



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No: 10.2.1
Halifax and West Community Council
August 3, 2016

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY: _____
Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: June 28, 2016

SUBJECT: Case 19912: Appeal of Variance Approval – 1597 Dresden Row, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

A variance request has been submitted for 1597 Dresden Row, Halifax to permit the property to be developed with a shed. In order to facilitate this project, a variance has been requested to relax the required streetwall setback. The property is a municipally and provincially registered heritage property and is currently developed with a single unit dwelling.

Site Details:

Zoning: DH-1 (Downtown Halifax-1) Zone, Downtown Halifax Land Use By-law

	Zone Requirement	Variance Requested
Min. Streetwall Setback:	9.5 metres	2.4 metres

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachments A and B). Subsequently, two appeals of this decision (Attachment C) have been filed from property owners within the 30m notification boundary and the matter is now before Halifax and West Community Council for decision.

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*. As such, the *HRM 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."

In order 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?

It is the Development Officer's opinion that this proposal does not violate the intent of the Land Use By-law. Guidelines concerning appropriate streetwall setbacks are contained within the Design Manual that forms part of the Downtown Halifax Land Use By-law.

The Design Manual states that the placement of a building relative to the front property line generally corresponds to the grade-level uses and intensity of pedestrian traffic. Most existing development in downtown Halifax is uniformly placed at the sidewalk edge with little or no setback and it is intended that future development follow this same example. However, there are areas that are more residential or institutional in character that observe a variety of streetwall setbacks as is the case with the subject property. To reinforce existing and desired streetscape and land use characteristics, a range of streetwall setbacks apply based on three categories from minimal to no setback, to a varied setback and to deep institutional or park front setbacks.

The Land Use By-law requires that accessory buildings are not to be located between a streetline and a streetwall where the streetwall is setback less than 9.5 metres from the streetline. In this case, the required streetwall setback varies from 0 to 4 metres in keeping with the original house form building types that prevailed on this small block. The adjoining existing streetwall to the south is in line with the setback of the proposed shed at a distance of 2.4 metres. The Design Manual states that new buildings should provide a setback that is no greater or lesser than the adjacent existing buildings. As this is the condition that is proposed by the requested variance, the proposal is in keeping with the intent of the Land Use By-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

It is the Development Officer's opinion that the difficulty experienced is not general to the area. This property has an irregular lot configuration with streets bordering 3 of its 4 boundaries. As a result, it has no back yard or side yards and only a front yard. There is no other location on the property for a shed to be situated. In any other location, the proposed shed would either block the front entrance and walkway to the dwelling or encroach over the property boundary. As such, the difficulty experienced is not 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.

The applicant has applied for a variance in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in the approval of the variance request.

Appellant's Appeal:

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
<i>The location of the shed will block the adjacent owner's view and sunlight through a picture window.</i>	Blocked views and lack of sunlight are not a consideration under the <i>Charter</i> for variance requests.
<i>The blocked window will affect the adjacent neighbour's property value.</i>	Property value is not a consideration under the <i>Charter</i> for variance requests.
<i>The property is a publicly registered Provincial and Municipal Heritage building and any substantial alterations to the exterior must be approved by the Governor in Council and permission granted by the Minister.</i>	Provincial and municipal heritage property program staff have reviewed the proposal and advise that the installation of a free-standing shed does not affect or alter the character-defining elements of the property. Therefore, the proposal does not constitute a substantial alteration which would require provincial or Council approval.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

RISK CONSIDERATION

The risks considered rate low. There are no significant risks associated with the recommendations in this Report. To reach this conclusion, consideration was given to the location of the proposed development on the property and whether relaxation of the land use by-law would result in a hazard to abutting properties, or present an operational difficulty, such as access for snow removal or maintenance on a public right-of-way.

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

1. Halifax and West Community Council may deny the appeal and uphold the decision of the Development Officer to approve the variance.
2. Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer and deny the variance.

ATTACHMENTS

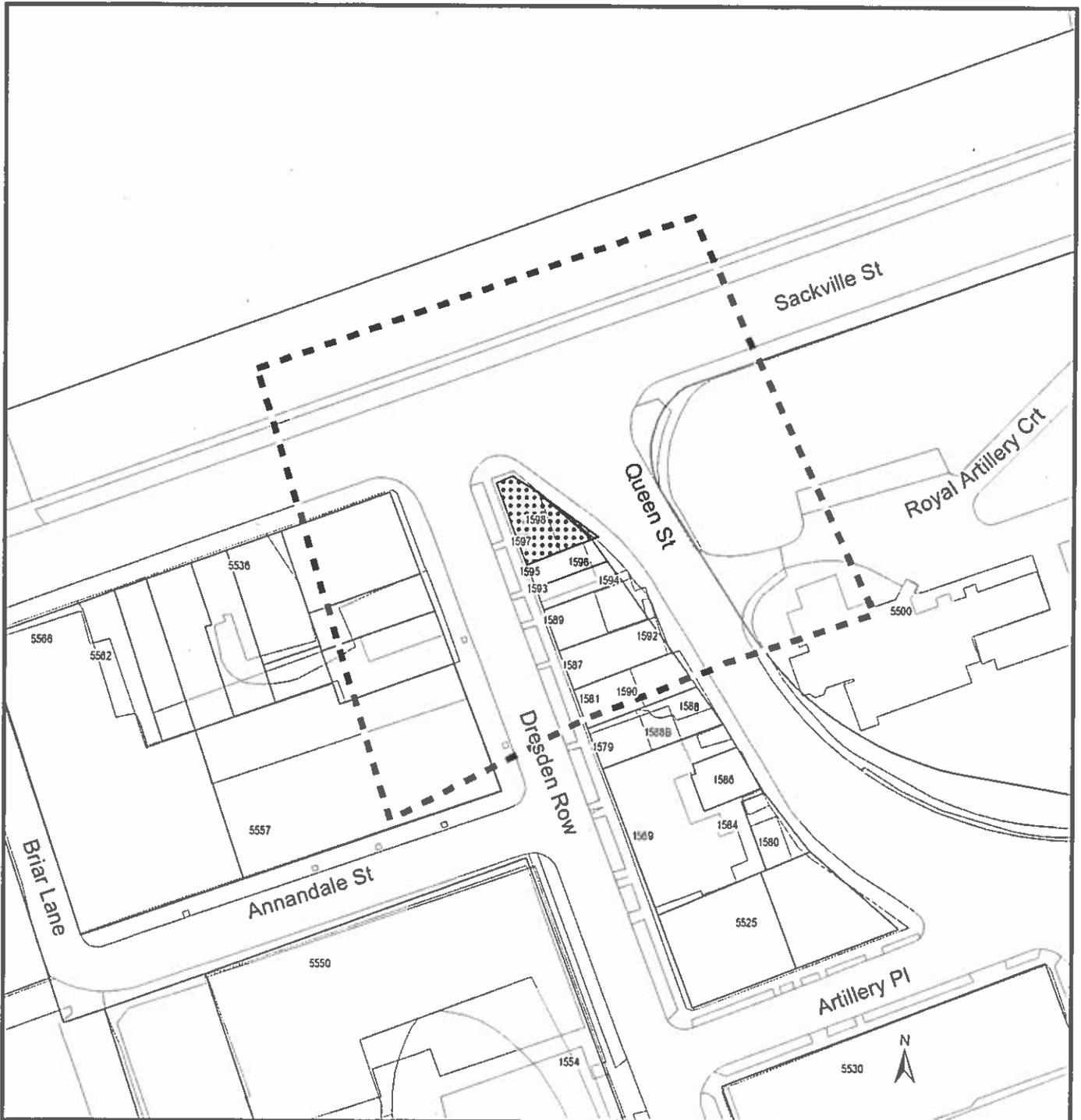
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Building Elevations
Attachment B	Variance Approval Notice
Attachment C	Letters of Appeal

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Sean Audas, Development Officer, 902-490-4402

Original Signed

Report Approved by: Kelly Denty, Manager, Current Planning, 902-490-4800



Map 1 - Notification Area

1597 Dresden Row
Halifax

 Subject Property

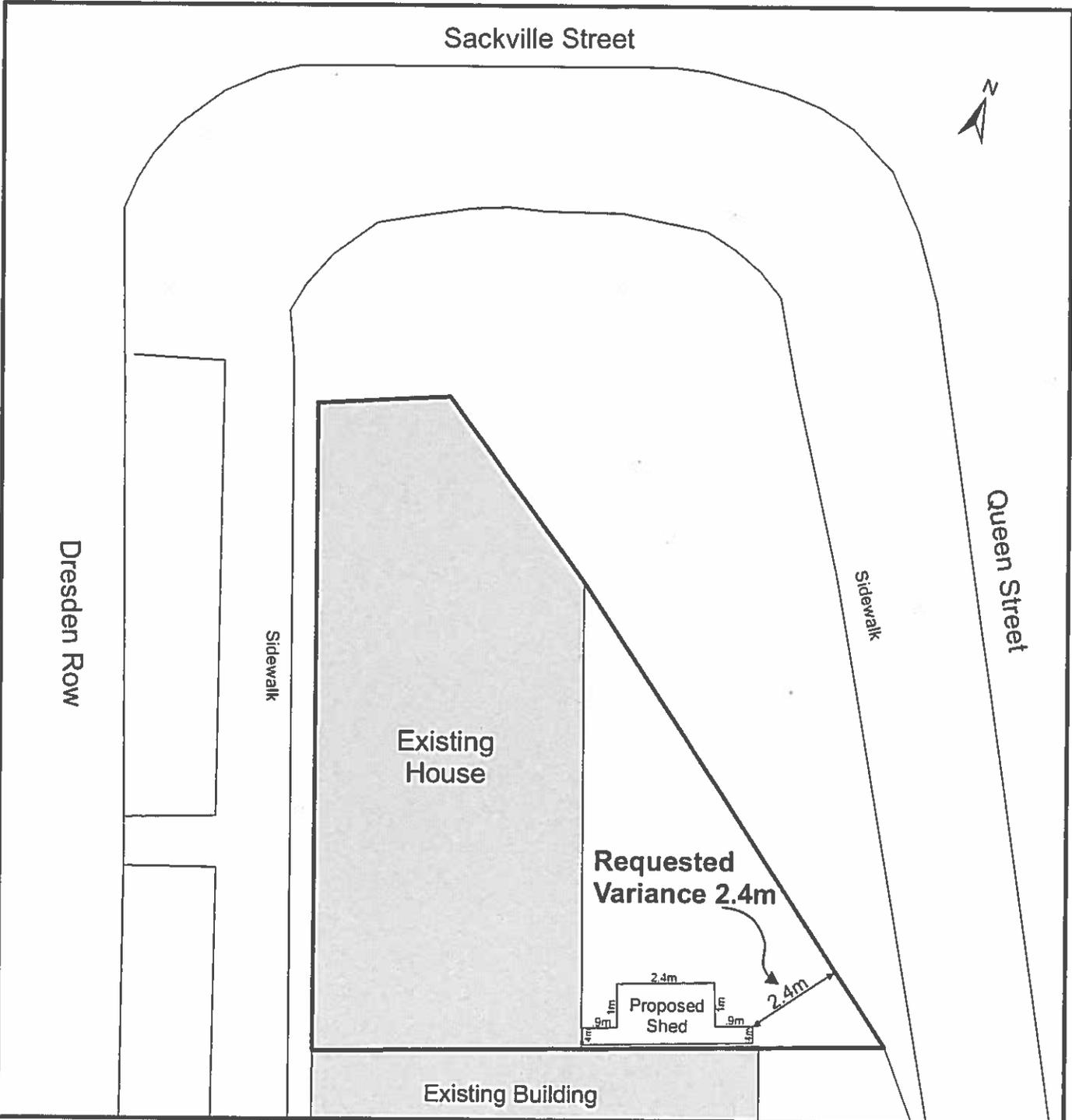
 Area of notification

Downtown Halifax Plan Area

HALIFAX



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



Map 2 - Site Plan

1597 Dresden Row
Halifax

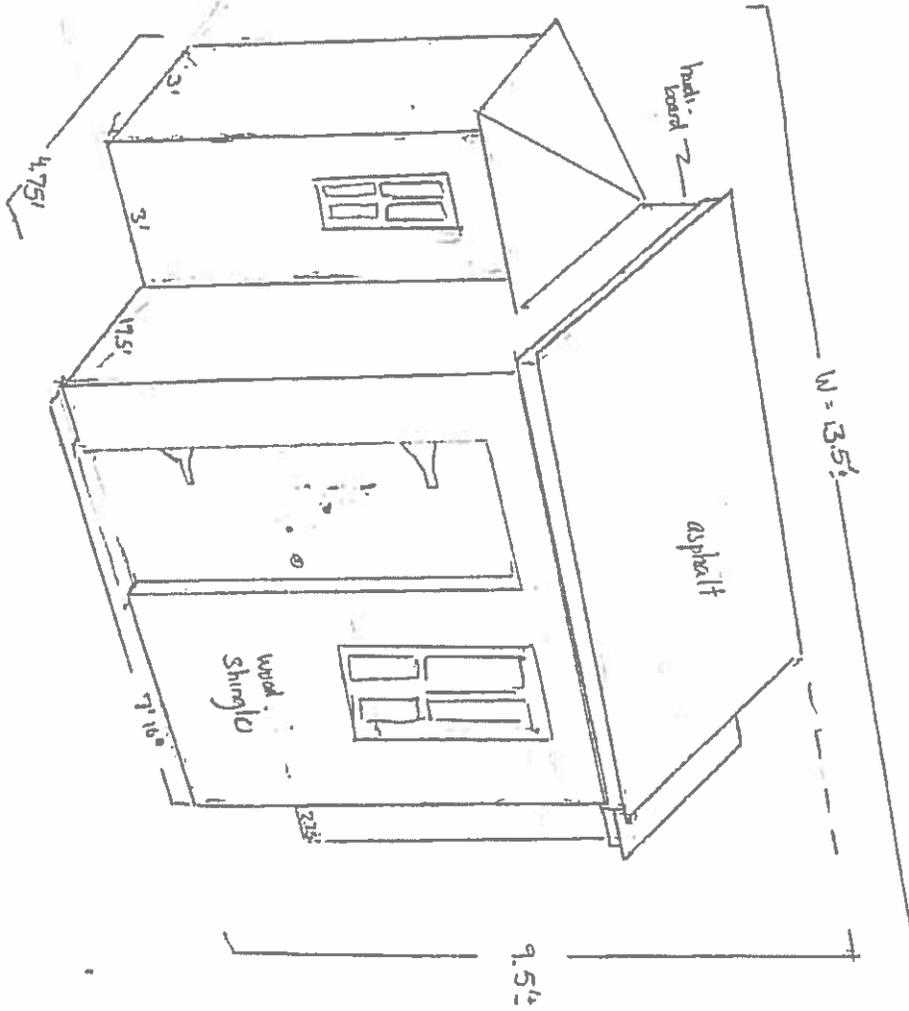
HALIFAX



Downtown Halifax Plan Area

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

ISOMETRIC SKETCH





February 26, 2016

Dear Sir or Madam:

RE: Variance Application #19912, 1597 Dresden Row , Halifax, N.S.

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.

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

Location: 1597 Dresden Row, Halifax

Project Proposal: To construct a shed.

	Required	Proposed
Streetwall setback	9.5 metres	2.4 metres

*** Please note that this letter is further to the original approval letter which was sent on July 22, 2015. Through an internal review it was determined that the previous measurement noted was incorrect. As a result, a new notification is required. ***

If you wish to appeal, please do so in writing, **on or before March 15, 2016** and address your appeal to:

**Sean Audas, Development Officer c/o Municipal Clerk,
Halifax Regional Municipality,
Planning and Development - Western Region,
P.O. Box 1749, Halifax, N.S.
B3J 3A5.
Clerks@halifax.ca**

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Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance.

Yours truly,

Original Signed

**Sean Audas, Development Officer
Halifax Regional Municipality**

**cc. Municipal Clerk Kevin Arjoon
Councillor Wayne Mason**

NOSEWORTHY Di COSTANZO DIAB

Barristers, Solicitors & Notaries

An Association of Independent Law Practices

John Di Costanzo Law Practice Inc.


clerks@halifax.ca

Fax: 902 490-4208

Sean, Audas, development officer
c/o Municipal Clerk,
Halifax Regional Municipality,
Planning and Development – Western region
P. O. Box 1749, Halifax, N. S.

Re-variance application # 19912, 1597 Dresden Row, Halifax, Nova Scotia

Dear Sir or Mdm.

I wish to advise you that I represent 3230813 Nova Scotia limited the owner of 1594/95 Dresden Row. My client has been provided with a copy of the variance application notice and I wish to confirm that my client wishes to appeal the municipality's decision to permit the minor variance.

The grounds of appeal include but not limited to: the location of the shed will block my client's view and sunlight through a picture window located on my client's property. In turn, this will affect my client's property value.

It is our understanding that there are a number of other locations on civic address 1597 Dresden Row in which the shed can be located without affecting my client's property and, it is my client's understanding that 1597 Dresden Row is a provincial heritage building and the shed will affect the exterior view of the property.

Please confirm that you have received this notice of Appeal.

Yours truly,

Original Signed

John Di Costanzo

JDC
Enclosures

STERLING PROPERTIES

March 4, 2016

Sean Audas
Development Officer c/o Municipal Clerk
Halifax Regional Municipality – Planning & Development – Western Region
PO Box. 1749 – Halifax, NS

Re: Variance Application #19912 – 1597 Dresden Row, Halifax, NS

Dear Sir,

With respect to Variance Application #19912, 1597 Dresden Row, we, Sterling Properties, wish to appeal.

This property at 1597 Dresden Row is a publicly registered Provincial Heritage Property and, according to the Nova Scotia Heritage Property Act, any substantial alterations to the exterior and interior must be approved the Governor in Council, and permission granted by the Minister.

While the addition of this shed may be seem to be a minimal intervention, the building itself is a small house on an extremely tight lot, so any addition has a strong impact to the façade. The proposed shed would overwhelm the scale of the entry and substantively alternates the exterior character of this lovely Provincial Heritage Property. Furthermore, the proposed addition is poorly conceived and detracts from the character-defining heritage elements of this modified Georgian style building.

We appeal this variance and feel the proposed addition is in clear violation of Nova Scotia Heritage Property Act.

Respectfully,
Original Signed

Pino Pagnottella
President & Owner

