

8.2.11



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
September 16, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Sean Audas - Development Officer

DATE: September 9, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a Variance at 8 Shore Drive, Dartmouth

STAFF REPORT

ORIGIN

This report outlines the appeal of the Development Officer's decision to refuse a variance for lot coverage of a proposed single unit dwelling at 8 Shore Drive, Dartmouth

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

Zoning:

The property is zoned DN (Downtown Neighbourhood) Zone under the Land Use By-Law for Downtown Dartmouth

Existing Use:

The current use of the property is a single unit dwelling. The property is approximately 1350 square feet in area. The dwelling currently has a 54.9% lot coverage which already exceeds the maximum lot coverage of 40% in this zone.

Proposed Use:

Maximum lot coverage of DN zone: 40%
Existing single unit dwelling: 54.9%
New single unit dwelling proposed: 64%

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria are as follows:

“A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”*

In order to be approved, the proposed variance must not conflict with any of the above statutory criteria. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw ?

- The Land Use Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The lot coverage for the DN zone is 40%. This is slightly larger than most residential zones which require a 35% lot coverage. This requirement takes into consideration the smaller lots in the downtown core.
- The existing dwelling already exceeds the 40% lot coverage and measures at 54.9%. This lot coverage can be maintained under current regulations. To exceed this existing established lot coverage is felt to violate the intent of the requirements of the Land Use By-Law.

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

- This lot is located on a street with similar lot areas (approx 1350 -2800 sq ft).
- Most dwellings in this area are approximately 34% lot coverage which is below the maximum lot coverage requirement.
- Where most lots in this area meet the current lot coverage requirements it is not felt that the difficulty experienced is general to properties in the area.

Is the difficulty experienced the result of intentional disregard for the requirements of the land use bylaw?

- The applicant has applied for a Variance request and is respecting the process.
- Work has not occurred on site and it is not felt that the difficulty experienced results in intentional disregard for the requirements of the Land Use By-Law.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined to be contrary to the provisions of the HRM Charter.

An appeal was filed by the applicant which has been included in Attachment 4.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The procedure for public notification is mandated by the HRM Charter. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to speak to staff's recommendation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the variance request.

ATTACHMENTS

1. Location Map
2. Site Plan
3. Proposed Dwelling
4. Refusal letter
5. Appeal letter

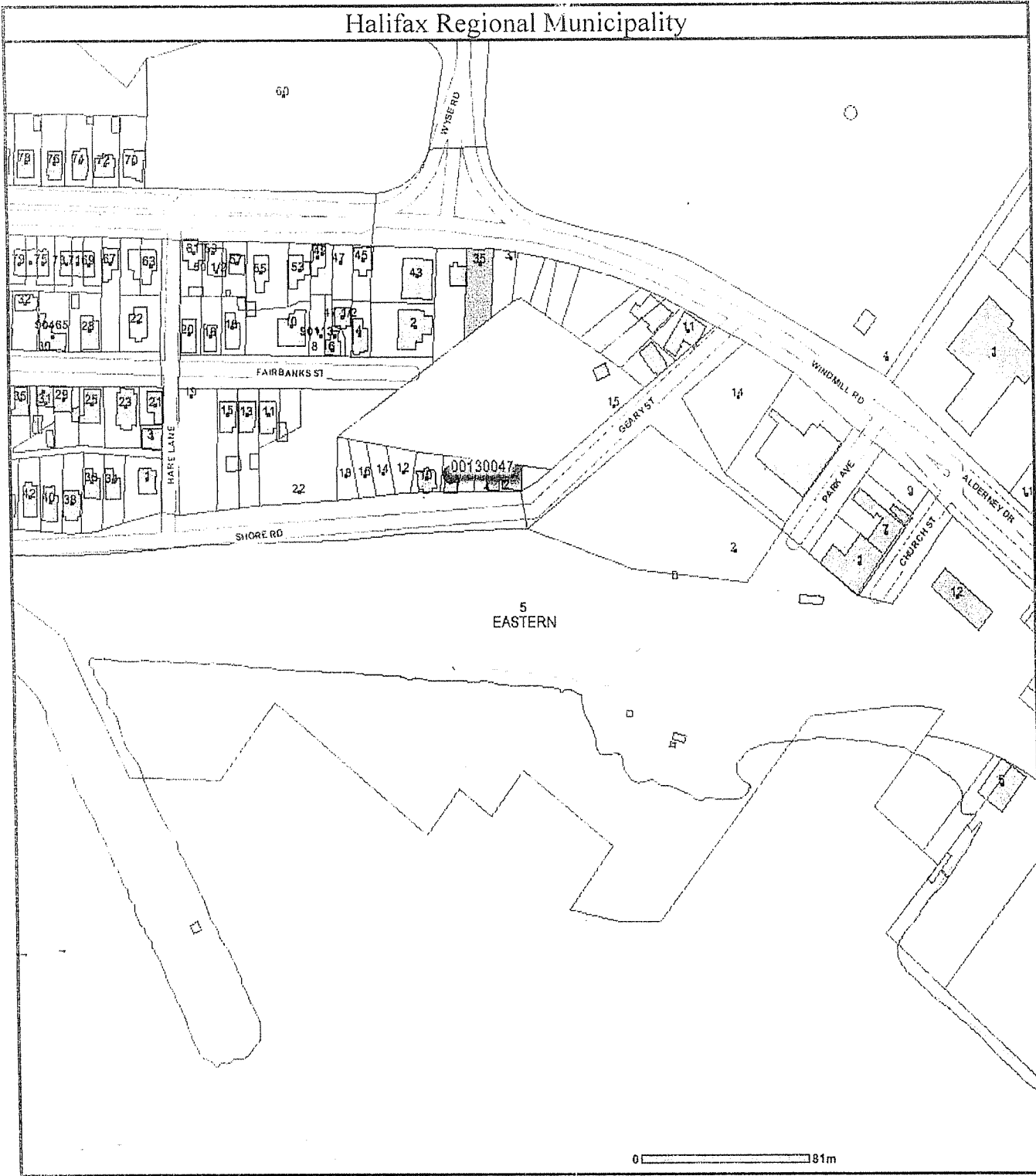
INFORMATION BLOCK

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Laura Walsh, Development Technician (490-4462)

Report Approved by: Sean Audas, Development Officer (490-4341)

Halifax Regional Municipality



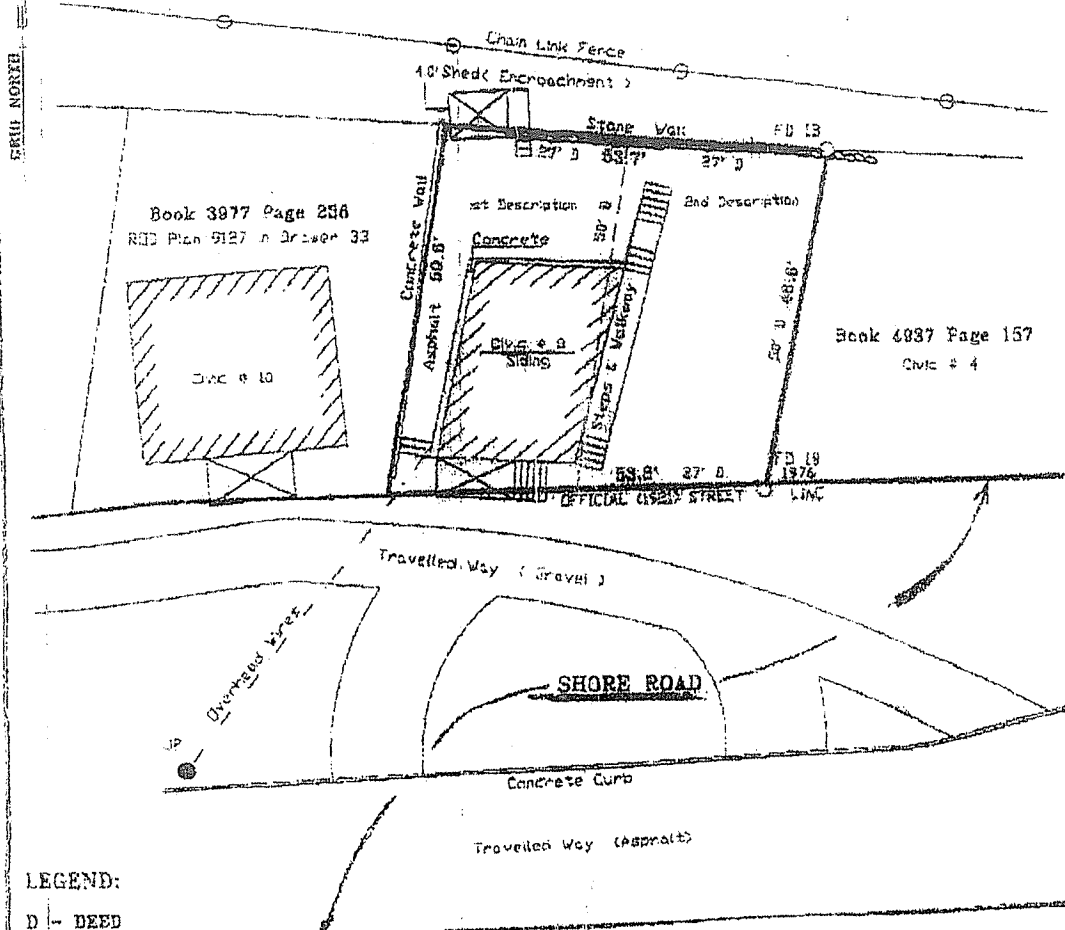
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This map was prepared for the internal use of Halifax Regional Municipality(HRM) HRM takes no responsibility for errors or omissions For further information on Street Name or Community(GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca Date of map is not indicative of the date of data creation

SURVEYOR'S LOCATION CERTIFICATE

St. Paul's Roman Catholic Cemetery
Plan Dates April 1, 1962 Signed By Walter E. Sarvant N.S.L.S.



LEGEND:

- D - DEED
- FD - FOUND
- ROD - REGISTRY OF DEEDS
- - IRON BAR

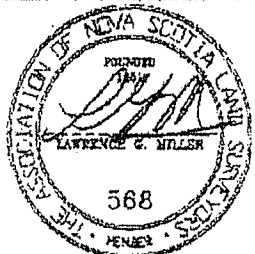
NOTE: 1. Clearances shown are perpendicular to the boundary and are to the closest corners of the structure.
2. Clearances are defined to a tolerance of 0.2'±.

I, LAWRENCE G. MILLER, NOVA SCOTIA LAND SURVEYOR, HEREBY CERTIFY THAT THIS SURVEYOR'S LOCATION CERTIFICATE WAS PREPARED UNDER MY SUPERVISION AND IN ACCORDANCE WITH PART VII OF THE NOVA SCOTIA SURVEYORS REGULATIONS MADE PURSUANT TO SECTION 8 OF THE LAND SURVEYORS ACT.

(1) THE DWELLING SHOWN HEREON IS LOCATED WITHIN THE BOUNDARIES OF THE SUBJECT LANDS AS SAID BOUNDARIES ARE DEFINED BY DEED BOOK 3372 PAGE 156 REGISTERED AT HALIFAX, N.S.

DATED FEBRUARY 21, 2000 _____ (N.S.L.S.)
(NO FURTHER CERTIFICATION OR ASSURANCE IS TO BE IMPLIED FROM THIS DOCUMENT)

- (2) THIS SURVEYOR'S LOCATION CERTIFICATE IS NOT TO BE USED FOR BOUNDARY DEFINITION OR AS A REFERENCE DOCUMENT FOR THE PREPARATION OF LEGAL DESCRIPTIONS.
- (3) CULTURAL FEATURES SHOWN HEREON ARE LOCATED TO PLOTTING ACCURACY UNLESS DIMENSIONED.



TO: CHRISTINE GALLANT
BRAD BOUDREAU
RE: CIVIC # 8
SHORE ROAD
DARTMOUTH
HALIFAX COUNTY, N.S.

ACUTE SURVEYS INC.
Hatchet Lake, Nova Scotia
902 852-4822
Lawrence G. Miller
NOVA SCOTIA LAND SURVEYOR

FIELDWORK FEBRUARY 18, 2000 FILE NO. 00-06
SCALE: 1"=30' S.L.C 23812

27'

Lot 21' x 48'
= 1296 sq/ft

10'

23'

House 23' x 38'
= 874 sq/ft

Lot Coverage
874 / 1350
= 64%

48'

3'

38'

proposed dwelling

9'

6' DECK

27' 8 Shore Road

PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

July 21, 2010

Richard Edward Power
84 Lakeshore Park Terrace
Dartmouth, NS
B3A 4Z4

Dear Mr Power:

RE: Application for Variance, File No. 16313 - 8 Shore Road, Dartmouth, Nova Scotia

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for *Downtown Dartmouth* as follows:

Location: 8 Shore Road, Dartmouth
Project Proposal: To construct a single unit dwelling
Variance Requested: Vary the lot coverage to 64%

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 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.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, therefore your request for a variance has been refused.

Pursuant to Section 251(4) 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
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region

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P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before *August 3, 2010*.

If you have any questions or require additional information, please contact Laura Walsh at at **490-4462**.

Sincerely,



Sean Audas
Development Officer

cc: Cathy Mellett - Municipal Clerk
Councillor Gloria McClusky, District 5

Laura Walsh - variance file#16313

From: Ed Power <edpower@accesswave.ca>
To: <audass@halifax.ca>
Date: 27/07/2010 4:40 PM
Subject: variance file#16313

hi sean; This email to confirm my appeal for 8 shore road to vary lot coverage to 64%. Please pass this on to Laura Walsh as we were dealing with her and I don't have her email. Also please advise on my next step in this process. thanks ed