



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

Item No.6.2.1
Halifax and West Community Council
March 30, 2021

TO: Chair and Members of Halifax and West Community Council Community Council

SUBMITTED BY: *Original Signed*

Steve Higgins, Manager, Current Planning

DATE: March 30, 2021

SUBJECT: **Case 23102: Appeal of Variance Refusal – 1891 Vernon Street, 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 Halifax and West Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 1891 Vernon Street in Halifax to permit construction of an addition to an existing single-family dwelling to add two additional units (Map 2, Attachment A). To facilitate this project, four variances have been requested as follows:

- Increase maximum gross floor area;
- Increase lot coverage;
- Reduce the minimum required lot area; and,
- Reduce the minimum side yard setback.

There have been multiple previous variance requests relative to this property.

In May of 2016, the Development Officer approved a variance similar to what is currently proposed. That decision was appealed, and Council upheld that appeal resulting in a refusal of the variance.

Two years later in April of 2018, a second variance was approved. That decision was the subject of multiple appeals. The applicant withdrew that variance application prior to the appeals being considered by Community Council and that file was closed.

In April of 2019, a third application was submitted including new information not part of the previous applications. The property was surveyed, and it was found that the side yard shown in the initial application was incorrect. The application was denied and there was no appeal.

In August of 2020, the most recent application was received. Taking the above into account, this application was further assessed under the Halifax Regional Municipal Charter and denied.

Site Details:

Zoning

The property is located within the R-2 (General Residential Dwelling) Zone of the Halifax Peninsula Land Use By-Law (LUB) and is within the Peninsula Centre Secondary Plan Area. The relevant requirements of the LUB and the related variance request is as identified below:

LUB Regulation	Requirement	Requested Variance
Minimum lot area (for Maximum Gross Floor Area)	4600 square feet lot area (to accommodate 2925 sq. ft. gross floor area)	6410 square feet lot area (to accommodate 3525 sq. ft. gross floor area)
Maximum Lot coverage	35%	40%
Minimum lot area	5000 sq ft	4600 sq. ft.
Minimum side yard setback	6 feet	2.2 feet (existing)

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment B) and the applicant subsequently appealed the refusal (Attachment C). Property owners within the notification area have been notified of the appeal of the refusal and the 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 refuse the variance.

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?

Gross Floor Area

In October 2005, Council adopted the Gross Floor Area Ratio (GFAR) amendments to the Land Use By-law. The GFAR was intended to limit the size of a building relative to the lot area, thereby contributing to compatibility of the scale of buildings on lots of similar sizes within a neighbourhood.

The Halifax Peninsula Land Use By-law defines Gross Floor Area as follows:

“Gross Floor Area” means the aggregate of the area of all floors in a residential building, whether at, above or below grade, measured from the exterior faces of the exterior walls, or from the centre line of the common wall separating two buildings, and including the basement floor area where the basement ceiling height is 1.95 metres or higher, but excluding any open porch/verandah, unfinished attic that is accessed by means other than a fixed staircase, and area used for a private garage, parking and loading.

The subject property is 4600 square feet in area, which would allow for Gross Floor Area of 2925 square feet. In order to accommodate the proposed 3525 square feet, the lot area would need to be a minimum of 6410 square feet, which is a considerable increase. The request to increase the lot area to accommodate a greater Gross Floor Area violates the intent of the Land Use By-law, which seeks to set a limit on the size of the building relative to the lot on which it sits.

Lot Coverage

Lot coverage requirements are intended to limit the size of the footprints of covered structures relative to the lot area. The request for increase in maximum lot coverage from 35% to 40% is required in order to

create a larger footprint than what is permitted in order to support the addition of two new dwelling units for a total of three. The requested 5% increase translates to 230 square foot greater footprint than is permitted. The benefits of open, unbuilt area are likely maintained with the requested increase in lot coverage. There is no issue with the intention of the By-law, relative to the lot coverage request.

Lot Area

Three and four-unit dwellings are permitted uses in the R-2 Zone based on the intent to limit buildings containing three and four units to larger lots than those containing single family homes or two-unit dwellings. The standard R-2 Zone lot requirements for a 3-unit dwelling are 8,000 square feet of lot area and 80 feet of road frontage. However, the subject property is within the Peninsula Centre Secondary Plan Area which already permits a substantial reduction of minimum lot area and frontage requirements down to 5,000 square feet 45 feet respectively. To relax the area regulation further to accommodate three units on an undersized lot does not align with the intent of the By-law.

Side Setbacks

Minimum building setbacks (yards) help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety and aesthetics. The existing side setback of 2.2 feet does not meet the requirement for a single unit dwelling. This setback is non-conforming pursuant to the HRM Charter. However, the proposed change of use from a single unit dwelling to a three-unit dwelling triggers an increase in the minimum side setback from 4 feet to 6 feet increasing the level of non-conformity and necessitating the variance. While the requested relaxation would normally not provide the separation and access intended by the requirement, it's recognized that the setback is an existing condition.

It is the Development Officer's opinion that this proposal violates the intent of the Land Use By-Law.

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

In determining whether the variance request results from difficulty general to properties in an area, an assessment of the surrounding properties was undertaken. Lot area, lot coverage, setbacks and Gross Floor Area are relatively varied in the general area, However, the property in question is not subject to any unique conditions or circumstances that would set it apart from the surrounding neighbourhood. Application of the standard regulations does not result in any difficulty or limitations that are not generally present throughout the area. Therefore, it is determined the difficulty experienced is general to properties in 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.

This is not the case in this request. The applicant has requested the variance prior to commencing any new work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

Appellant's Submission:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment C) for

Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
<p><i>We don't believe anything in the LUB has changed since the DO approved the last request in 2015 so there shouldn't be a reason for a change in the opinion of the DO.</i></p>	<p>There has not been any change to the R-2 Zone, Halifax Peninsula Land Use Bylaw with respect to the requirements for this application. However, the approval of the initial variance in May 2016, was appealed and presented to Community Council. Council overturned the decision, and therefore, that variance request was denied.</p> <p>In April 2018, a second variance request resulted in substantial appeals and petitions. The applicant chose not to move forward to Community Council with that request.</p> <p>April 2019, a third application was submitted and new information was provided. The property was surveyed, and it was found that the side yard shown in the initial application was incorrect. The application was denied and there was no appeal.</p> <p>August 2020, the most recent application was received. Taking the above into account, this application was further assessed under the Charter criteria and has been denied.</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 2020/21 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.

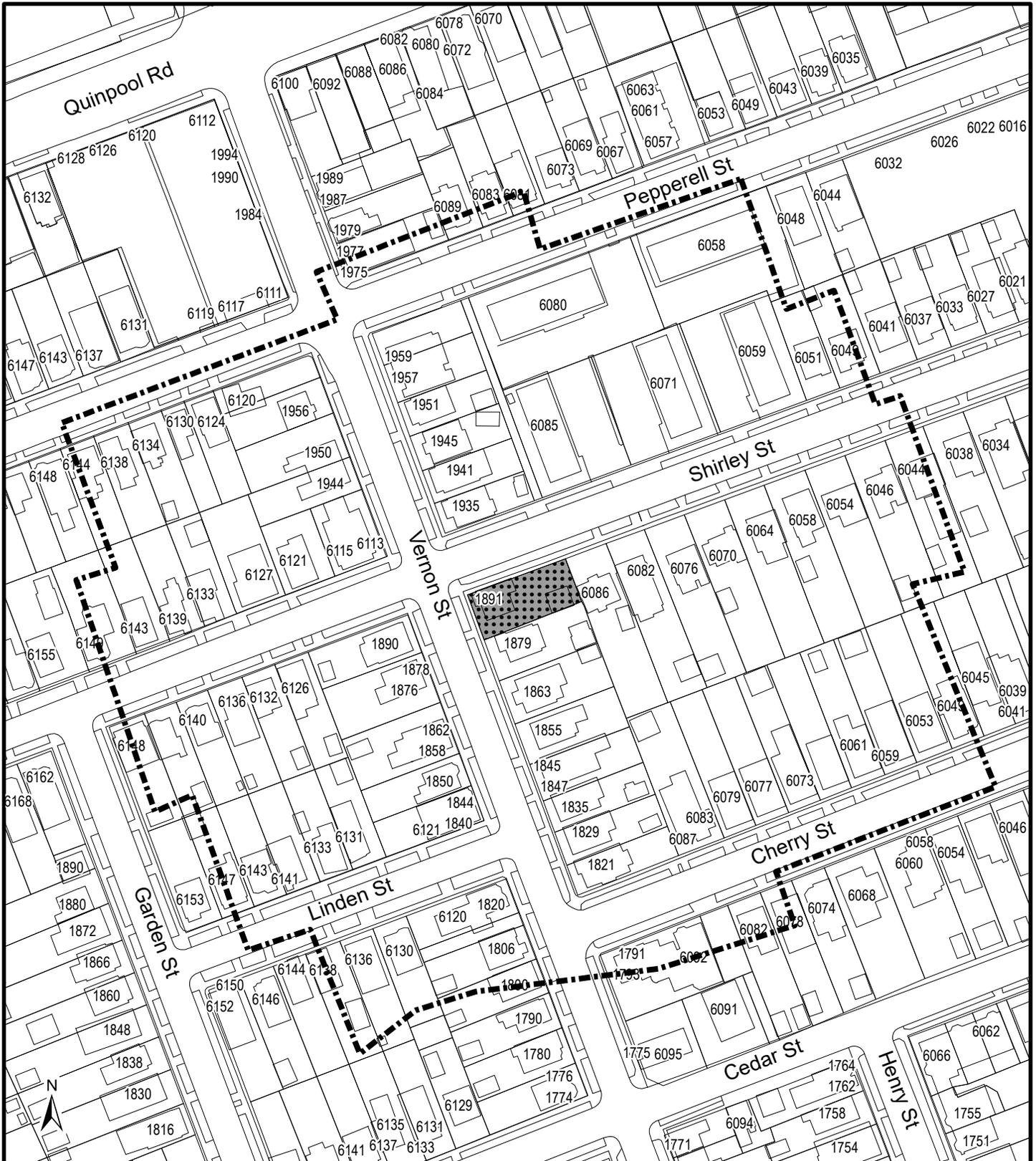
1. Denial of the appeal motion would result in the approval of the variance. The would uphold the Development Officer's decision and this is staff's recommended alternative.
2. Approval of the appeal motion would result in the refusal of the variance. This would overturn the decision of the Development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

ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevations
Attachment B:	Variance Refusal Letter
Attachment C:	Letter of Appeal from Applicant

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: Brenda Seymour, Planner 1, 902.223.3042
Rosemary MacNeil, Principal Planner/Development Officer, 902.476.6776



Map 1 - Location and Notification Area

1891 Vernon St.,
Halifax



Subject Properties

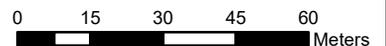


Notification Area

HALIFAX

Halifax Plan Area

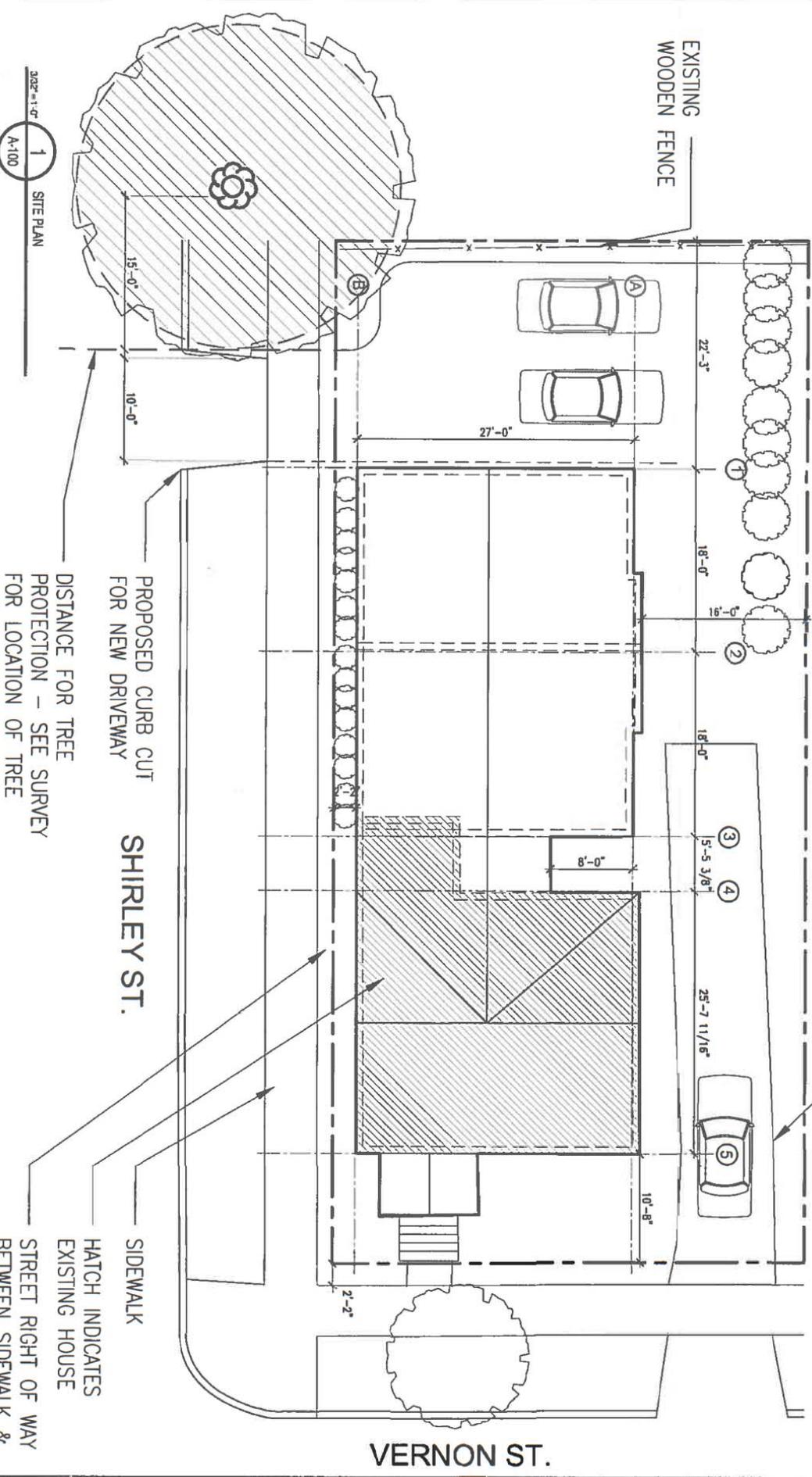
The accuracy of any representation on this plan is not guaranteed.



SITE AND BUILDING SUMMARY / YIELD		
LOT COVERAGE:		
Lot Area: 4,600 sqft	Level 01: 1720 sqft	TOTAL BEDS:
Lot Coverage: 1,855 sqft	Level 02: 1805 sqft	
Lot Coverage %: 40%	Total: 3,525 sqft	
GROSS FLOOR AREA:		Existing: 3 beds Addition: 4 beds Total: 7 beds
Gross Floor Area %: 76.6%		

SETBACK SUMMARY	
Side Yard Setback	16'
Rear Yard Setback	22'-3"
Flanking Yard (Shirley St.)	2'-2" (existing & addition)
Front Setback (Vernon St.)	10'-8" (existing)

Note: See survey for existing and property boundaries, including tree.



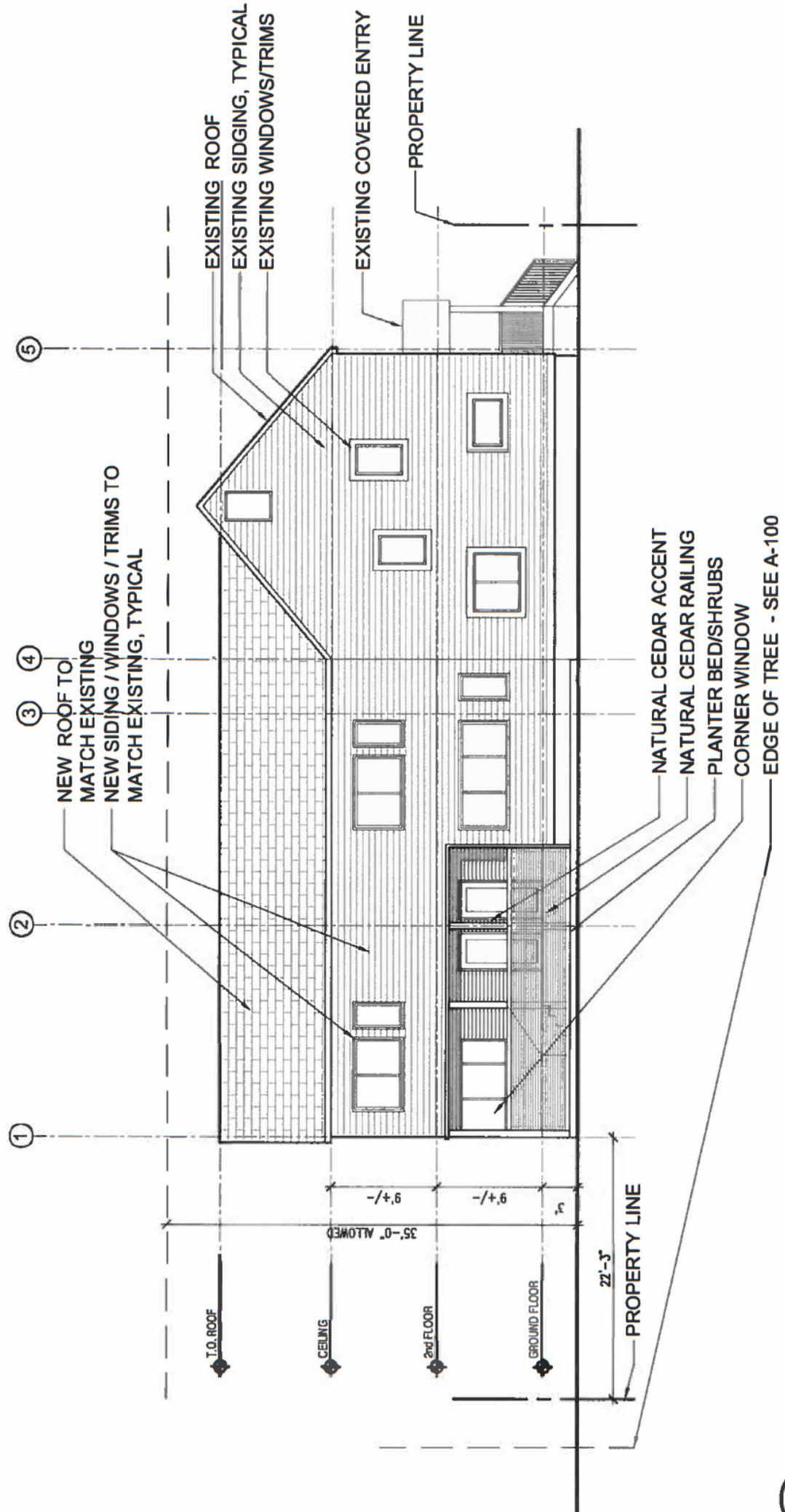
Scale: 1/4" = 1'-0"
A-100
1 SITE PLAN

PROPOSED CURB CUT FOR NEW DRIVEWAY
DISTANCE FOR TREE PROTECTION - SEE SURVEY FOR LOCATION OF TREE

SHIRLEY ST.

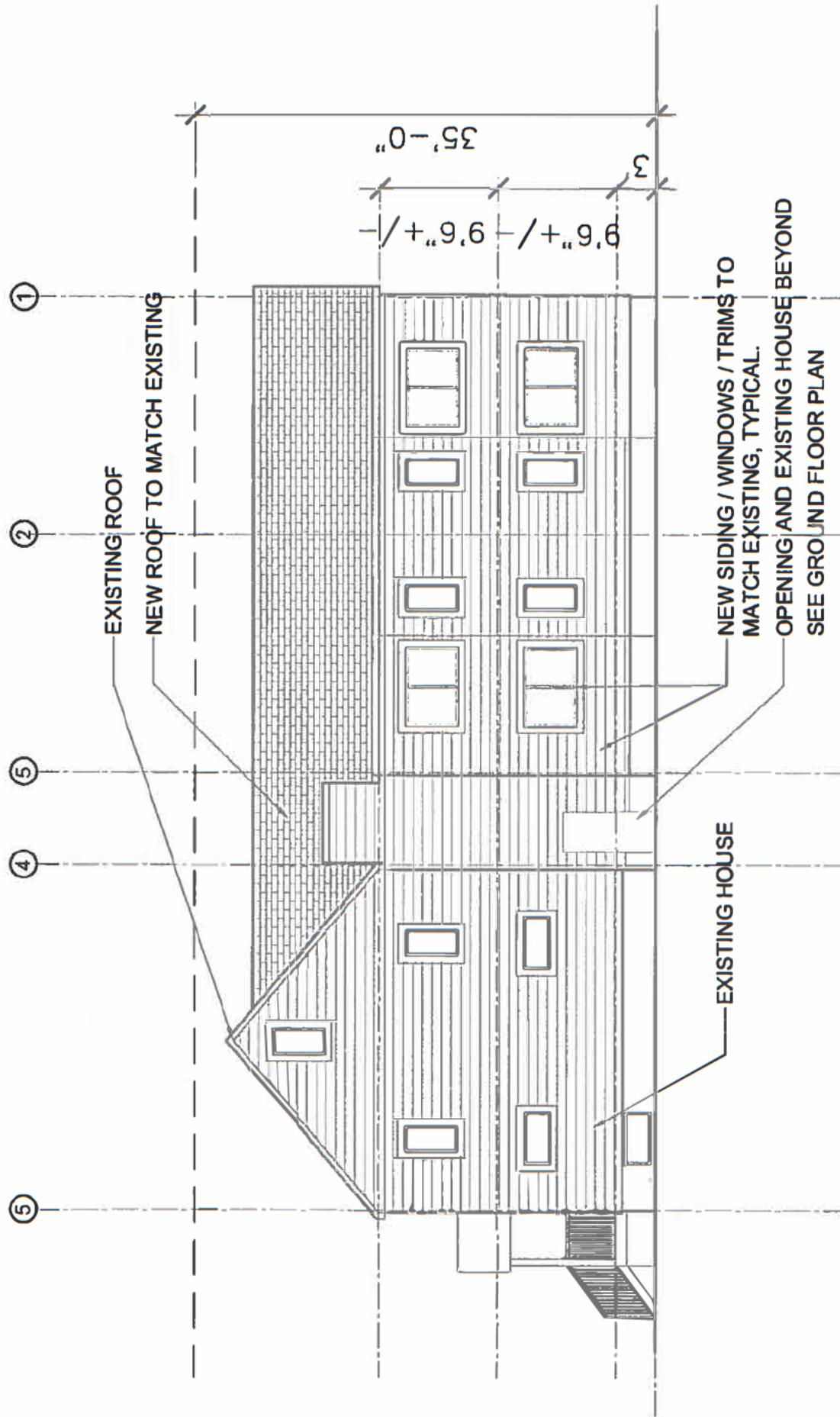
SIDEWALK
HATCH INDICATES EXISTING HOUSE
STREET RIGHT OF WAY BETWEEN SIDEWALK & PROPERTY LINE

VERNON ST.



3/32" = 1'-0" 1 SHIRLEY ST. ELEVATION

A-201



3/22/11 1:00
 1 SIDE ELEVATION

A-203

Attachment B- Variance Refusal Letter

November 9, 2020

Mr. Rob Leblanc
Fathom Studio
1 Starr Lane, Unit 1
DARTMOUTH NS B2Y 2N2

Email:

Dear Mr. Leblanc:

RE: VARIANCE APPLICATION 23102 – 1891 VERNON STREET, HALIFAX

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

Location: 1891 Vernon Street, Halifax
Project Proposal: Addition to a single unit dwelling to convert to a three unit dwelling

LUB Regulation	Land Use Requirements	Requested Variance
Minimum side yard setback	6 feet	2.2 feet (existing)
Minimum lot area	5000 sq. ft.	4600 sq. ft.
Minimum Lot coverage	35%	40%
Minimum lot area (for Maximum Gross Floor Area)	4600 square feet (2925 sq. ft. gross floor area)	6410s sq. ft. (3525 sq. ft. gross Floor 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 the variance violates the intent of the land use bylaw.

Page 1 of 2

Mr. R. Leblanc
November 6, 2020
Variance 23102
Page 2 of 2

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 **November 27, 2020.**

If you have any questions or require clarification of any of the above, please call Brenda Seymour, Planner 1 at 902-223-3042.

Sincerely,

Rosemary MacNeil, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Phoebe Rai – Acting Municipal Clerk
Waye Mason, Councillor District 7
Julien Boudreau, Fathom Studio

APPEAL TO VARIANCE APPLICATION 23102 RULING - 1891 VERNON STREET, HALIFAX

Dear Rosemary,

Thank you for your Nov 9 response. As we mentioned in our application, previous applications for an even larger proposed development had been approved twice previously by a DO (Case 19677), and we have worked in the interim to scale back the development while addressing a few outstanding issues identified by council when it was initially rejected. Specifically, the DO had approved three of the four variance requests on previous applications (see attached) including:

1. The minimum lot area (5000 sq.ft. required and 4600 sq.ft. requested) - Approved June 2 -2015 (see attached).
2. Minimum lot coverage (35% required, and 40% requested) - - Approved June 2 -2015 (see attached).
3. Minimum lot area for max gross floor area (2925 sq.ft. Required, 3525 requested) - - 4,190 sq.ft. was Approved on June 2 -2015 (see attached).

On our last June 2020 application, in addition to the 3 previously approved variances, we had also requested a relaxation on the required 6' flanking yard (side or front?) setback but noted that we could shift the building back to 6' to meet the requirement if the DO thought that this request may be a problem. As a result of the rejection, we have moved the building back to meet the 6' front (side?) yard setback requirement (see the next page).

Since your letter does not state the reason for the rejection, we assume the requested 6' front yard setback variance must be the reason (the previous 3 variance requests had already been previously approved by a DO). With the front yard request removed, we are now only asking consideration for variances that were previously approved:

1. Minimum Lot Area for 3-unit - 5,000 sq.ft. We are at 4,600 sq.ft. so just slightly under the requirement.
2. Lot coverage is 35% max. The design proposed is at 40%. The new Schedule B Centre Plan is increasing lot coverage to 50% soon.
3. The maximum GFA shall be 2,925 sq. ft. or a FAR of 0.60, whichever is greater - We are requesting 3,525 sq.ft. on a 4,800 sq.ft. lot or a FAR of 0.78. Again, in the draft impending Centre Plan, this maximum GFA requirement is removed.

Issued

Nov 26, 2020

Project Number

Attachment C: Letter of Appeal from Applicant

We dont believe anything in the LUB has changed since the DO approved the last request in 2015 so there shouldn't be a reason for a change in the opinion of the DO's. If you have any questions, please drop me a line. Thanks again for taking the time to review.

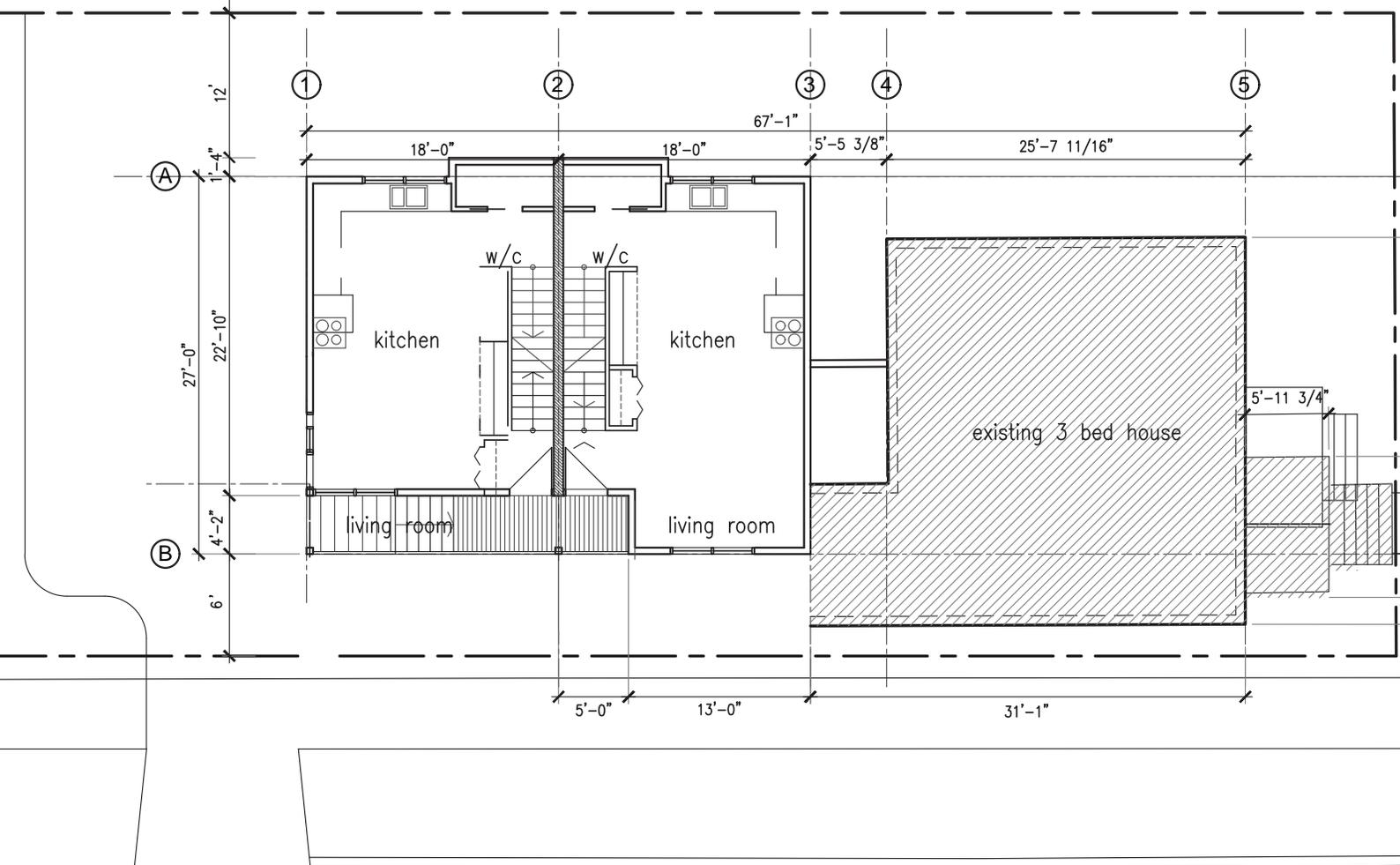
Sincerely,

Rob LeBlanc, president

SITE AND BUILDING SUMMARY / YIELD		
LOT COVERAGE:	GROSS FLOOR AREA:	TOTAL BEDS:
Lot Area: 4,600 sqft Lot Coverage: 1,855 sqft Lot Coverage %: 40%	level 01: 1720 sqft level 02: 1805 sqft Total: 3,525 sqft Gross Floor Area %: 76.6%	Existing: 3 beds Addition: 4 beds Total: 7 beds
Note: See survey for existing and property boundaries, including tree.		



EXISTING HOUSE:
Existing two level house with 3-bedrooms. Basement less than 6'8" as measured by owner. Existing garage shown on survey - to be demolished.





June 2, 2015

Julian Boudreau



RE: Variance Application 19677- Variance for side yard setbacks, lot area, lot coverage and gross floor area requirements of Halifax Peninsula Land Use Bylaw to construct an addition to a single unit dwelling to create three dwelling units.

As a Development Officer for the Halifax Regional Municipality, I have approved your request for a variance from the requirement(s) of the land use bylaw as follows:

Location: 1891 Vernon St, Halifax
Project Proposal: To construct an addition to a single unit dwelling to create three dwelling units

	Requirement	Proposed
Minimum lot area (for lot size)	5000 sq. ft.	4600 sq. ft.
Maximum lot coverage	35%	39%
Minimum left side yard setbacks	6 ft	4 ft
Minimum lot area (for Maximum Gross Floor Area)	4600 square feet (2925 sq. ft. gross floor area)	6983 square feet (4190 sq. ft. gross floor area)

In accordance with Section 250 of the Halifax Regional Municipality Charter, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before June 18, 2015.

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Brenda Seymour, 902-490-3244.



Sean Audas
Development Officer

cc. Cathy Mallet, Municipal Clerk
Councillor Wayne Mason, (District 7)