

# HALIFAX

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

**Item No. 10.2.1**  
**Regional Centre Community Council**  
**June 22, 2022**

**TO:** Chair and Members of Regional Centre Community Council

**SUBMITTED BY:**  **(Original Signed)**

Erin MacIntyre, Director, Current Planning

**DATE:** June 7, 2022

**SUBJECT:** **Case 24071: Appeal of Variance Approval – 6085 Coburg Road, Halifax**

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## **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 6085 Coburg Road in Halifax to allow for the addition of a third storey to an existing mixed-use building along with a three-storey rear addition to the building (Map 2 and Attachment A).

A site plan approval application for the proposal was received in October of 2020. At that time, the regulations within the Regional Centre Land Use By-Law (Package A) were in effect. The intended rear yard setback in accordance with Package A was 3.0 metres, but due to an inadvertent lack of clarity in the specific wording of the LUB it was required to be applied at 0 metres. During the course of the review of the application, Package B of the Regional Centre Land Use By-law was adopted, which allowed the proposal to proceed “as of right”, through the permitting process alone and which corrected the rear yard setback to 3 metres. The Site Plan Approval application was cancelled as it was no longer required. The HRM Charter sets out conditions that must be met in order to establish that a proposal is protected from changing regulations, one of which is issuance of a permit to construct. In this case, a permit was not issued in advance of the change in the rear yard requirement, meaning that a variance of this setback is required in order for the project to proceed as originally planned.

The purpose of the addition is to create three additional residential units above the existing commercial ground floor, creating a building with one commercial unit at grade, and four residential units on the second and third floors. The rear addition creates space for three covered parking spaces and waste storage space on the ground floor while allowing for an enclosed staircase to access the upper floors. The existing commercial floor area is not proposed to increase in area. The second and third floors of the addition are proposed to be used for residential living space.

The proposed variance requests reduction of the required 3 metre rear yard setback to 0 metres and the side yard setback from 0.38 metres to 0.3 metres. The existing sidewall of the building is angled slightly towards the side property line causing any extension of the wall toward the rear yard to slightly reduce the non-conforming side yard setback.

Notwithstanding the reductions to the side and rear yard setback, the building is proposed to meet all other requirements of the Regional Centre Land Use By-law (LUB).

### **Site Details:**

#### **Zoning**

The property is in the HR-1 (Higher Order Residential 1) Zone of the Regional Centre Land Use By-law. The requirements of the LUB and the related variance request are identified below:

<b>LUB Regulation</b>	<b>Requirement</b>	<b>Requested Variance</b>
<b>Minimum Side Yard Setback</b>	Existing Non-conforming setback of 0.38m	0.3m (reduction of 0.08m or 8cm)
<b>Minimum Rear Yard Setback</b>	3m	0m

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 intent of the 3 meter rear setback is to act as a buffer from abutting properties. The portion of the abutting property to the rear is dedicated to driveway access to an underground parking garage, a small parking lot and landscaping. The configuration of the abutting property is such that the multi-unit residential building is located proximate to the intersection of Coburg and Vernon Street, and has no presence on Henry Street. The existing side setback is minimal and required due to slight offset of the home relative to the property line. Because of those existing conditions, it was felt that the proposal does not violate the intent of the Land Use By-Law.

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

The subject site is located on a corner lot that abuts a landscaped buffer to the rear, followed by a driveway and three parking spaces. These elements support the multi-unit building that is located on the corner of Coburg Road and Vernon Street. Having a rear yard which abuts a driveway access is not experienced generally within the area. In addition, the next property over from the driveway on Henry Street is 25 metres away from the rear lot line of the subject site. These two factors were considered when determining that the proposal is not 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. That is not the case in this request.

An application for a site plan approval at this property was originally made in October of 2020. Regional Centre Package B was adopted while the review of this proposal was underway. Package B removed the site plan approval process and included clarifying language to specifically state the rear yard setback is 3 metres. Due to the corrected rear setback in Package B, a variance is required to achieve the 0 metre rear yard setback. The applicant has since made the variance application which is the subject of this report. 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:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<p><i>"The existing "rear yard" of 6085 Coburg currently contains 2 parking spaces as well as a dumpster and 8 green bin sized containers used by the coffee shop. It is unclear from the development plan for 6085 Coburg how these garbage and recycling containers will be housed so as to not impact the neighborhood.</i></p> <p><i>The removal of 2 parking spaces as well as the 2 spaces lost by the expansion of the coffee shop patio into the street will further exacerbate the limited parking in the area, which is only one block from the Dalhousie campus and is a prime area for student and staff parking. It is also highly probable that the three additional residential units being added to the building will bring additional pressure on parking in the neighborhood."</i></p>	<p>The number of parking spaces on this property are proposed to increase from two to three.</p> <p>All waste receptacles are now proposed to be fully contained within the building. The proposed design will alleviate the nuisance of commercial waste being located in a visible yard.</p>

**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 2022/23 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. This 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.

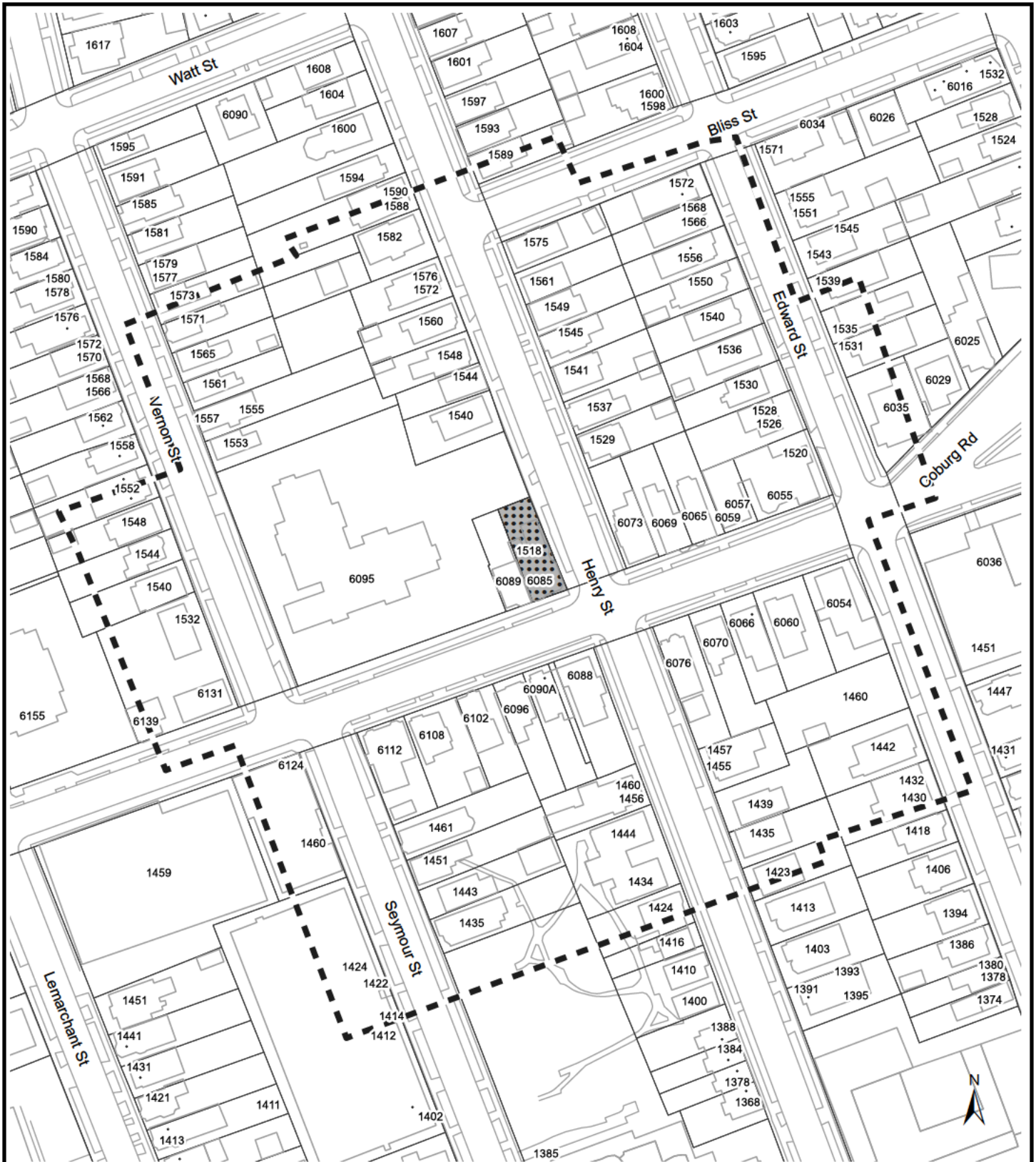
### **ATTACHMENTS**

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

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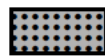
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

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

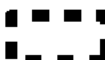


**Map 1 - Notification Area**

6085 Coburg Road,  
Halifax

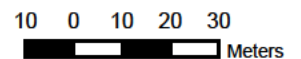


Subject Property



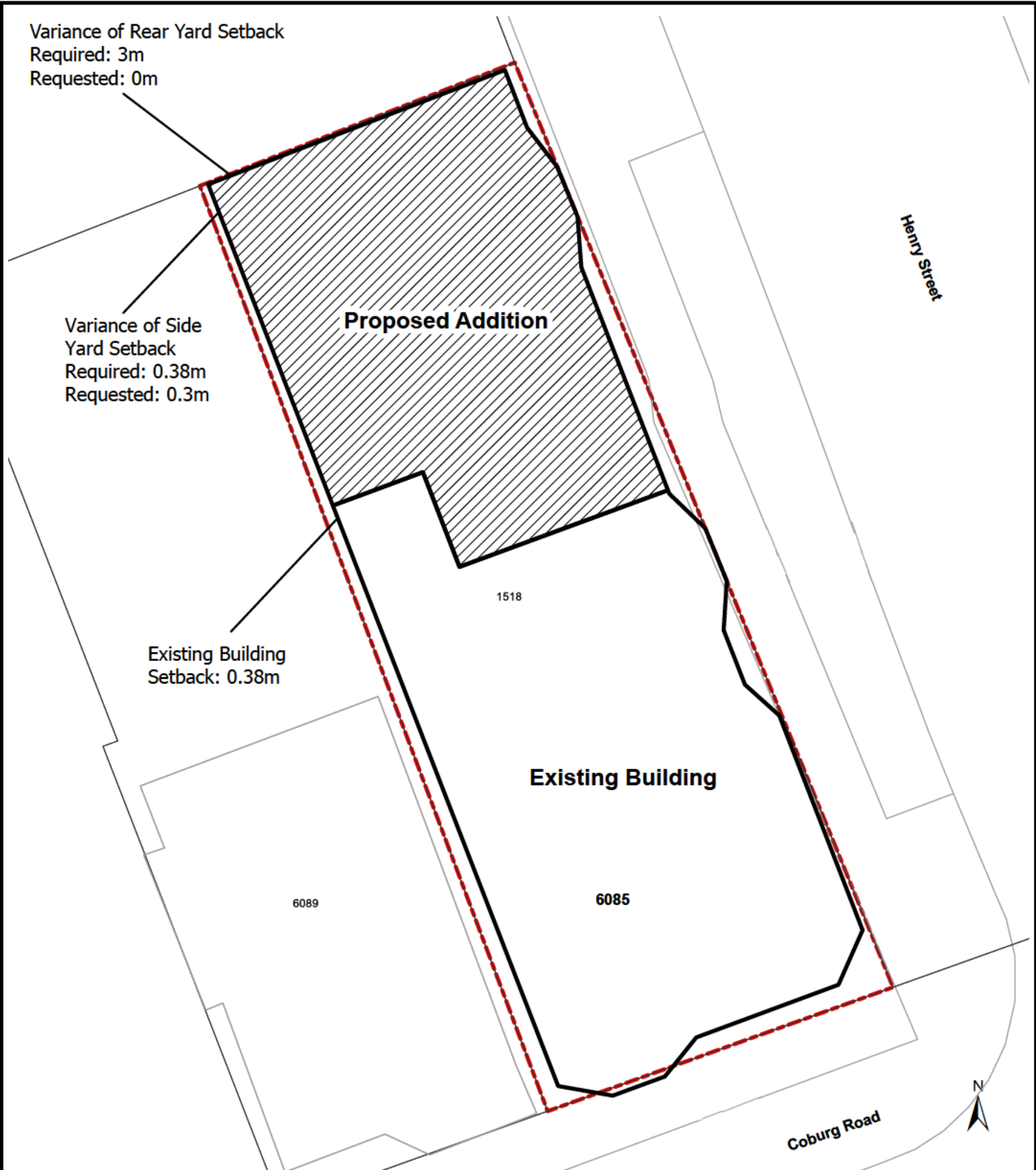
Notification Area

**HALIFAX**



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





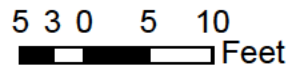
**Map 2 - Site Plan**

6085 Coburg Road,  
Halifax

**HALIFAX**



Subject Property



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

Case 24071 - Attachment A - Building Elevation Plans



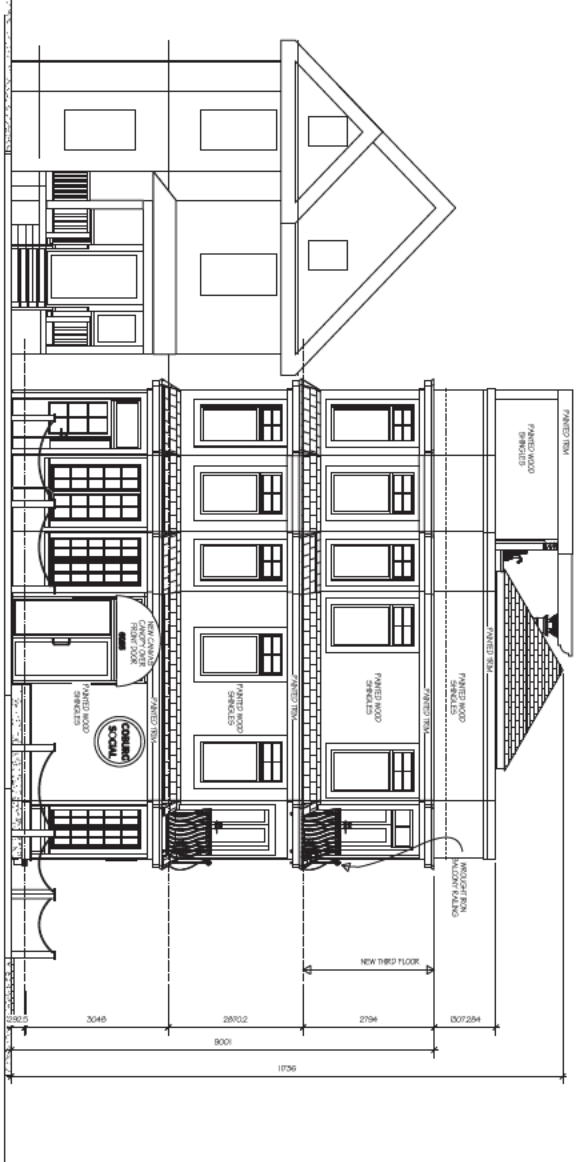
CONSEIL TAMP

*Wm. Annyll*  
**ARCHITECT**  
 700 Gambia Ave., F4 - P. 401, NS (012) 473-0717

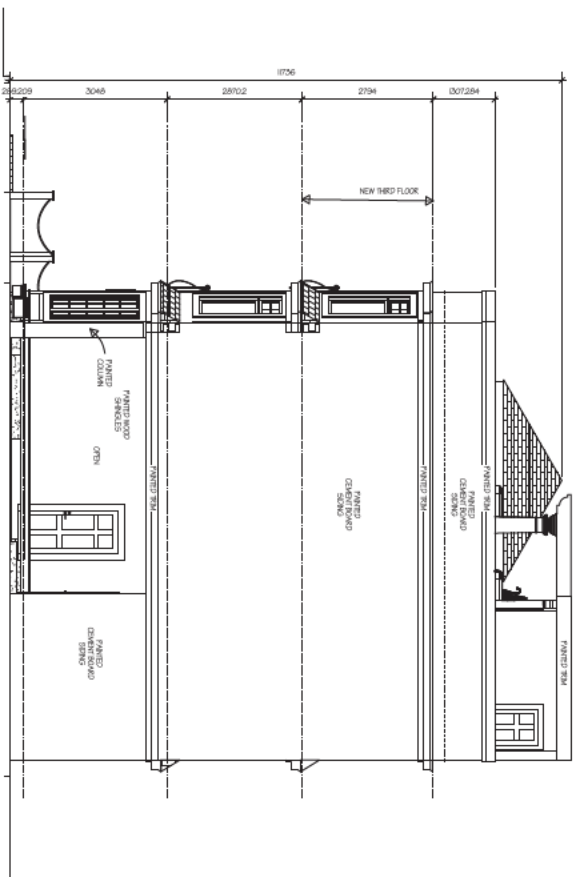
SCALE NTS	PROJECT 6055 COBURG ROAD HALIFAX, NOVA SCOTIA
DATE AUGUST 2021	DRAWING EAST ELEVATION, SKETCH 1



# Case 24071 - Attachment A - Building Elevation Plans



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



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



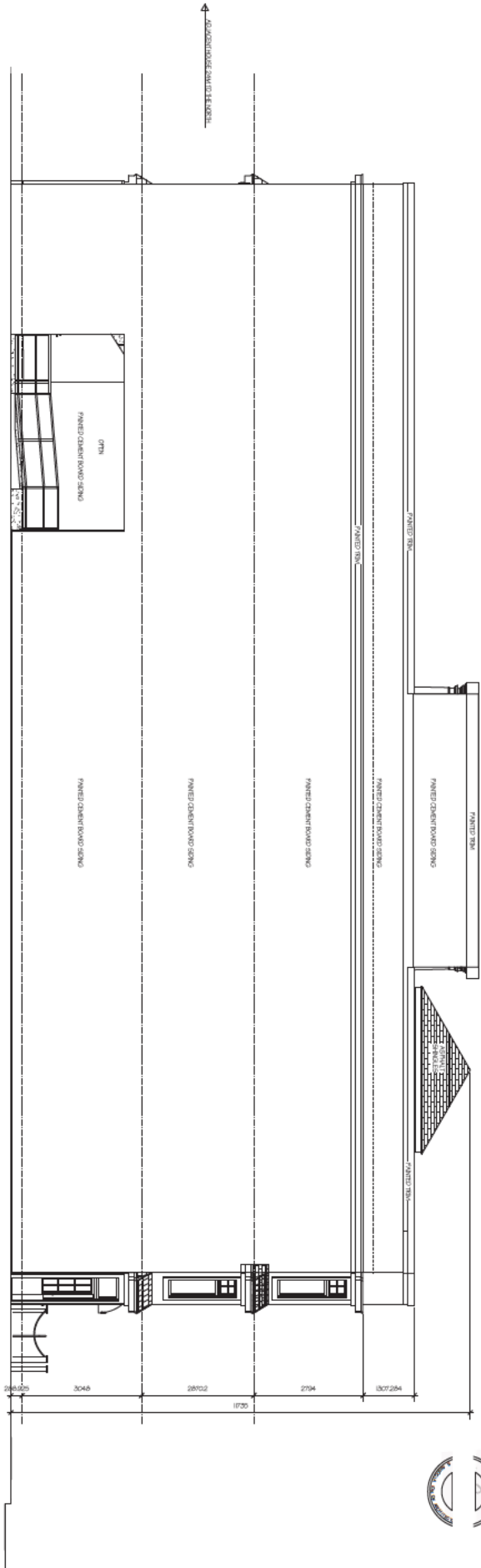
CONSULTANT

*Wm. Annyll*  
ARCHITECT  
70 Garsden Ave., Ft. Rvier, NS (B02) 423-6737

A-08	SCALE	1:50	PROJECT	6085 COBURG ROAD HALIFAX, NOVA SCOTIA
	DATE	AUGUST 2021	DRAWING	SOUTH ELEVATION, NORTH ELEVATION



# Case 24071 - Attachment A - Building Elevation Plans



1 WEST ELEVATION  
SCALE: 1:50

A-07	SCALE 1:50	PROJECT 6085 COBURG ROAD HALIFAX, NOVA SCOTIA
	DATE AUGUST 2021	DRAWING WEST ELEVATION

CONSULTANT



*Wm. Annyll*  
ARCHITECT  
70 Glenora Ave., Ft. R. v. NB (002) 423-5737

# Attachment B

April 8, 2022



Dear Sir or Madam:

**RE: VARIANCE APPLICATION #24071, 6085 COBURG ROAD, HALIFAX, NS, PID 00068254**

As you have been identified as a property owner within 100 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipal Charter, Section 251.

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved a request for a variance from the requirements of the Regional Centre Land Use By-Law as follows:

**Location:** 6085 Coburg Road, PID# 00068254  
**Project Proposal:** Addition to add three residential units

LUB Regulation	Requirement	Requested Variance
Minimum Side Yard Setback	Existing Non-conforming setback of 0.38m	0.3m (reduction of 0.08m or 8cm)
Minimum Rear Yard Setback	3m	0m

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, **Monday, April 25, 2022** and address your appeal to:

**Municipal Clerk**  
**Halifax Regional Municipality**  
**P.O. Box 1749, Halifax, N.S. B3J 3A5**  
[clerks@halifax.ca](mailto:clerks@halifax.ca)

If filing an appeal of the decision to approve the above variances, 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.

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance. If you have any questions or require clarification of any of the above, please contact James Coons, Planner I at 782-640-7651.

Yours truly,



Stephanie Norman, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Iain MacLean - Municipal Clerk  
Councillor Wayne Mason



# Attachment C

April 25, 2022

Municipal Clerk  
Halifax Regional Municipality  
and  
Ms Stephanie Norman  
Principal Planner/Development Officer  
Halifax Regional Municipality

Re: Variance Application #24071, 6085 Coburg Road, Halifax, NS, PID 00068254

Dear sir/madam,

We understand that variance application #24071 allowing a variance of 0m for the rear yard setback and a reduction of the existing 0.38m non-conforming setback to 0.3m for the side yard has been approved for the site plan (#23226) at 6085 Coburg Rd. This approval only increases our concerns expressed in our appeal of June 21, 2021.

The existing "rear yard" of 6085 Coburg currently contains 2 parking spaces as well as a dumpster and 8 green bin sized containers used by the coffee shop. It is unclear from the development plan for 6085 Coburg how these garbage and recycling containers will be housed so as to not impact the neighborhood. The removal of 2 parking spaces as well as the 2 spaces lost by the expansion of the coffee shop patio into the street will further exacerbate the limited parking in the area, which is only one block from the Dalhousie campus and is a prime area for student and staff parking. It is also highly probable that the three additional residential units being added to the building will bring additional pressure on parking in the neighborhood.

We thus wish to appeal this variance decision (#24071) as well as the original site plan approval (#23226) for 6085 Coburg Rd.

Sincerely,  
Michael Reith and Linda Dodds

