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Halifax, Nova Scotia
B3J 3A5 Canada

8.2.1

Peninsula Community Council
January 9, 2011

TO: Chair and Members of Halifax Peninsula Community Council

SUBMITTED BY:


Sean Audas, Development Officer

DATE: December 29, 2011

SUBJECT: **5528 Merkel Place, Halifax- Appeal of the Development Officer's
decision to refuse an application for a variance**

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the side yard setback requirements of the Halifax Peninsula Land Use Bylaw to permit the construction of an attached garage.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 5528 Merkel Place in Halifax (see Attachment 1- 'Map 1 – Location'). The property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use By-law. The permitted uses in the R-2 Zone include those permitted in the R-1 zone, Semi-detached or duplex dwellings and buildings containing not more than four apartments. The townhouse construction typical of the Hydrostone is a non-conforming use in the R-2 Zone, and as such, would not normally be eligible for additions. Section 16F(3) of the Land Use Bylaw addresses this issue, requiring that additions to townhouses comply with the requirements of the zone in which the use is permitted; in this case, the R-2T Zone.

The applicant is proposing to add an attached garage to the end dwelling unit of a block of dwellings in the Hydrostone. (See Attachment 2- 'Map 2- Site Plan'). The R-2T Zone requires a 10 (ten) foot side yard.

The property description registered with the deed indicates that the property is 29.25' wide. The applicant illustrated that the dwelling unit on the property is 18 feet wide, leaving 11 feet between the side wall of the building and the property line. The applicant is proposing an 11 foot wide attached garage, which would result in a 0 (zero) foot side setback.

It should be noted that HRM's GIS mapping of the property indicates an existing 8 foot side setback. If a permit application is received on the property, a survey, by way of a location certificate will be required to verify the existing setback and the buildable area will have to be adjusted accordingly on any submitted plans.

The applicant submitted an application for consideration of the variance on October 20, 2011. The variance was originally considered under R-1 Zone regulations. The variance was refused, and the applicant filed an appeal of the refusal on November 16, 2011 (see Attachment 3 -Appeal Letter). The consideration under the R-1 Zone regulations has since been revealed to be incorrect, and is now being assessed against the R-2T Zone requirements.

DISCUSSION

The Halifax Regional Municipal Charter sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use by-law;*
- (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 by-law."*

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

Does the proposed variance violate the intent of the land use by-law?

The intention of the side yard setback is to provide access to the rear yard, to allow for open, green space on the property and to provide adequate separation between uses. While the Hydrostone area typically has a lane in the rear of the houses for access and amenity and service space, a reduction to zero feet from the property line does not allow for these intended elements, and as such, the reduction violates the intent of the Land Use Bylaw. Further, the requested reduction from ten feet to zero feet exceeds any reasonable tolerance which could be considered consistent with the intent of the setback.

Is the difficulty experienced general to properties in the area?

If the area is considered to extend throughout the Hydrostone, as the regulations under the bylaw are uniform for the whole neighbourhood and the Hydrostone has a unique and uniform character and built form, the relaxation would set the precedent for approximately 120 end units. Each end unit would have issues meeting the side setback if proposing an addition of this size. While it is recognized that there are existing structures within the side setback, they either predate the 1950's R-2 Zone, or have had variances granted to them. If the structures are being considered by a series of variances, it can be proved that the difficulty is indeed common to many properties in the neighbourhood. The difficulty experienced in regards to the side yard variance is general to the area.

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

There is no intentional disregard for the requirements of the land use bylaw. The applicant has applied for a Development Permit and the variance prior to commencing construction on the property, and is proceeding with the proper process.

As the application to decrease the side yard setback requirement violates the intention of the Land Use Bylaw, and the difficulty experienced is general to the area, the application has been **refused**.

BUDGET IMPLICATIONS

There are no budget implications related to this variance.

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

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*. 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

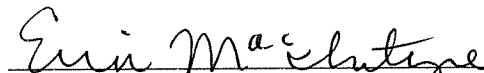
1. Council could overturn the decision of the Development Officer and approve the variance.
2. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.

ATTACHMENTS

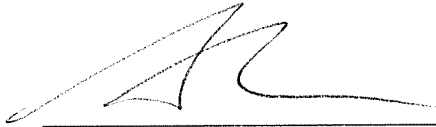
1. Attachment 1- 'Map 1 – Location'
2. Attachment 2- 'Map 2- Site Plan'
3. Attachment 3 - Appeal Letter
4. Attachment 4- Letter from property owner within notification area- 5512 Merkel Place
5. Attachment 5- Letter from property owner within notification area- 5539 Columbus Place
6. Attachment 6- Letter from property owner within notification area- 5524 Merkel Place

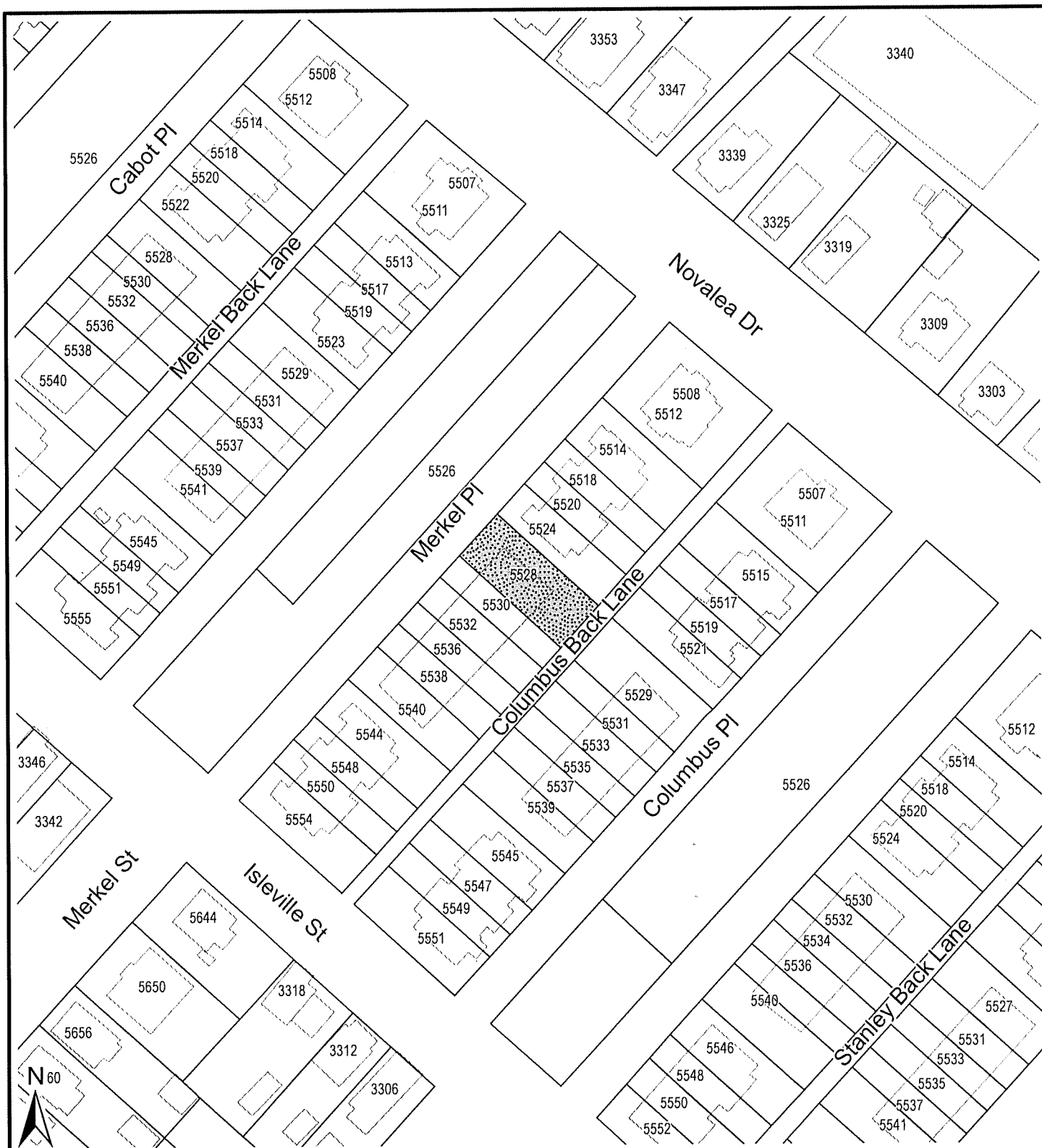
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by :


Erin MacIntyre- Development Technician, 490-4338

Report Approved by:


Sean Audas- Development Officer, 490-4402



Map 1 - Location

5528 Merkel Place
Halifax

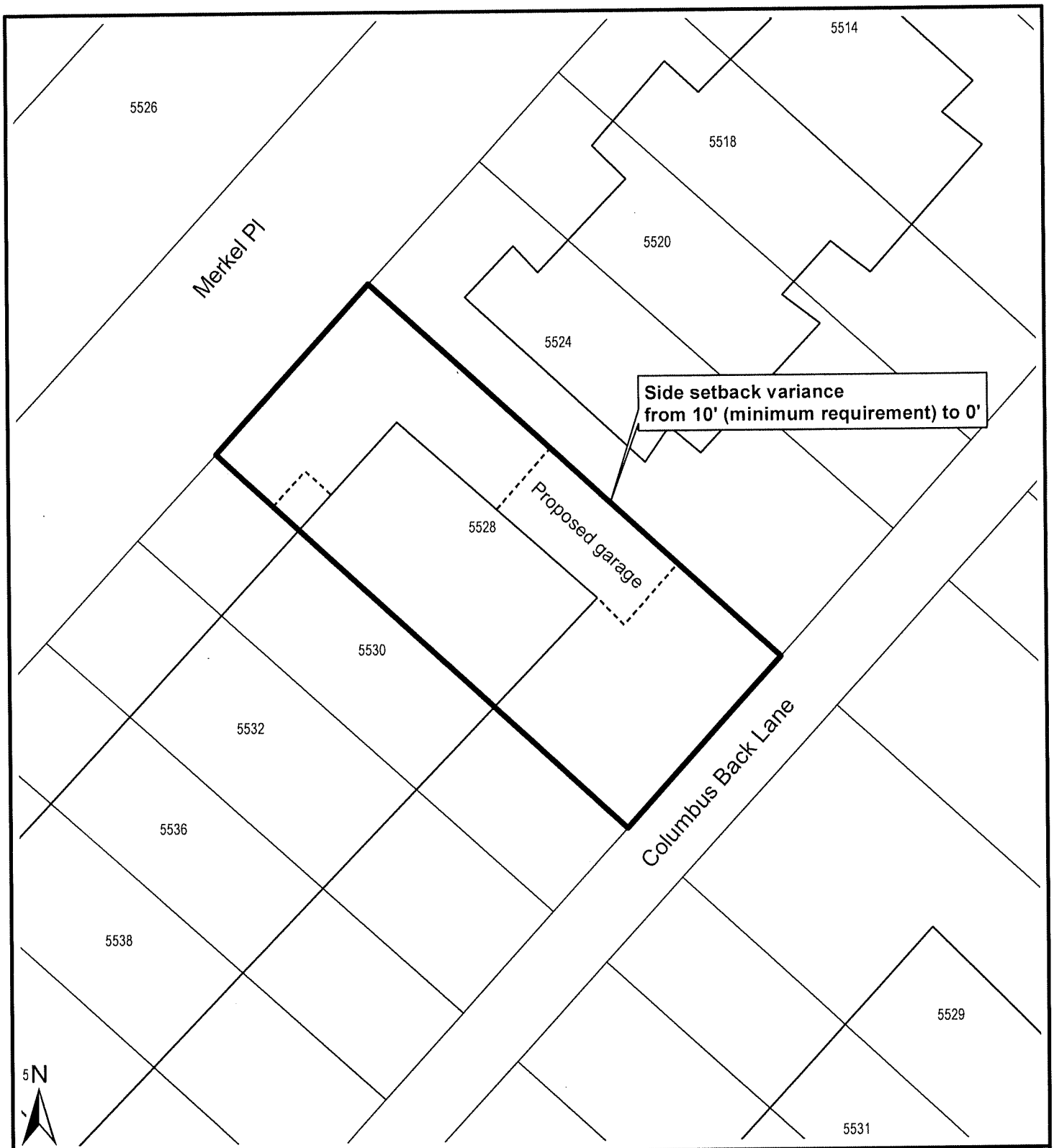
HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



Subject property




HRM does not guarantee the accuracy
of any representation on this plan



Map 2 - Site Plan

5528 Merkel Place
Halifax

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

 Subject property

HRM does not guarantee the accuracy
of any representation on this plan

APPEAL - Case No 17331 - Variance

NOV 16, 2011
Anne Mackay

RECEIVED

(a) I do not understand the "intent" of the By-law.
The garage will replace a deck structure which has been in place since the 1970's.
It will sit on the footprint of the deck with no change from the back lane and only a slight difference in length - not noticeable from the street view.

(b) Re "difficulties"
Our neighbours have absolutely no objection to the garage. The deck has been there since the 1970's.

Enclosed are photographs of several similar garages located between end unit buildings.
They all have (0) Zero feet of clearance.

We are senior citizens and plan to remain in our home as long as possible. Having a garage will make ~~been~~ for far less snow-shovelling and much easier storage of gardening supplies.

I have spoken to our Alderman, Jerry Blumenthal, who is supportive of our project.

Thank you for your consideration.

Sincerely,

Anne Mackay

December 1, 2011

Sean Audas
Development Officer, Western Region
Halifax Regional Municipality
P.O. Box 1749
Halifax, NOVA SCOTIA
B3J 3A5

Dear Mr. Audas:

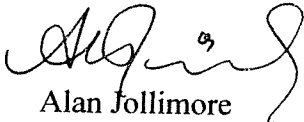
**Re: HRM Application No. 17331 – Variance at 5528 Merkel Place, Halifax, Nova Scotia
PID 00115543**

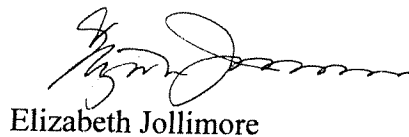
We have received your correspondence of November 28, 2011 regarding the appeal from a refusal to grant a request for a variance from the requirements of the Land Use Bylaw to permit construction of a garage at 5528 Merkel Place.

We believe this appeal should be allowed: the variance should be granted so that the garage may be constructed.

Please bring this letter to the attention of the municipal clerk and councillors.

Yours truly,


Alan Jollimore


Elizabeth Jollimore

December 02.2011

RE:HRM Application # 17331- Variance at Merkel Place, Halifax, NS PID 00115543

To: Sean Audas
Development Officer, Western Region

From: Anne Hanlon

Our neighborhood is unique in Canada and I would like to preserve it. In time of strong real estate pressures, it is going to be more and more difficult to do so.

There are already renovations done on units which are not in keeping with this historic neighborhood so adding a garage will not help. Moreover it will change the original land occupancy concept of an English garden city by reducing or suppressing space between houses. It would be a precedent that could totally transform every back yard and in consequence the aspect of this very exceptional neighborhood.

Even though I understand the practicality of a garage and I think it would be nice to have, I am sorry, but for the above mentioned reasons, I could not support the request of a permit.

Yours truly

Anne Hanlon

>>>

12/6/2011 10:21 am >>>

Good day,

I am the property owner of 5524 Merkel Place, and my property is located within 30 m (100 feet) of subject application / appeal for the construction of an attached garage.

I support Section 253 (3) of the Halifax Regional Municipal Charter and the decision made by the Development Officer, and wish the requirement of the 4 feet minimum side yard setback remain in place.

Will you please confirm this email will be accepted as written submission with respect to the proposal?
Thanks

Regards,

Toby

Ms. Toby Meade