



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

Item No. 10.1.1
Regional Centre Community Council
June 25, 2025

TO: Chair and Members of Regional Centre Community Council

SUBMITTED BY: Erin MacIntyre, Director, Development Services

DATE: May 12, 2025

SUBJECT: **Case VAR-2024-01983: Appeal of Variance Refusal – 1681 Oxford Street, Halifax, PID 00048272**

ORIGIN

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

EXECUTIVE SUMMARY

Variance requests have been submitted for 1681 Oxford Street in Halifax, in order to reduce minimum left side, right side and rear setback requirements, and to reduce separation requirements between main and accessory buildings. The variance request is associated with a rear addition to a two-unit dwelling. After evaluating the request relative to the criteria set out in the *HRM Charter*, the Development Officer refused the variances. Notice of the Development Officer's decision was provided to the applicant, who has appealed the decision. The matter must now be considered by Regional Centre 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 approval of the variances.

Community Council denial of the appeal will result in refusal of the variances.

Staff recommend that Regional Centre Community Council deny the appeal.

BACKGROUND

In June of 2024, staff were made aware of a large rear addition and decking under construction at the subject property. Investigation revealed that the addition and decking were underway without the required permits. There had been previous development of the property without permits as well. Four orders to comply were issued, requiring the property owner obtain the necessary permits for a large two-storey rear addition, a third-storey left side deck, a rear deck, a second unit in the basement and an extension to the roof of an accessory building.

A permit was submitted to renovate the basement to legalize a second unit and make the building a two-unit dwelling. This application has been approved. The issuance of this permit increased the permitted lot coverage from 40% to 50%, and as a result a variance for an increase in lot coverage that was originally requested is no longer necessary.

In addition to the unauthorized development noted above, there was a second addition on the left side of the house that had been completed without the required permit. That addition does not meet the minimum separation distance requirements of the Regional Centre Land Use By-law, between the main and accessory buildings. Staff determined that the work already commenced could not be approved due to several deficiencies with the Regional Centre Land Use By-law requirements (Map 2).

Site Details:

Zoning

The property is zoned Established Residential 3 (ER-3) of the Regional Centre Land Use By-Law (LUB). The relevant requirements of the LUB and the related variance requests are as identified below:

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	1.25 m	0m (decks)
Minimum Rear Setback	6.0 m	0m (rear deck) 1.0m (rear addition)
Minimum Right Side Setback	1.25 m	0 m (rear addition)
Accessory structure separation distance	1.25 m	0.0m (covered parking area)

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variances (Attachment B). The applicant has appealed the refusal (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 refuse 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; 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 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 large rear addition on the right side is currently two full storeys with the intention to have a third storey. The addition is not setback from the right property line, and is set back one metre from the rear property line. Furthermore, there is a second addition to the building that occurred without a building permit on the left side of the building at the rear. This addition is too close to the accessory structure therefore not meeting the minimum 1.25 metre separation distance.

The large rear deck ranges from approximately 6 to 8 feet in height and is not set back from the rear property line. The left deck is approximately three storeys in height and is not set back from the left property line. The decks and rear addition would not maintain adequate separation from the property lines and it is the Development Officer’s opinion that the requested variances violate the intent of the land use by-law.

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

The lot sizes in this area of Oxford Street and Jubilee Road are not consistent and vary in shape and size. The subject property, at 464 square metres (5000 square feet), is larger than the minimum lot are required in the Established Residential 3 (ER-3) Zone of 325.0 square metres (3498 square feet). Regardless of the lot size, the land use by-law applies consistent rear and side yard setbacks. The land use by-law also provides for existing residential buildings, allowing for their expansion at the established setback. There does not appear to be any unique circumstance supporting this proposal, and so the Development Officer determined that the difficulty is general to properties in this area.

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

The owner has previously applied for and received approval for permits in the past. A building permit to lift the house to create habitable space in the basement was issued in 2014 and a permit was granted in 2015 for operation of a home-based business. As well, staff have communicated with the owner on the process to obtain a building permit for a rear addition to the home in 2023. The addition subject to the requesting variances is well under construction with no associated permit application made in advance of construction commencing. Under these circumstances, the Development Officer has determined that there was intentional disregard of the land use by-law requirements.

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:

Sample:

Appellant's Appeal Comments	Staff Response
<p><i>"Minimum Right Side Setback - rear addition.</i></p> <p><i>I would like you to take into consideration, that before I started, I checked Halifax Property line on the official Government of Nova Scotia website (attachment D) and accordingly to their information it is my neighbour building just almost encroaching my property side line, not mine, on the Right side.</i></p> <p><i>The Development officer explained me later that this information is irrelevant, but still it was officially placed at that moment for some reason on the official Government of Nova Scotia website available for the general public.</i></p> <p><i>I was confused being sure I had this 1.25 metres on the Right Site Setback, but my neighbour does not. I was not right, but my confusion was based on the wrong information. It is not justifying me anyhow and I am ready to do all I need to rectify this situation</i></p> <p><i>I am ready to accommodate all safety and fire requirements for this situation. I have discussed it with an engineer and with HRM representative and we can install metal siding, fireproof wrapping and drywall and, if needed, even water fire sprinkles - it would then meet the code."</i></p>	<p>Property online building polygons are not intended to be used for accurate measurements or be a replacement for land surveys. There is a disclaimer included on the bottom of the Provincial mapping (Attachment D) outlining that the mapping is a graphical representation, and is not intended to be used to calculate exact dimensions of properties and should not have been used to calculate the setback to the side property line.</p>
<p><i>"Minimum Rear Setback - rear addition and Maximum Lot coverage (42% of 40% max).</i></p> <p><i>I understand that it the most part I did wrong. I tried to put the max living area within my property borderline and did in within my property line leaving only 1-meter setback being sure it is enough. I was wrong, my fault. Please take into consideration that if I left 6 metres as required I did not have any enough space for living area in the addition, just barely for one-two rooms max. Certainly not enough for four or five extra people.</i></p> <p><i>Please, I am applying for your mercy: allow me to complete it as it has already started. I will do everything to meet the code in the current conditions."</i></p>	<p>The 6-metre rear yard setback requirement of the Regional Centre Land Use By-law applies to all ER (Established Residential) zoned properties in within the regional centre. Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The approval of a reduction in the rear setback from 6.0 metres to 0 metres along the rear would be a departure from the intent of the land use by-law as noted above.</p>

<p><i>Minimum Rear Left Setback - Left side deck and Minimum Rear Setback - rear deck.</i></p> <p><i>I should reveal that my neighbour on the backside had a big German Sheppard dog. The dog has never been under any training - I learnt it with the police officers presence. This dog run, jumped and barked very loudly on my kids - they were very little at the moment and it was pity to see that they are just scared to play on the backyard because of the wild big dog barking on them there. I tried to talk with my neighbour many times - no effect, once his dog jumped and run on my property scaring the whole family. I cannot stand it any more - I reported this situation to the police. Please, check with their Go-number, they protooled this situation and it is in the police records. Please refer to their notes.</i></p> <p><i>I decided to build a deck on the height above the ground level because the dog does not notice them if the playing on the above. I wanted my kids to be safe and secured from the wild barking untrained dog.</i></p> <p><i>Please accept my apologies for the building rules violation.</i></p>	<p>The <i>HRM Charter</i> does not allow the Development Officer to consider reasons other then the three noted in the Legislative Authority section of this report.</p>
<p><i>Accessory structure separation distance (covered parking area)</i></p> <p><i>"As I explained the Development Officer, I bought this house in 2014, just almost 11 years ago, and this garage and its covered parking area already existed at the moment of the purchase in 2014. I have no idea when it was actually built."</i></p>	<p>The issue is not with the existing covered parking area but with the addition of the cantilevered portion of the building being too close to the accessory structure (0.0 metres) where a required separation distance of 1.25m from accessory structures is required.</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 does 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 can be accommodated with the approved 2025/26 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 30 metres of the property, and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part VIII, Planning and Development

Variance

250 (1) *A development officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use by-law requirements:*

- (a) percentage of land that may be built upon;*
- (b) size or other requirements relating to yards;*
- (c) lot frontage or lot area, or both, if
 - (i) the lot existed on the effective date of the bylaw, or*
 - (ii) a variance was granted for the lot at the time of subdivision approval.**

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.*

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.

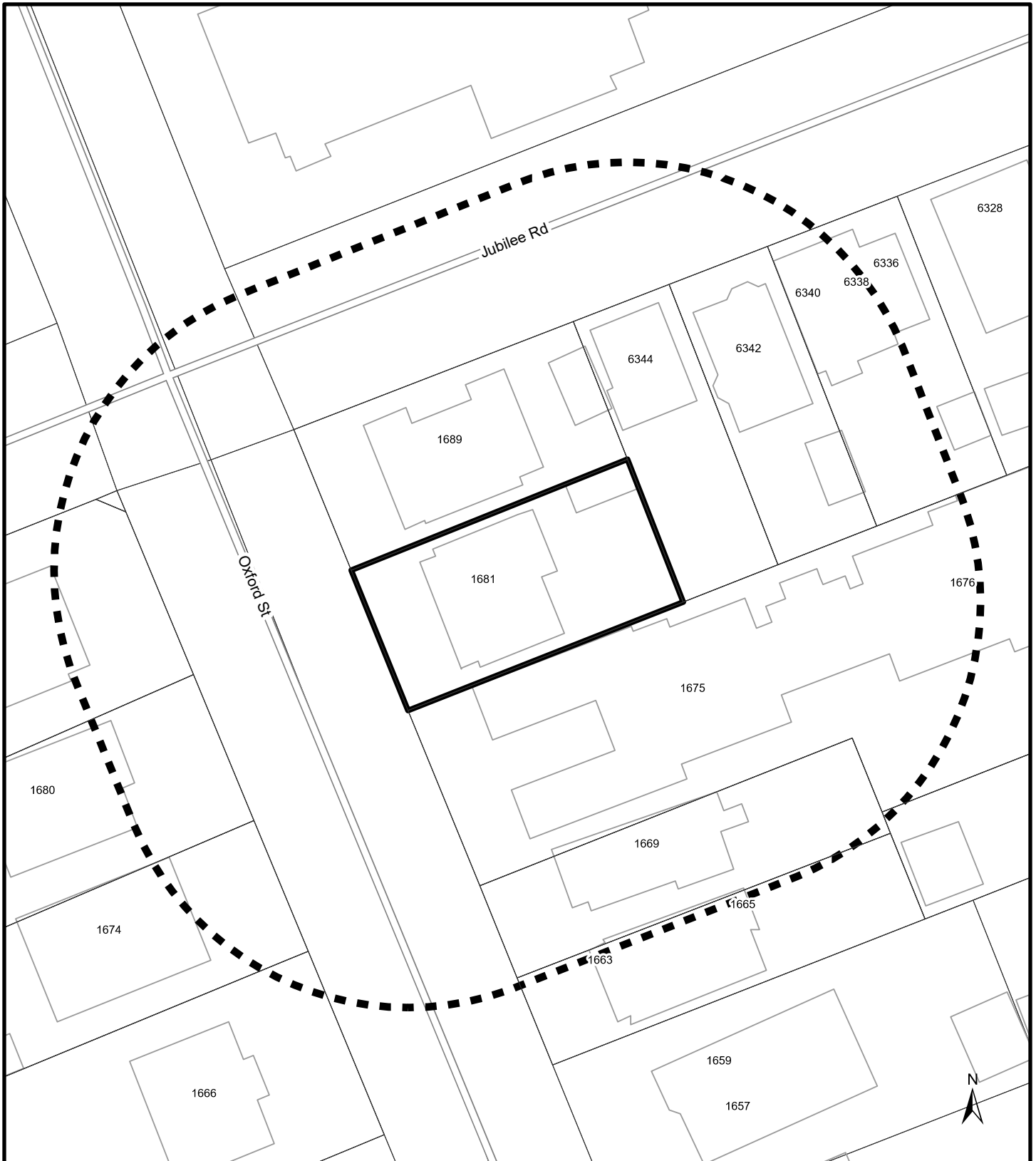
1. Denial of the appeal motion would result in the refusal of the variance. This would uphold the Development Officer's decision, and this is staff's recommendation.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Officer.

ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Site Photos
Attachment B:	Variance Refusal Notice
Attachment C:	Letter of Appeal from Applicant
Attachment D:	Property Online Mapping (submitted by appellant)

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: Aaron Bliss, Planner II, (902) 719-7846
Stephanie Norman, Principal Planner/ Development Officer, (782) 640-0702

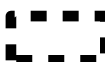


Map 1 - Notification Area

1681 Oxford Street,
Halifax

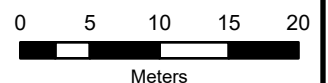


Subject Property

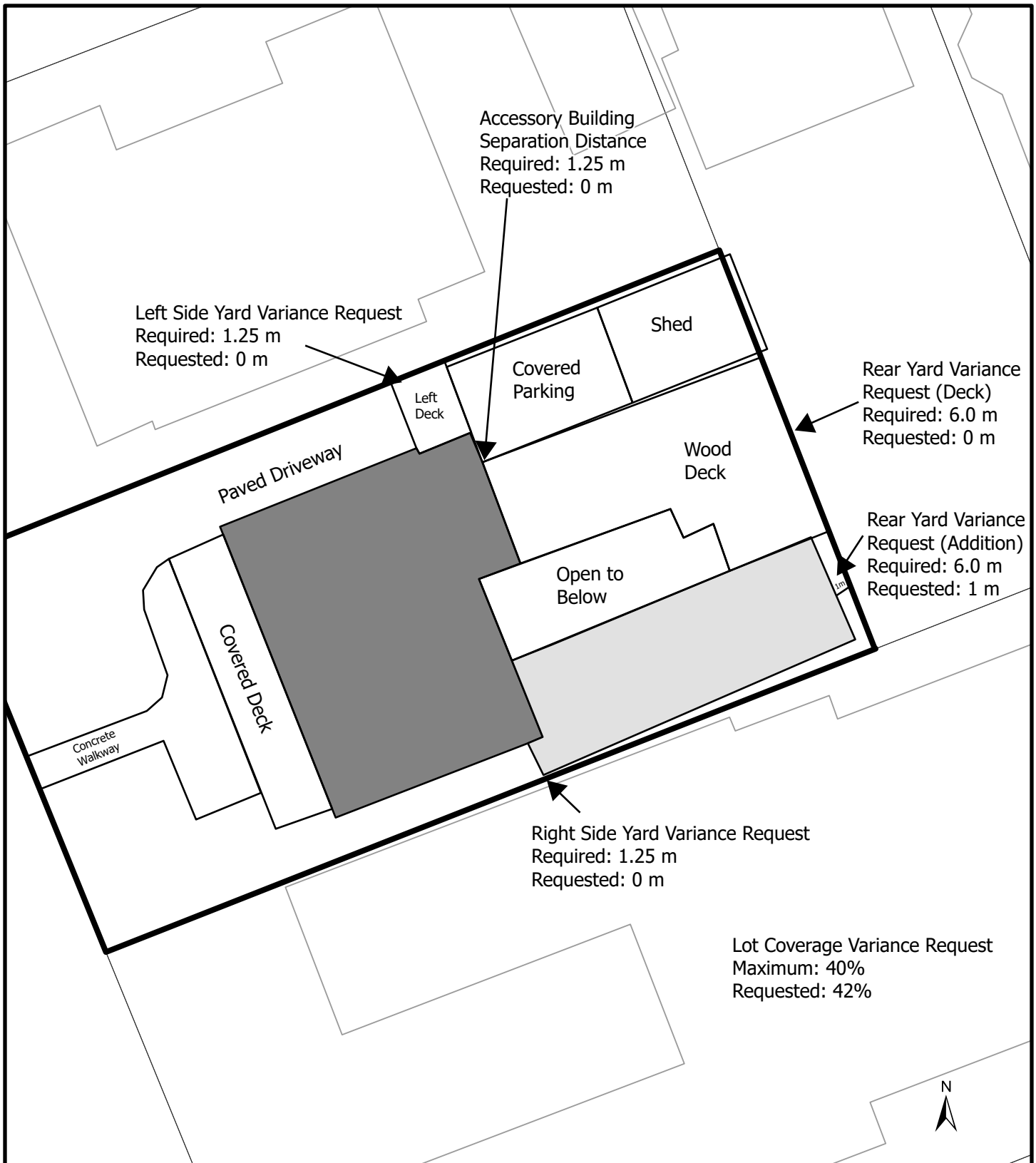


Notification Area

HALIFAX

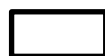


The accuracy of any representation on this plan is not guaranteed.

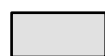


Map 2 - Site Plan

1681 Oxford Street,
Halifax



Subject Property



New Building Addition



Existing Building

HALIFAX

0 1 2 4 6 8



Meters

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

Attachment A- Site Photos

Photos taken by staff on October 11, 2024.



View from front of the dwelling



View of deck on left side of dwelling. Shown as left deck on site plan.



View of separation distance between rear of house and covered garage area, shown as covered parking area on site plan.



View of rear deck standing on edge of deck along the rear lot line facing towards the house. Shown as wood deck on site plan.

ATTACHMENT B

January 14, 2025

Sergey Nilov

1681 Oxford St.
Halifax, NS, B3H 3Z5

Dear applicant,

RE: VARIANCE APPLICATION VAR-2024-01983, 1681 Oxford St, PID 00048272

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

Location: 1681 Oxford Street, PID 00048272
Project Proposal: Additions to a single unit dwelling, rear and side decks and covered parking area.

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	1.25 m	0m (decks)
Minimum Rear Setback	6.0 m	0m (rear deck) 1.0m (rear addition)
Minimum Right Side Setback	1.25 m	0 m (rear addition)
Maximum lot coverage	40%	42% (additions and covered parking area)
Accessory structure separation distance	1.25 m	0.0m (covered parking area)

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:

- (a) The variance violates the intent of the land use by-law; and
- (b) The difficulty experienced is general to properties in the area; and
- (c) The difficulty experienced results from the intentional disregard for the requirements 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:

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

Your appeal must be filed on or before **January 24th, 2025**.

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 contact Aaron Bliss at aaron.bliss@halifax.ca or 902-719-7846.

Sincerely,



Stephanie Norman, LPP, MCIP
Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councillor Laura White

ATTACHMENT C

To: **Municipal Clerk**
Halifax Regional Municipality
Development Service
P.O. Box 1749
Halifax, NS B3J 3A5



From: **Sergey Nilov**
1681 Oxford Street,
Halifax NS B3H3Z5

January 21, 2025

Appeal of the Development Officer decision

Dear Sir or Madam,

I am Sergey Nilov, an owner of the property on 1681 Oxford Street, Halifax, NS.
I am writing this appeal as the Development officer notified me this is only way to help me to conclude the house addition building. Thus, I am applying for you understanding and mercy.

We, my wife and I purchased this house in 2014. Since then we have got two kids and I have home-based health clinic on the main floor.

My wife is a Registered Nurse working full time at Veteran Memorial Hospital, Halifax. She worked with aged people with dementia; she works irregular and night shifts. Our kids are 10 and 13 years old by now and we needed and still need to walk them to, out of school, and to extra curricular activities.

We both working full time to provide family and we need to invite and host my mom, kids grandmother, to visit us from abroad and stay for months and sometimes up to a year to help us with kids and she needs her personal space as well.

I am explaining it so in details to underline that we barely have enough space to accommodate my current family.

I have to reveal the situation has changed crucially in 2022 – when the war in Ukraine started. I have part of my close family of four people resides in Kiev, Ukraine. Since then they have been are under life threat every day, they listen to bombing alarm almost every night hiding and spending in a bomb shelters up to 8-10 hours a day. The are educated, hard working but unfortunately currently in very poor situation as Ukraine has been being still ruined and people suffer physically and even more emotionally.

I talked with them, seeing them crying I strongly feel my obligation to help them by accommodating them in a save and peaceful place, like Canada, at my own home.

I should apologize: I did not realize I should have apply for the permit first. I was emotionally affected and started to build an addition to my house just the firs weekend I heard that «banshee» - bombing attack alarm just while our telephone conversation. I wish none of us had heard that «banshee» - it is a call of the approaching death. This moment I decided to build an addition as soon as possible to accommodate them here.

I understand I violated the rule – please, accept my apologies. I should reveal that the addition has completed by 70% by the moment I stopped working on it by HRM order in July 2024. Since then the case has been under consideration by Stephanie Norman, a Development Officer.

I received the official refusal on January 21, 2025. It was just 7 months of consideration but for people in Ukraine it was probably like an eternity. We cannot understand their feelings during this time being far away is safe place.

Now I would like to explain every point that highlighted in the Development Officer letter (please see a copy attached).

Minimum Right Side Setback – rear addition.

I would like you to take into consideration, that before I started I checked Halifax Property line on the official Government of Nova Scotia web site (please see the print attached) and accordingly to their information it is my neighbour building just almost encroaching my property side line, not mine, on the Right side.

The Development officer explained me later that this information is irrelevant, but still it was officially placed at that moment for some reason on the official Government of Nova Scotia web site available for the general public.

I was confused being sure I had this 1.25 metres on the Right Side Setback, but my neighbour does not. I was not right, but my confusion was based on the wrong information. It is not justifying me anyhow and I am ready to do all I need to rectify this situation

I am ready to accommodate all safety and fire requirements for this situation. I have discussed it with an engineer and with HRM representative and we can install metal siding, fireproof wrapping and drywall and, if needed, even water fire sprinkles - it would then meet the code.

Minimum Rear Setback – rear addition and Maximum Lot coverage (42% of 40% max).

I understand that it the most part I did wrong. I tried to put the max living area within my property borderline and did in within my property line leaving only 1-meter setback being sure it is enough. I was wrong, my fault. Please take into consideration that if I left 6 metres as required I did not have any enough space for living area in the addition, just barely for one-two rooms max. Certainly not enough for four or five extra people.

Please, I am applying for your mercy: allow me to complete it as it has already started. I will do everything to meet the code in the current conditions.

Minimum Rear Left Setback – Left side deck and Minimum Rear Setback – rear deck.

I should reveal that my neighbour on the backside had a big German Sheppard dog. The dog has never been under any training – I learnt it with the police officers presence. This dog run, jumped and barked very loudly on my kids - they were very little at the moment and it was pity to see that they are just scared to play on the backyard because of the wild big dog barking on

them there. I tried to talk with my neighbour many times - no effect, once his dog jumped and run on my property scaring the whole family. I cannot stand it any more – I reported this situation to the police. Please, check with their Go-number, they protocolled this situation and it is in the police records. Please refer to their notes.

I decided to build a deck on the height above the ground level because the dog does not notice them if the playing on the above. I wanted my kids to be safe and secured from the wild barking untrained dog.

Please accept my apologies for the building rules violation.

Accessory structure separation distance (covered parking area).

As I explained the Development Officer, I bought this house in 2014, just almost 11 years ago, and this garage and its covered parking area already existed at the moment of the purchase in 2014. I have no idea when it was actually built.

As I discussed with the Development officer I will do all the necessary work to these structures to meet the existing requirement.

I would like you please to consider this information with the whole family life understanding.

I totally realise the necessity of regulation and the rule following, but today I am applying more for your human feeling and asking for your mercy.

Please allow me to complete the building addition the way in which it has already started. I have neither possibility not money to demolish it and rebuilt from the beginning.

I do not violate any other people property lines and promise to fulfill all the requirements under current conditions to meet the code for the construction.

Thank you for your time and understanding,

Redacted

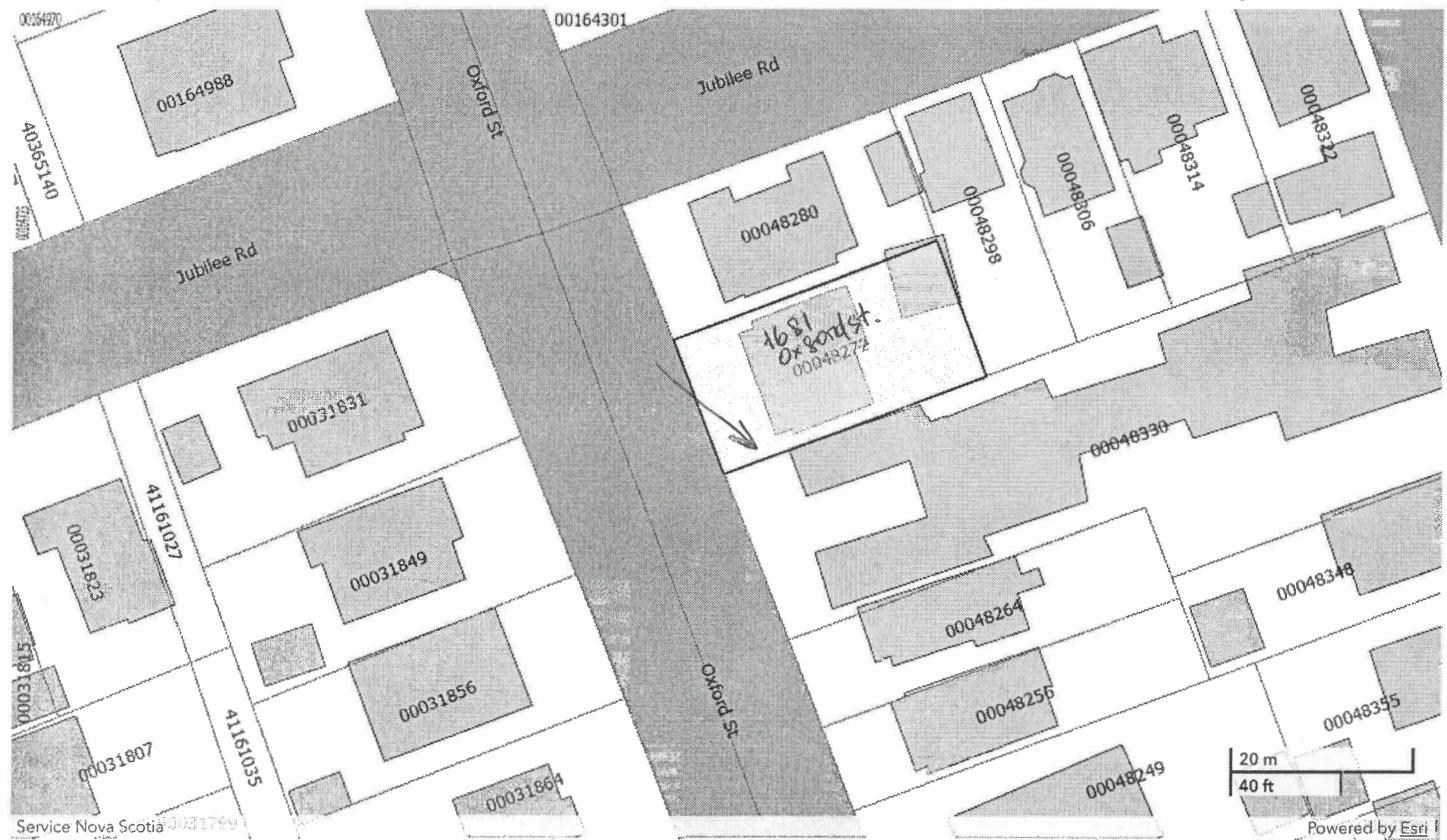
Sergey Nilov

ATTACHMENT D



Property Online Map

Date: July 15, 2024 15:43:43



PID: 00048272
County: HALIFAX COUNTY
LR: LAND REGISTRATION

Address: 1681 OXFORD STREET
HALIFAX
Owner: ANNA NILOVA
SERGEY NILOV

AAN: 01439723
Value: \$882,900.00 (2024
RESIDENTIAL TAXABLE)

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [Land Registration Act subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

Property Online Version 1.0

This page and all contents are copyright © 1999-2024, Government of Nova Scotia, all rights reserved.

If you have comments regarding our site please direct them to: propertyonline@novascotia.ca

Please feel free to [Submit Problems](#) you find with the Property Online web site.