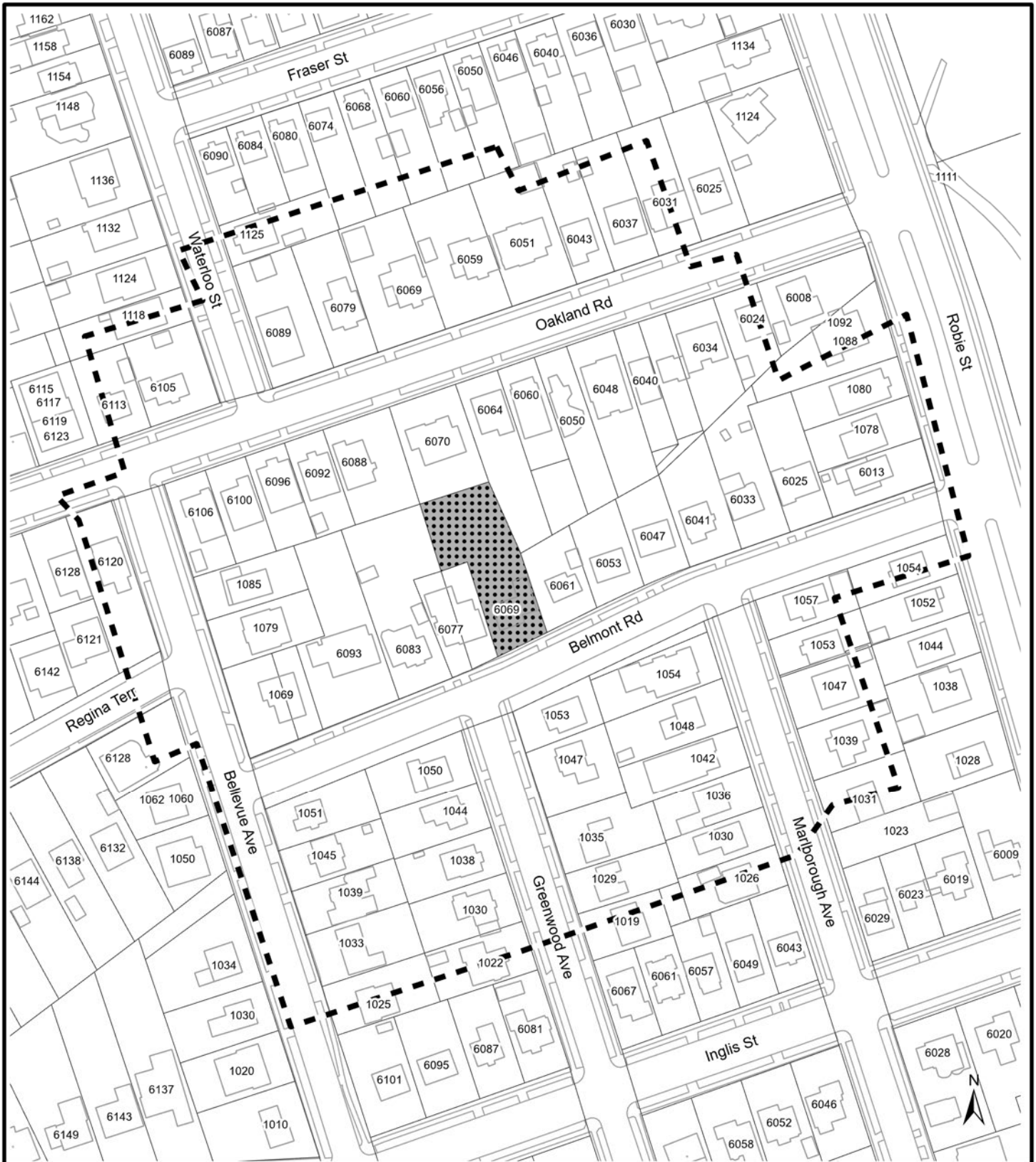
1. Denial of the appeal motion would result in the approval of the variance. The would uphold the Development Officer's decision and this is staff's recommended alternative.
2. Approval of the appeal motion would result in the refusal of the variance. This would overturn the decision of the Development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

ATTACHMENTS

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

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: James Coons, Planner I, 782.640.7651
Stephanie Norman, Development Officer/Principal Planner, 782.640.0702

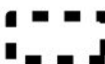


Map 1 - Notification Area

6069 Belmont Road,
Halifax

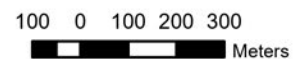


Subject Property

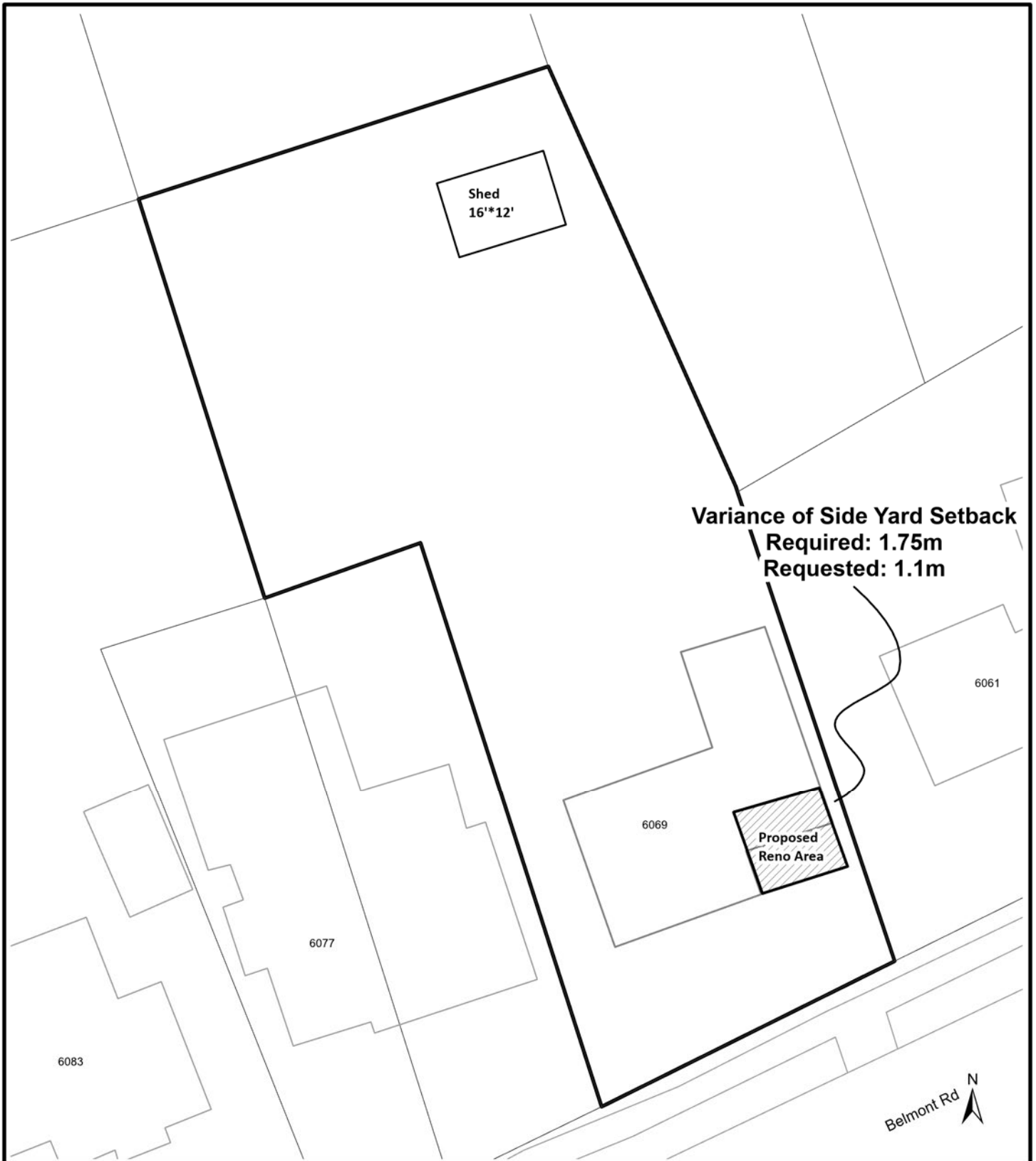


Notification Area

HALIFAX



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



Map 2 - Site Plan

6069 Belmont Road,
Halifax

HALIFAX



Subject Property



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

Attachment A - Building Elevation Plans

GENERAL NOTES:

ALL DRAWINGS REMAIN THE PROPERTY OF ATLANTIC HOME DESIGNS LIMITED.

DO NOT SCALE DRAWINGS.

ALL NOTES AND DIMENSIONS ARE TO BE TAKEN FROM THIS DRAWING. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL DIMENSIONS PRIOR TO CONSTRUCTION. ANY ERRORS OR OMISSIONS SHALL BE REPORTED TO ATLANTIC HOME DESIGNS IMMEDIATELY UPON DISCOVERY. DRAWINGS PRIOR TO ANY CONSTRUCTION.

ALL CONSTRUCTION SHALL BE CARRIED OUT IN ACCORDANCE WITH ALL LOCAL CODES & AUTHORITIES HAVING JURISDICTION.

ALL PERMITS PERTAINING TO THE WORK SHALL BE APPLIED & PAID FOR BY THE GENERAL CONTRACTOR OR HIS SUBCONTRACTORS UNLESS NOTIFIED OTHERWISE IN WRITING, BY THE OWNER.

1. CONTRACTOR TO VERIFY MEASUREMENTS PRIOR TO CONSTRUCTION

REVISION	NO.	BY	DATE

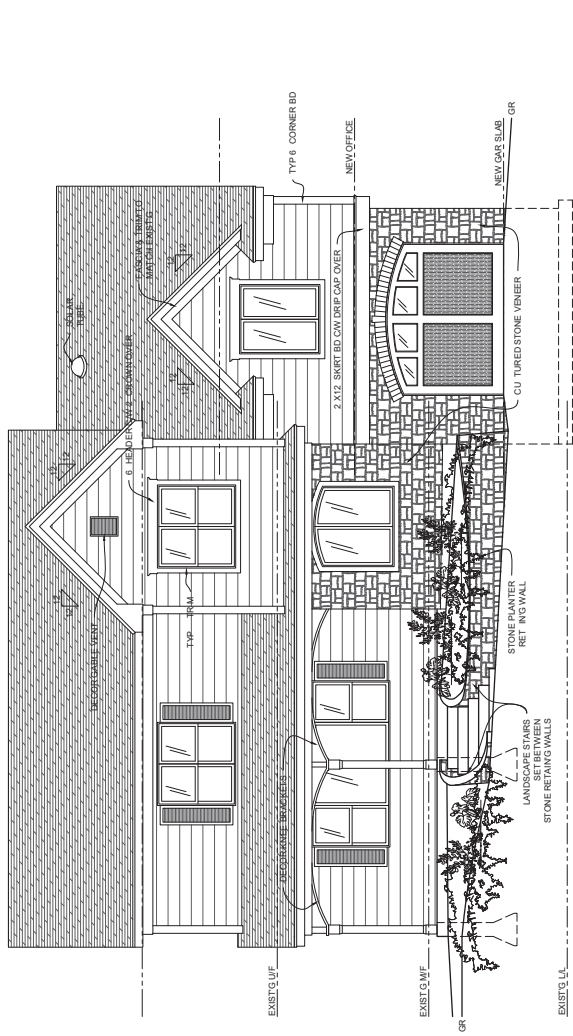


THIS DRAWING MUST NOT BE USED FOR CONSTRUCTION IN ANY PART UNTIL SIGNED BY THE OWNER

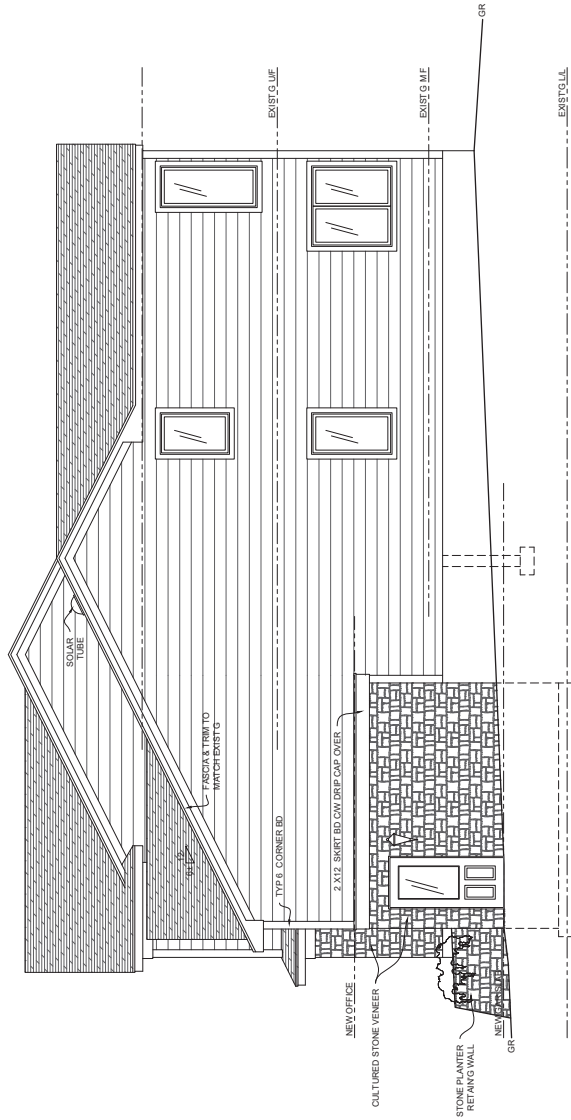
PROJECT TITLE
**BEN & MIRREN HARRIS
 RENO/ADDITION
 HALIFAX, NS**

DATE
PROPOSED ELEVATIONS

DATE JUNE 29/20	SCALE 1/4" = 1'-0"	JOB NO.
DRAWN BY JH	DWG NO.	
CHECKED BY JH		



1 PROPOSED FRONT ELEVATION
 Scale: 1/4" = 1'-0"



2 PROPOSED RIGHT ELEVATION
 Scale: 1/4" = 1'-0"

Attachment A - Building Elevation Plans

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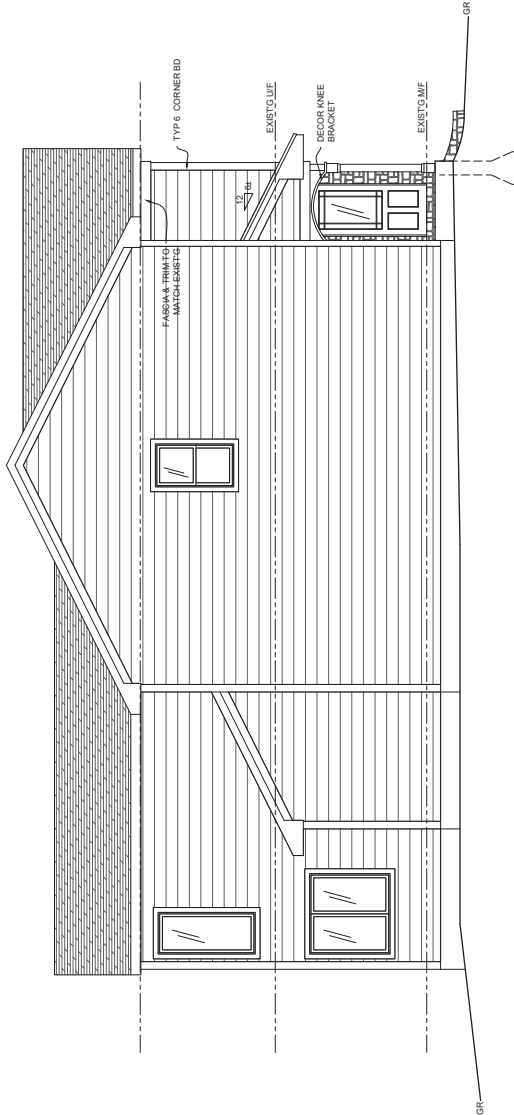
DATE

PROJECT TITLE
**BEN & MIRREN HARRIS
 RENO/ADDITION
 HALIFAX, NS**

DATE: JUNE 29/20
 SCALE: 1/4" = 1'-0"
 DRAWN BY: JH
 CHECKED BY: JH

PROPOSED ELEVATIONS

2 OF 5



3 PROPOSED LEFT ELEVATION
 Scale: 1/4" = 1'-0"



HALIFAX

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

halifax.ca

Attachment C: Letter of Appeal

From: [Office, Clerks](#)
To: [Coons, James](#); [Norman, Stephanie](#)
Cc: [MacIntyre, Erin](#); [Vining, Krista](#)
Subject: APPEAL: Variance app #23782
Date: Monday, January 17, 2022 9:46:22 AM

James and Stephanie, please review below, received by our office, which I am forwarding to you for action as you deem appropriate.

I note from our log that the appeal-by date was January 14, 2022.

Regards,

LESLIE NEATE
OFFICE OF THE MUNICIPAL CLERK

HALIFAX

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HALIFAX NS B3J 3A5
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F. 902.490.4208
halifax.ca

From: Brenda Heck [REDACTED]
Sent: Friday, January 14, 2022 5:03 PM
To: Office, Clerks <clerks@halifax.ca>
Cc: Chris Heck [REDACTED]
Subject: [External Email] Appeal: Variance app #23782

[This email has been received from an external person or system]

Dear Sir or Madam: We are responding to the Variance Application #23782, 6069 Belmont Road, Halifax, NS, PID 00053140. We live on Oakland Road. Our primary concern with this variance is the precedence it may set in the future for similar variance requests. As property owners on Oakland Road, we believe the special set back rule is a good rule for Oakland Road. While we do not have an issue with this specific variance, we do not agree with granting the variance if it will weaken or eliminate the Oakland Road set back rule in the future.

Chris & Brenda Heck
[REDACTED]
[REDACTED]