

# HALIFAX

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

**Item No. 10.2.2**  
**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 24051: Appeal of Variance Refusal – 5832 West St, Halifax

## **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 Regional Centre Community Council deny the appeal.

## **BACKGROUND**

A variance request has been submitted for 5832 West Street in Halifax to permit an addition to an existing single unit dwelling to accommodate a two-storey addition to the rear of the dwelling. (Map 2 and Attachment A). To facilitate this project, a variance has been requested to increase the maximum permitted lot coverage for an undersized lot.

This property has a lot area of 130 square metres (1400 square feet) and is considered an undersized lot in accordance with the provisions of the Regional Centre Land Use By-law (LUB). Lot coverage is the percentage of the property that is covered by roofed structure. The existing lot coverage on the subject property is 46%. The applicant has proposed an addition to increase living space by adding a bedroom to the second storey and expansion to allow for reconfiguration of the kitchen and dining area on the main level. The proposed addition will increase the building footprint from 57.2 square metres to 70.4 square metres, resulting in an increase in the lot coverage to 55.5%.

### **Site Details:**

#### **Zoning**

The property is located in the ER-1 (Established Residential 1) Zone of the Regional Centre Land Use By-law. The relevant requirements of the LUB and the related variance request is as identified below:

|                             | <b>Zone Requirement</b>            | <b>Variance Requested</b> |
|-----------------------------|------------------------------------|---------------------------|
| <b>Maximum Lot Coverage</b> | 50%<br>(for lots under 325.0 sq m) | 55.5%                     |

For the reasons detailed in the Discussion section of this report, the Development Officer denied 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 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 refuse the variance request.

## **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 LUB contains provisions to allow for increased lot coverage on undersized lots. Part V, Chapter 9 of the LUB contains built form and siting requirements for ER-1, ER-2, and ER-3 zoned lots. The By-law provides specific relaxation for smaller lots. Lots greater than 325.0 sq m are subject to a lot coverage maximum of 40%, while lots 325.0 sq m or less are subject to a lot coverage maximum of 50%, to allow for appropriate development of undersized lots. Lot coverage limitations are intended to provide ample undeveloped area on a property, to support amenity provision on the property.

The proposed addition will meet rear yard setback requirements and will not alter the existing side yard setbacks. The requested variance is to increase the maximum lot coverage by just over 5%, which equates to 6.5 square metres (70 square feet), which would not have a material impact on the intention of the lot coverage limitation. It is 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.

The difficulty meeting the maximum lot coverage requirement is due to the size of the subject property, and the size of the existing single unit dwelling. The subject property is an undersized lot with a lot area of 130 square metres, and an existing footprint of 57.2 sq m.

Many of the surrounding ER-1 zoned properties facing West St are undersized lots and may face similar challenges. The average lot size of surrounding properties is approximately 151 square metres. While the existing dwelling footprint and existing lot coverage percentages of each property may vary, it appears the surrounding properties in this area may face similar challenges and constraints due to lot size.

It is the Development Officer's opinion that the difficulty of meeting lot coverage requirements on an undersized lot 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.

That is not the case in this request. The applicant has applied for the variance in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements is 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>A preliminary visual survey of the properties in our neighbourhood shows that many of the buildings already cover more than 50% of their respective lots – please see attached photos. As you can also see, many other property owners in our neighbourhood have already constructed additions off the back of their homes. In fact, the majority of homes on our street appear to have additions. Additions are more “the norm” in our area than not.</i></p>  | <p>It is acknowledged that the existing lot coverage of neighbouring properties varies, and it is agreed that many of the neighbouring properties are at or above the lot coverage limit. As set out in the Discussion section of this report, this represents a condition that is general to the area.</p> <p>New additions must meet the built form and siting requirements for the ER-1, ER-2, and ER-3 zones as outlined in the LUB. Existing additions that pre-date the LUB were subject to the requirements of the now repealed Halifax Peninsula Land Use By-law.</p> |
| <p><i>Accordingly, the apparent “difficulty experienced” is not “general to properties in the area”. Other property owners in our neighbourhood whose lot coverage already exceeds 50% can achieve a fully renovated home exceeding 50% lot coverage without a variance, whereas our project cannot in the absence of a variance.</i></p>   | <p>The LUB addresses buildings that exceeded the maximum lot coverage prior to the coming into force date of the Regional Centre Land Use By-law, establishing them as non-conforming, meaning that they may be renovated internally, but no further additions are permitted.</p>   |
| <p><i>... pursuant to s. 231(3) of the Land Use By-Law properties located in the ER-1 zone may have an accessory structure not exceeding a 20 square meter footprint that is exempt from the lot coverage calculation. Accordingly, one of the options available to us in the event our variance is not approved, is the construction of an accessory structure which would result in potential lot coverage of up to 83.4 square meters or 65.8%.</i></p> <p><i>This is not our desired method of creating additional living space... if lot coverage is HRM's primary concern for denying our variance, then granting the variance would result in up to 10% less lot coverage than one of the available alternatives ...</i></p> | <p>Section 231(1) allows one accessory building with a footprint of 20 sq m or less to be exempt from the lot coverage calculation. This provision applies to all ER-1, ER-2, and ER-3 zoned lots, regardless of lot size.</p> <p>An accessory structure differs from an addition to a dwelling in that it an accessory structure is a subordinate, detached structure that is unable to be lived in, and is subject to different regulations than a main residential building.</p>   |

### **Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of 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 request. The HRM cost associated with processing this application can be accommodated with the approved 2022/2023 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 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 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, and 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 Elevation Plans        |
| Attachment B: | Variance Refusal Letter         |
| Attachment C: | Letter of Appeal from Applicant |

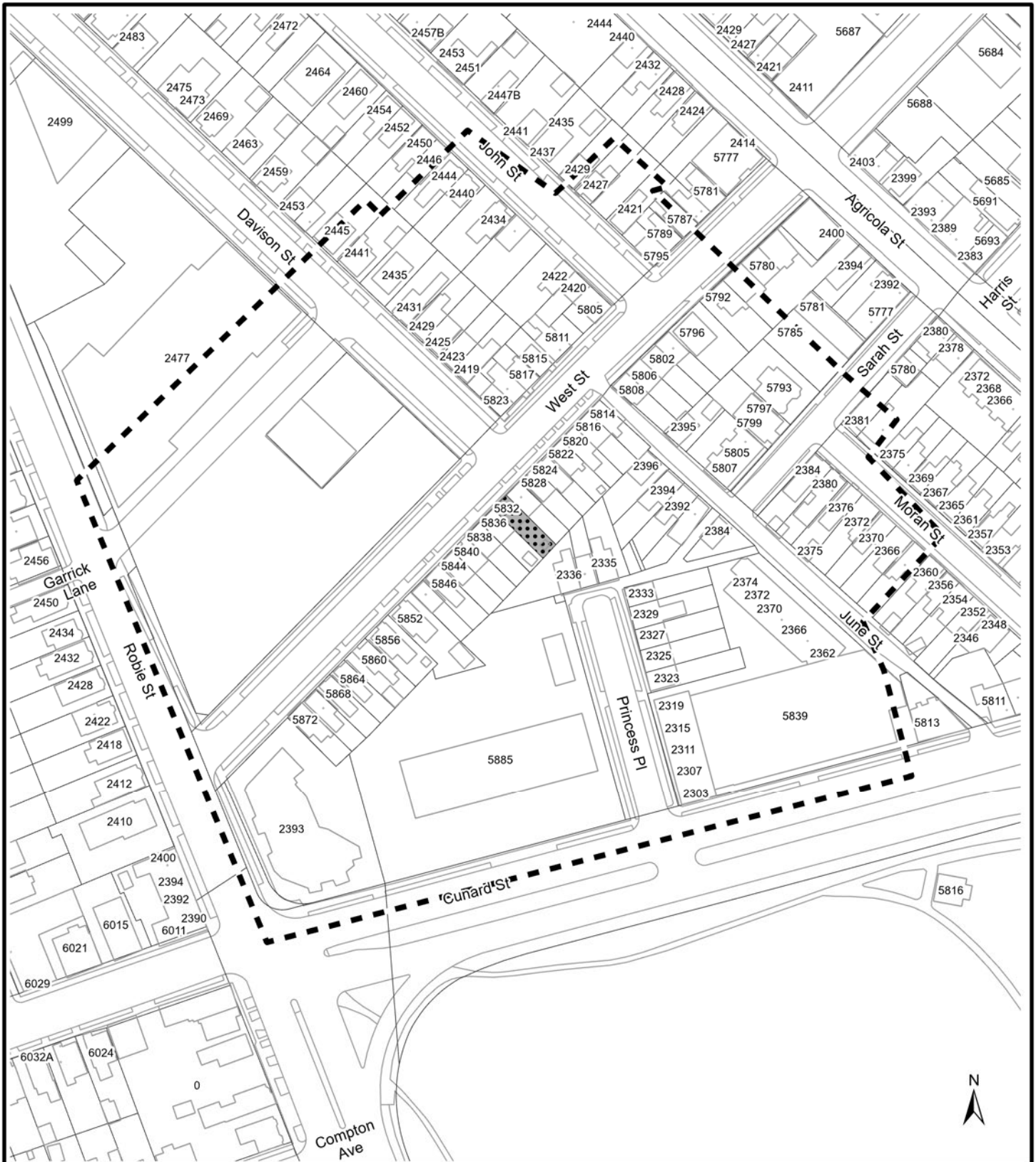
Attachment D:            Photographs of Surrounding Properties Submitted by Applicant

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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.

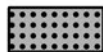
Report Prepared by:    Faith Ford, Planner I, 782.640.8687  
                                  Stephanie Norman, Development Officer, 782.640.0702

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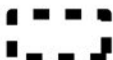


**Map 1 - Notification Area**

5832 West St.,  
Halifax

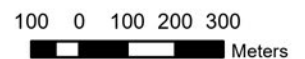


Subject Property



Notification Area

**HALIFAX**



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

# 24051 Map 2 - Site Plan

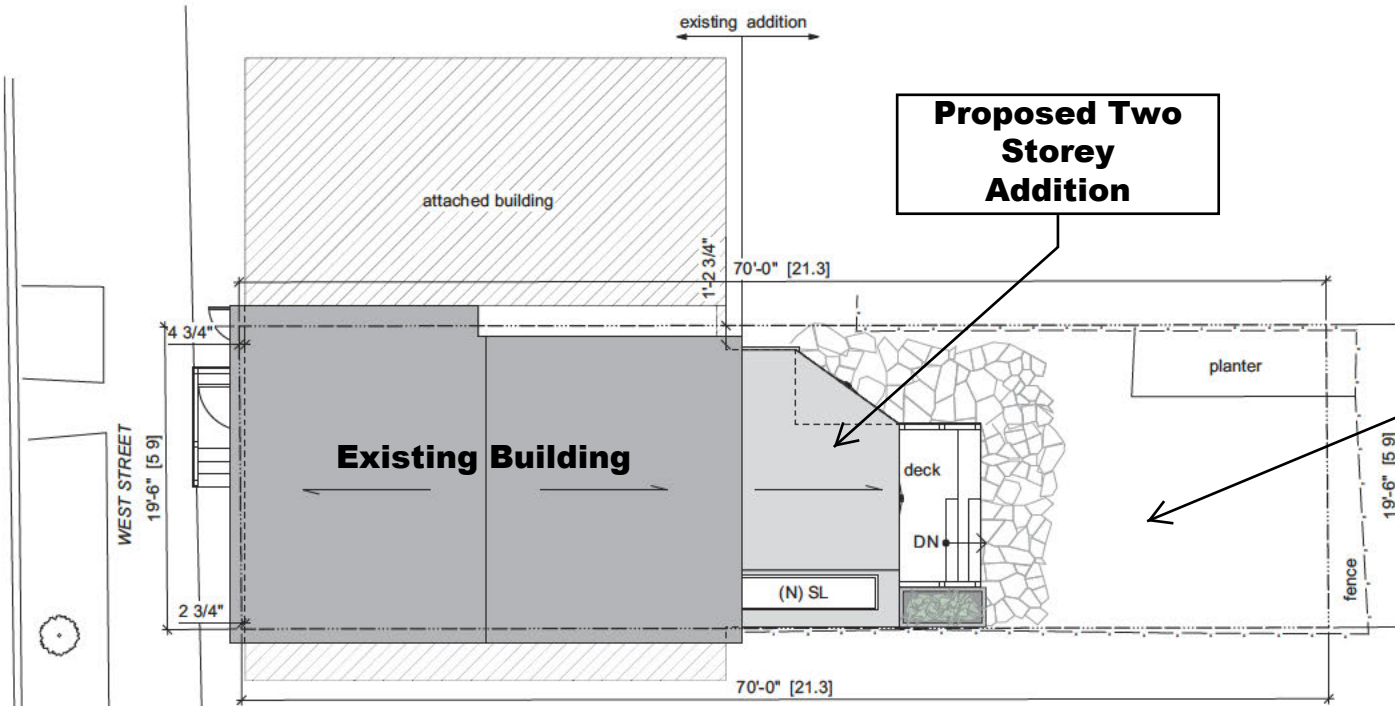
**LEGEND:**

-  new roof
-  existing roof



6437 Cork St, Halifax, NS

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**Variance of Lot Coverage for an undersized lot  
Lot Coverage: 50%  
Requested: 55.5%**

*Preliminary Not For Construction*

1 Proposed Site Diagram  
1/8" = 1' 0"

Note: Information shown is based on Surveyor's Location Certificate prepared by Kevin C. Brown, Design Point Engineering & Surveying, dated February 19, 2021.

**2 Storey Addition**

5832 West St  
Halifax, NS

22-116 5832 West St - V.A.vvwx

drawing title:  
Site & Zoning Information

|                                 |                      |
|---------------------------------|----------------------|
| phase:<br>Issue for Variance    | sheet size:<br>17x11 |
| drawn by:<br>IG                 | checked by:<br>JO    |
| date:<br>1/6/22                 | scale:<br>1/8"=1'-0" |
| drawing number:<br><b>A-101</b> |                      |

graphic scale: north arrow:



# 24051 Attachment A - Building Elevation Plans

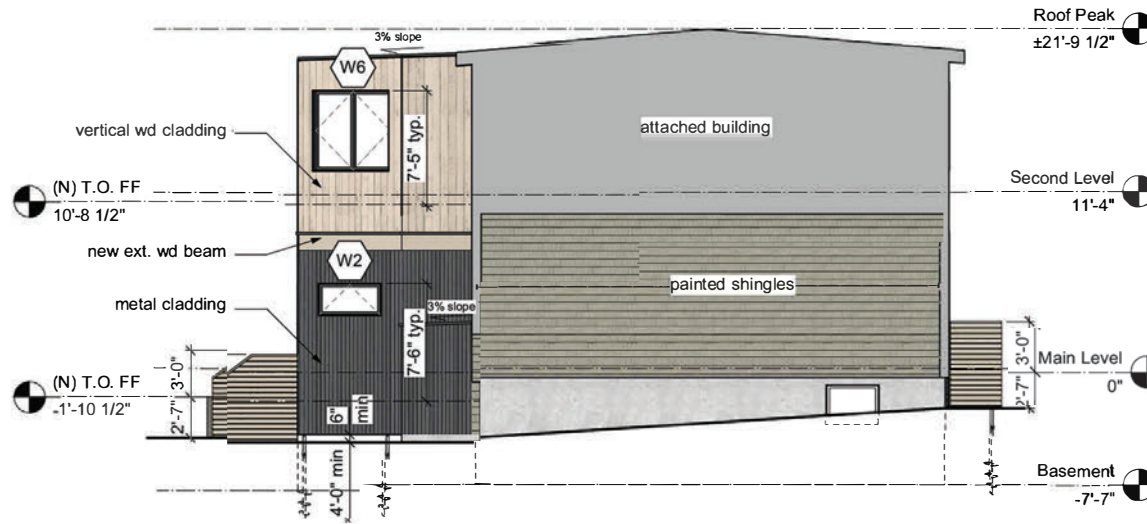


6437 Cork St, Halifax, NS

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**3** Proposed South Elevation  
1/8" = 1'-0"



**4** Proposed East Elevation  
1/8" = 1'-0"



graphic scale: north arrow:

Preliminary Not For Constructor

## 2 Storey Addition

5832 West St  
Halifax, NS

|   |                   |                          |  |
|---|-------------------|--------------------------|--|
| drawing title:<br>South & East Elevations |                   | sheet size:<br>17x11     |  |
| phase:<br>Issue for Variance              |                   | drawing number:<br>A-202 |  |
| drawn by:<br>IG                           | checked by:<br>JO | date:<br>1/6/22          |  |
| scale:<br>1/8"=1'-0"                      |                   | date:<br>1/6/22          |  |

22-116-5832 West St, VA, www

## 24051 Attachment B - Variance Refusal Letter

March 15, 2022

ANDREW WAUGH  
[REDACTED]

Dear Mr. Waugh,

**RE: VARIANCE APPLICATION #24051, 5832 West St, PID #00150284**

This will advise that I have refused your request for a variance from the requirements of the Regional Centre Land Use By-law as follows:

**Location:** 5832 West St, Halifax  
**Project Proposal:** Increase maximum lot coverage from 50% to 55.5% to accommodate an addition to a single unit dwelling on an undersized lot.

| LUB Regulation                               | Requirement | Proposed |
|--|-------------|----------|
| Maximum lot coverage for lots under 325 sq m | 50%         | 55.5%    |

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:

(b) the difficulty experienced is general to properties in the area

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 **March 25, 2022**.

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 Faith Ford at 782-640-8687.

Sincerely,

Original Signed

Stephanie A. Norman, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Iain MacLean – Municipal Clerk  
Councillor Lindell Smith

## 24051 Attachment C - Letter of Appeal from Applicant

Andrew Waugh & Devon Peavoy  
5832 West Street  
Halifax, NS  
B3K 1J3

March 22, 2022

Municipal Clerk  
Halifax Regional Municipality  
Development Services – Western Region  
P.O. Box 1749  
Halifax, NS  
B3J 3A5

**SENT VIA E-MAIL ONLY – [clerks@halifax.ca](mailto:clerks@halifax.ca)**

Dear Sir/Madam:

**Re: Variance Application #24051, 5832 West Steet, PID - #00150284**

Further to the letter of March 15<sup>th</sup>, 2022 denying our variance request, please accept this letter as an appeal of that decision. This letter is being sent on behalf of both myself and my partner, Ms. Devon Peavoy, who, while not an applicant for the variance, is also the legal owner of the home located at 5832 West Street.

According to the denial letter the Development Officer's decision was based on section 250(3)(b) of the *Halifax Regional Municipality Charter [HRM Charter]*:

(b) the difficulty experienced is general to the properties in the area;

We are appealing the decision on the basis that the Development Officer erred in their determination that the "difficulty experienced," in this instance exceeding 50% lot coverage, is "general to the properties in the area".

The purpose of our variance application is to allow for a renovation of 5832 West Street, which will include the construction of an addition resulting in lot coverage of approximately 56%. Please see the attached architectural drawings submitted in support of the variance.

A preliminary visual survey of the properties in our neighbourhood shows that many of the buildings already cover more than 50% of their respective lots – please see attached photos. As you can also see, many other property owners in our neighbourhood have already constructed additions off the back of their homes. In fact, the majority of homes on our street appear to have additions. Additions are more "the norm" in our area than not.

Accordingly, the apparent “difficulty experienced” is not “general to properties in the area”. Other property owners in our neighbourhood whose lot coverage already exceeds 50% can achieve a fully renovated home exceeding 50% lot coverage without a variance, whereas our project cannot in the absence of a variance. us. It is our intention to submit a more detailed review of lot coverage in our neighbourhood prior to the hearing of this appeal.

We are very excited about the prospect of renovating our home and creating new space and light in our small row house. This is the aesthetic reason for our project, and no doubt the genesis of many other past renovations of homes in our area that have included additions. However, if we are unable to obtain a variance to permit the construction of an addition, one of the alternatives available to us could lead to even greater lot coverage.

We understand that absent a variance, the permissible lot coverage in the ER-1 zone according to the *Regional Centre Land Use By-Law [Land Use By-Law]* is 50% or 63.4 square meters of the lot located at 5832 West Street. However, pursuant to s. 231(3) of the *Land Use By-Law* properties located in the ER-1 zone may have an accessory structure not exceeding a 20 square meter footprint that is exempt from the lot coverage calculation. Accordingly, one of the options available to us in the event our variance is not approved, is the construction of an accessory structure which would result in potential lot coverage of up to 83.4 square meters or 65.8%.

This is not our desired method of creating additional living space. We only point out this possibility for the purpose of conveying that if lot coverage is HRM’s primary concern for denying our variance, then granting the variance would result in up to 10% less lot coverage than one of the available alternatives should this variance be denied on appeal.

In summary, it is our position that the Development Officer erred in in their determination that we face a difficulty that is general to the area and, further, that we will be able to achieve a more modest lot coverage percentage with a variance than without.

Thank you for taking the time to review this letter. We look forward to presenting more detailed information at the appeal hearing into this matter.

Sincerely,

**Original Signed**

Andrew Waugh & Devon Peavoy

Attachments

**24051 Attachment D - Photographs of  
Surrounding Properties Submitted by Applicant**

Images from West Street:



*5846 West Street*



*5856 West Street*



*5823 West Street*



*5831 West Street but lot pictured is for adjacent property at corner of West/John*



*2419 John Street (corner West/John) showing back lots of 5783, 5787 and 5789 West*



*5872 and 5870 West Street*





*Back of 5856 West Street and adjacent properties*



*Back of 5868 West Street and adjacent property*



*5838 West Street addition + 5844 West Street addition from our backyard*



*Homes adjacent to our backyard showing additions + outbuildings*

**Images from Moran Street:**



*2352 – 2364 Moran Street*



*2376 Moran Street showing addition + outbuilding*



*2381 Moran Street*



*5807 – 5797 Sarah Street (corner of June + Sarah) – across from Moran*

**Images from June Street:**



*Back of 2395 June Street/lot size*



*2390 June Street w/ addition*



*Back of 2394 June Street*