



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 10.1.1
Halifax and West Community Council
September 9, 2024

TO: Chair and Members of Halifax and West Community Council

FROM: Erin MacIntyre, Director Development Services

DATE: August 16, 2024

SUBJECT: **Case VAR-2024-00531: Appeal of Variance Approval – 3291, Westerwald Street, Halifax**

ORIGIN

Appeal of the Development Officer's decision to approve a variance.

EXECUTIVE SUMMARY

A variance request has been submitted for 3291 Westerwald Street in Halifax, in order to reduce the flanking yard setback from the Highway 102 on-ramp and the front, flanking, and rear streetwall setback requirements. The variance request is associated with a proposed multi-unit dwelling. After evaluating the request relative to the criteria set out in the *HRM Charter*, the Development Officer approved the variances. Notice of the Development Officer's decision was provided to property owners within 30 metres of the subject site. One property owner has appealed the decision. The matter must now be considered by Halifax and West Community Council.

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 Halifax and West Community Council deny the appeal.

BACKGROUND

A variance application has been submitted for 3291 Westerwald Street in Halifax, requesting reduction of the flanking yard setback from the Highway 102 on-ramp and the front, flanking, and rear streetwall setback requirements. The variance request is associated with a proposed multi-unit dwelling (Map 2 and Attachment A). The remainder of the building is proposed to meet all other requirements of the Halifax Mainland Land Use By-law.

The building abuts an existing low-rise residential use to the north. While the applicant could avoid this variance by moving the multi-unit dwelling 1.5 metres closer to the existing low-rise residential building, siting it at the minimum required 0 metre side setback, the applicant has chosen to instead site the building partially within the required flanking yard, in order to provide more separation distance to the existing abutting residential building.

Site Details:

The property is within the C-2C (Dutch Village Road Mixed Use) Zone of the Halifax Mainland Land Use By-Law (LUB) and is commercially-designated within the Fairview Secondary Plan Area. The relevant requirements of the LUB pertaining to the variance request is as identified below:

	Zone Requirement	Variance Requested
Minimum Flanking Yard Setback	1.5 metres	0 metres
Required streetwall setback	3 metres	2 metres (on front, flanking, and rear streetwalls)

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variances (Attachment B). One property owner within the notification area has appealed the Development Officer's approval (Attachment C) and 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 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*. This variance was reviewed under two sections of the *Charter*. The variance to the setback requirements was reviewed in accordance with Section 250(3), while the variance to the streetwall setback was reviewed under Section 250A(1) of the Charter.

Setback Variance Request:

The *Charter* sets out the following criteria by which the Development Officer may not grant variances to the

setback 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; or*
- (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 to a setback must not conflict with any of the above 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?

Flanking yards occur on lots that are on a corner, that abut two public street. The flanking yard is the side yard between the building and the streetline, Flanking yard setbacks allow for the adequate separation distance between buildings and right-of-ways. This specific flanking lot line is adjacent to a provincially owned parcel, being a portion of the on-ramp from Joseph Howe Drive to Highway 102. Despite this being classified as a “flanking lot line”, there is an greater than usual distance between the subject lot boundary and the travelled portion of the Highway 102 on-ramp.

It is the opinion of the Development Officer that the intent of the flanking yard setback is still met.

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

As the lot abuts a provincially owned right-of-way, the setback is required to be a minimum of 1.5 metres, which is greater than the 0 metre side yard setback requirement of the C-2C Zone. Typically, flanking yards abut local streets, where a reduction of the setback could result in greater impact, whereas the subject lot flanks onto a Provincial 100-series highway.

Additionally, the side and flanking lot lines are not parallel to each other, creating a lot that narrows from front-to-back. This lot shape can present challenges in meeting setback requirements, and can impose development constraints. Most of the lots along Westerwald Street have side and rear lot lines that are parallel.

For these reasons, the Development Officer has determined that the difficulty is not general to the properties in the area.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

There was no intentional disregard for the requirements of the LUB. The applicant submitted a variance application prior to any construction or the issuance of a building permit.

The flanking yard setback variance was referred to the Nova Scotia Department of Public Works, who had no concerns relative to the request.

Streetwall Stepback Variance Request:

The *Charter* sets out the following criteria by which the Development Officer may not grant variances to the streetwall stepback requirements of the LUB:

“250A (1) A development officer shall grant under Section 250 a variance respecting a step back or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.”

The proposed variance to reduce the front, flanking, and rear yard streetwall setbacks of the proposed building from 3 metres to 2 metres does not materially conflict with the policies of the Halifax Municipal Planning Strategy (MPS). The MPS policies outline intent to address land use, external appearance of structures (built form), and urban design in a comprehensive manner through the LUB requirements within the as-of-right process; but does not speak specifically to streetwall setbacks. The variance does not materially conflict with the Municipal Planning Strategy.

Appellant’s Submission:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment C) for Council’s consideration. These points are summarized and staff’s comments on each are provided in the following table:

Sample:

Appellant’s Appeal Comments	Staff Response
<i>“The changes to the setback requirements will not go unnoticed once construction is complete. A nine-storey building directly adjacent to us will certainly reduce the amount of sunlight we receive. Growing our own vegetable could become more difficult. The many flower gardens could be affected as well. Also, if our swimming pool was covered in shade, it would be much less enjoyable for our children.”</i>	The zone regulates maximum height and built form, but does not otherwise address potential impacts of increased shadow casting. The building as proposed meets the height requirements of the C-2C Zone of the LUB.
<i>“...the view from our deck will have a large building rather than the trees we planted ourselves. Another reason why every meter larger the proposed building, the greater its effect on us.”</i>	A multi-unit building is permitted by the C-2C zone. The increased bulk of the building would result from the reduced streetwall setback of 1 metre on the front, rear and flanking elevations.
<i>“Of the three setback reduction requests, we believe the Front Street Wall Setback and Flanking Yard Setback (Highway 102 on-ramp side) requests would have less impact than the Rear Street Wall Setback. If the Rear request were to be denied we could learn to live with the former two setback reductions.”</i>	The streetwall setbacks were approved because it was determined that they do not materially conflict with the policies of the MPS, as directed by the <i>HRM Charter</i> .

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

The HRM costs associated with processing this application are immaterial and can be accommodated with the approved 2024/25 operating budget for Planning and Development.

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 recommendation.
2. Approval of the appeal motion would result in the refusal of the variance. This would overturn the decision of the Development Officer.

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; or
 - (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.
- s. 250A (1) - A development officer shall grant under Section 250 a variance respecting a step back or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.
- 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.

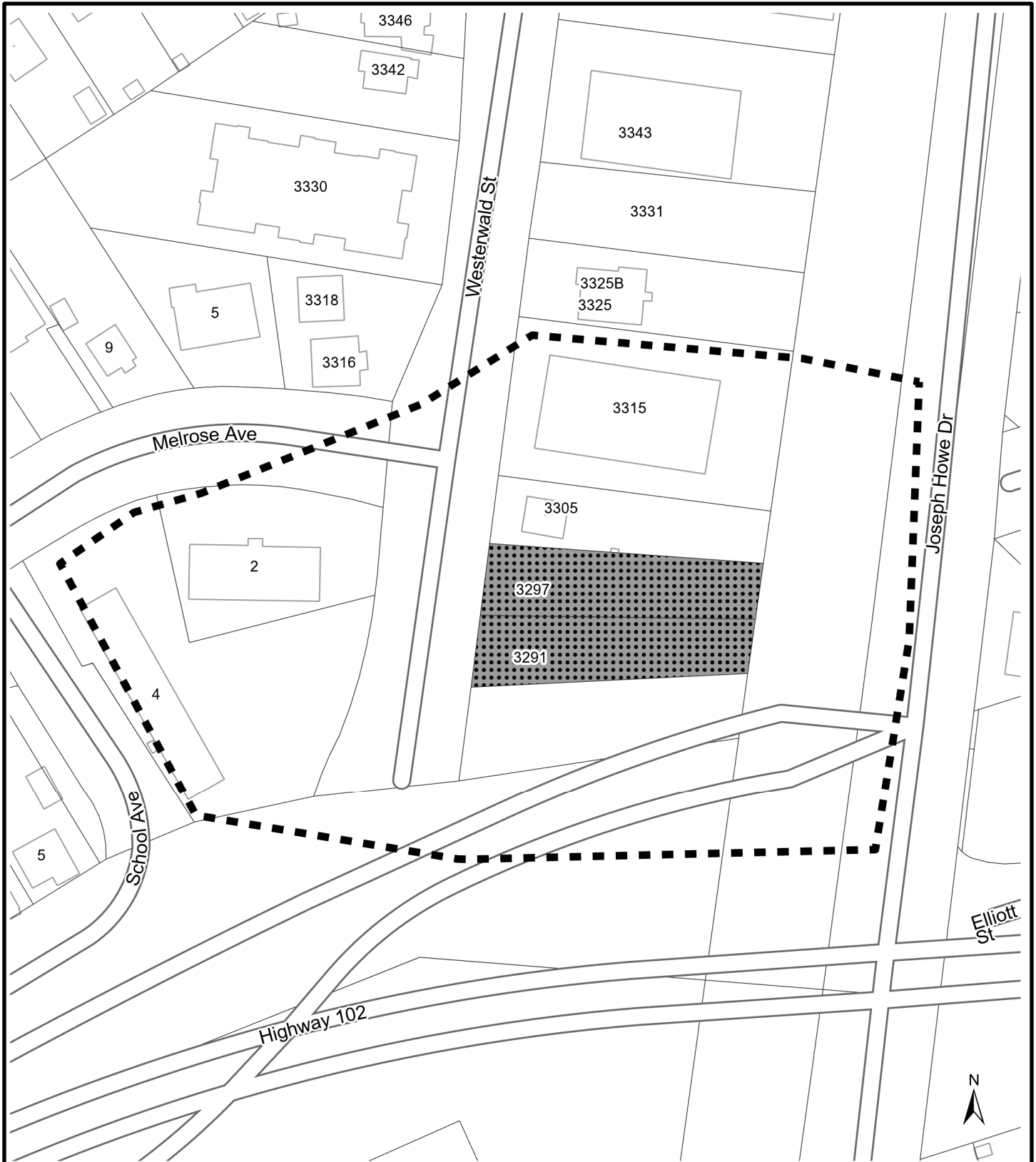
ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

Attachment A: Application Documents
Attachment B: Variance Approval Notice
Attachment C: Letter of Appeal from Abutter

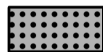
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Aidan MacFarlane, Planner I, 902-478-7841
Trevor Creaser, Principal Planner/Development Officer, 902-476-1591

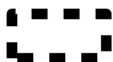


Map 1 - Location and Notification Area

3291-3297 Westerwald Street
Halifax

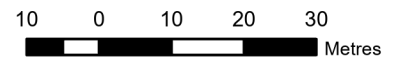


Subject Properties

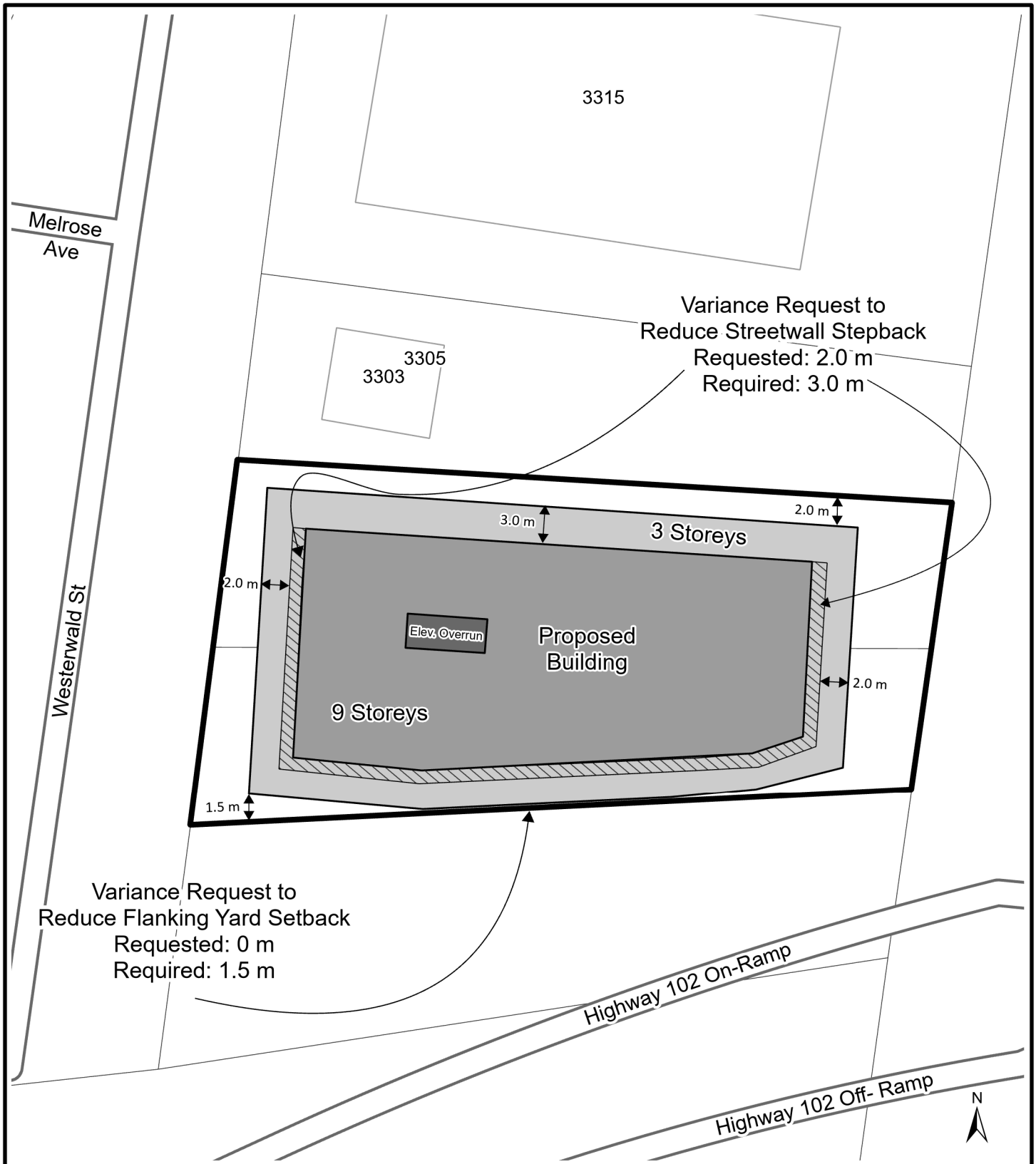


Notification Area

HALIFAX



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



Map 2 - Site Plan

3291-3297 Westerwald Street
Halifax

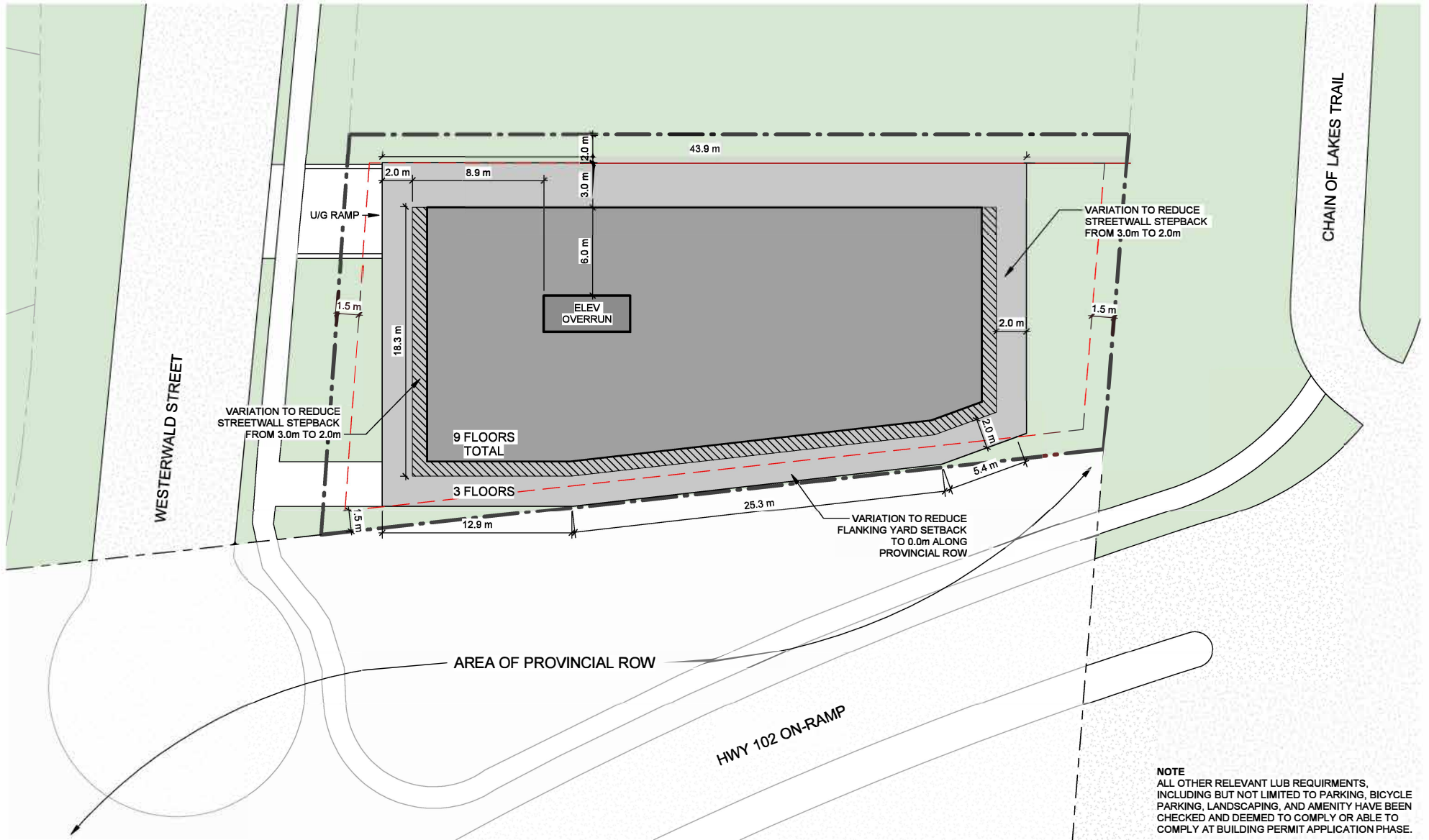
HALIFAX



Subject Properties



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



WESTERWALD

3291 - 3297 WESTERWALD STREET, HALIFAX NS

Site Plan

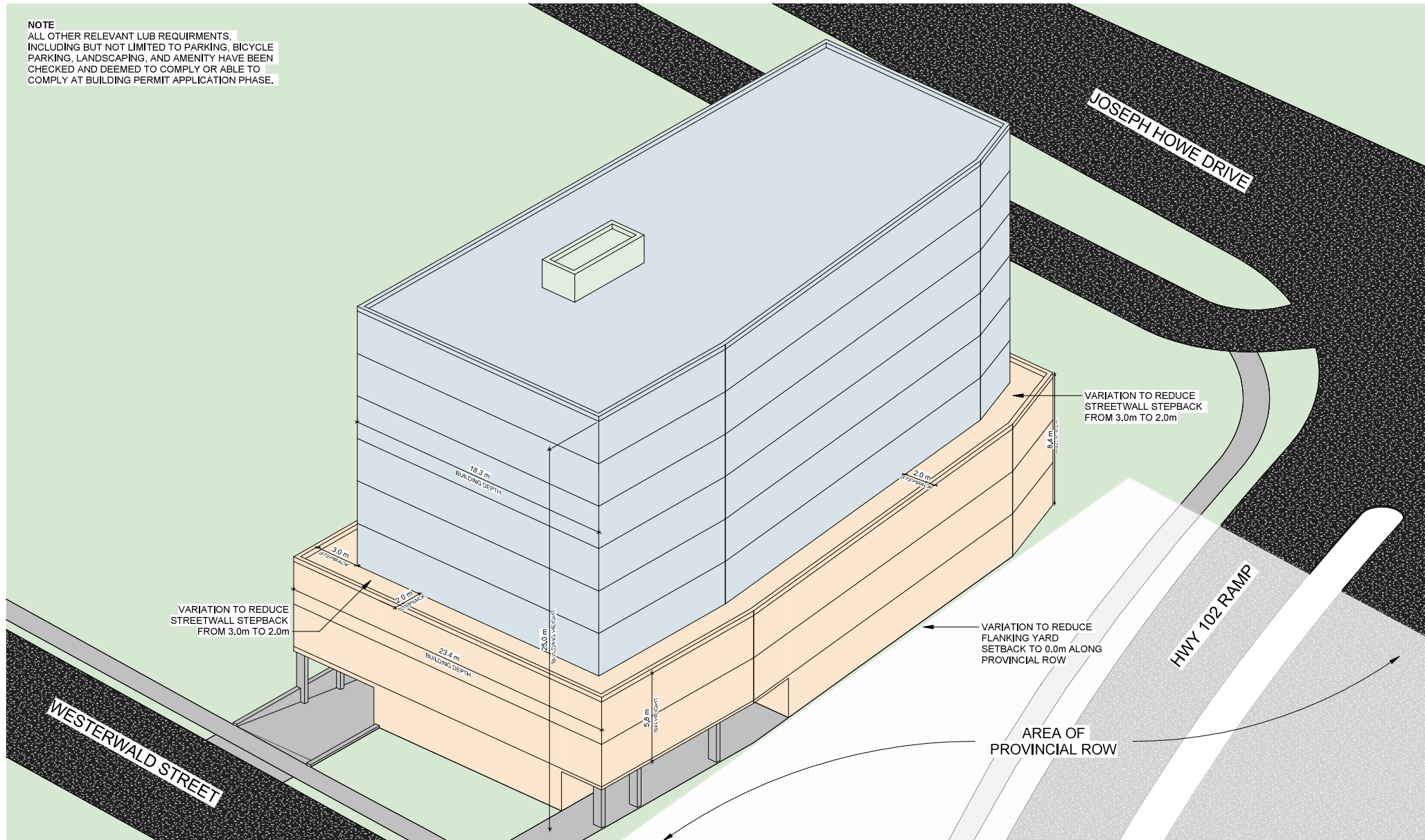
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WM FARES
 ARCHITECTS

D1

NOTE
 ALL OTHER RELEVANT LUB REQUIREMENTS, INCLUDING BUT NOT LIMITED TO PARKING, BICYCLE PARKING, LANDSCAPING, AND AMENITY HAVE BEEN CHECKED AND DEEMED TO COMPLY OR ABLE TO COMPLY AT BUILDING PERMIT APPLICATION PHASE.



WESTERWALD

3291 - 3297 WESTERWALD STREET, HALIFAX NS

Site Massing

Project No: 2023-15
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D3

June 14, 2024

Dear Resident:

RE: Variance Application #VAR-2024-00531, 3291/3297 Westerwald Street, Halifax, NS, PID 00198598/00198580

As you have been identified as a property owner within 30 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 **Halifax Mainland** as follows:

Location: 3291/3297 Westerwald Street, Halifax - PID 00198598/00198580
Project Proposal: Construct a multi-unit dwelling closer to the Highway 102 on ramp right-of-way (flanking yard) with a varied streetwall setback than permitted under the land use bylaw.

LUB Regulation	Requirements	Proposal
38BC(1)(c) Minimum flanking yard setback	1.5m	0m
38BC(1)(f) Required streetwall setback	3m	2m

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 30 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, **on or before July 1, 2024** and address your appeal to:

Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, N.S. B3J 3A5
clerks@halifax.ca

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.

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 Kirstin Poole Chislett, Planner I at (902) 478-2860.

Yours truly,



Trevor Creaser, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councilor Kathryn Morse

Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, NS

July 1 2024

RE: Variance Application # VAR-2024-00531

To whom it may concern,

As residents of a property affected by the above variance request; we would like to have our feelings on the matter known.

We have spent the last 15 years working diligently to that we can call our property home. Many trees, planted as saplings, now surround our yard; making our home feel as secluded as any country home. We have pool installed and a pond stocked with fish that provide our children with hours of enjoyment. We even had our wedding ceremony under a pergola, just behind the pond.

The changes to the setback requirements will not go unnoticed once construction is complete. A nine-storey building directly adjacent to us will certainly reduce the amount of sunlight we receive. Growing our own vegetable could become more difficult. The many flower gardens could be affected as well. Also, if our swimming pool was covered in shade, it would be much less enjoyable for our children. Finally, the view from our deck will have a large building rather than the trees we planted ourselves. Another reason why every meter larger the proposed building, the greater its effect on us.

We strongly believe the variance request will have a significant impact on our lives. Therefore, we kindly ask you consider our proposal; As there are three variance requests in total, perhaps approval could be negotiated. Of the three setback reduction requests, we believe the **Front Street Wall Setback** and **Flanking Yard Setback** (Highway 102 on-ramp side) requests would have less impact than the **Rear Street Wall Setback**. If the **Rear** request were to be denied we could learn to live with the former two setback reductions.

Thank you for your time,

Harry and Brandi Smith