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Halifax, Nova Scotia
B3J 3A5 Canada

**Western Region Community Council
September 20, 2010**

TO: Chair and Members of Western Region Community Council

SUBMITTED BY:


Trevor Creaser, Development Officer

DATE: September 13, 2010

SUBJECT: Appeal of the refusal of a Variance # 16283 - 169 Ashdale Cres, Timberlea

ORIGIN

This is an appeal of the Development Officer's decision to refuse an application for a variance from the left yard setback requirements of the Timberlea, Lakeside, Beechville Land Use Bylaw for the construction of an addition to a single unit dwelling.

RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to refuse the request for the variance.

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BACKGROUND

The subject property is located at 169 Ashdale Crescent, Timberlea (refer to Attachment 1). This property is zoned R-1 (Single Unit Dwelling) under the Timberlea, Lakeside, Beechville Land Use Bylaw.

An application for variance was made on July 2, 2010 to construct an two storey addition to the existing dwelling which includes an attached garage and a workshop on the 2nd level. The proposed size of the addition is 21 feet wide by 30 feet Long. As the existing setback from the building to the property line is 25.7 feet, the addition would result in a setback of 4.7 feet (refer to Attachment 2). The requirement under the R-1 Zone is eight (8) feet. If the width of the building was reduced to 17 feet, the 8 foot setback requirement can be met.

The Development Officer refused the variance on August 12, 2010 (refer to Attachment 3). This was then appealed by the applicant on August 22, 2010 (refer to attachment #4).

DISCUSSION

The *Halifax Municipality Regional 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 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 guidelines. An assessment of the proposal relative to these stipulations is set out below

(a) variance violates the intent of the land use bylaw;

The intent of minimum side yard setback requirement is to provide adequate separation of buildings from adjacent properties. This is necessary to ensure compatibility of uses, to minimize potential conflicts between neighbouring structures and ensure that the buildings can be accessed on their own property for maintenance and repair. It is therefore determined that permitting an addition to be 4' 7" and running 30' along the property line would *violate the intend of the land use bylaw.*

(b) difficulty experienced is general to the properties in the area;

The lots and buildings in the area are generally the same size and configuration. Therefore the *difficulty experienced is general to properties in the area.*

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(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”

Intentional disregard is not a consideration in this variance.

BUDGET IMPLICATIONS

None

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

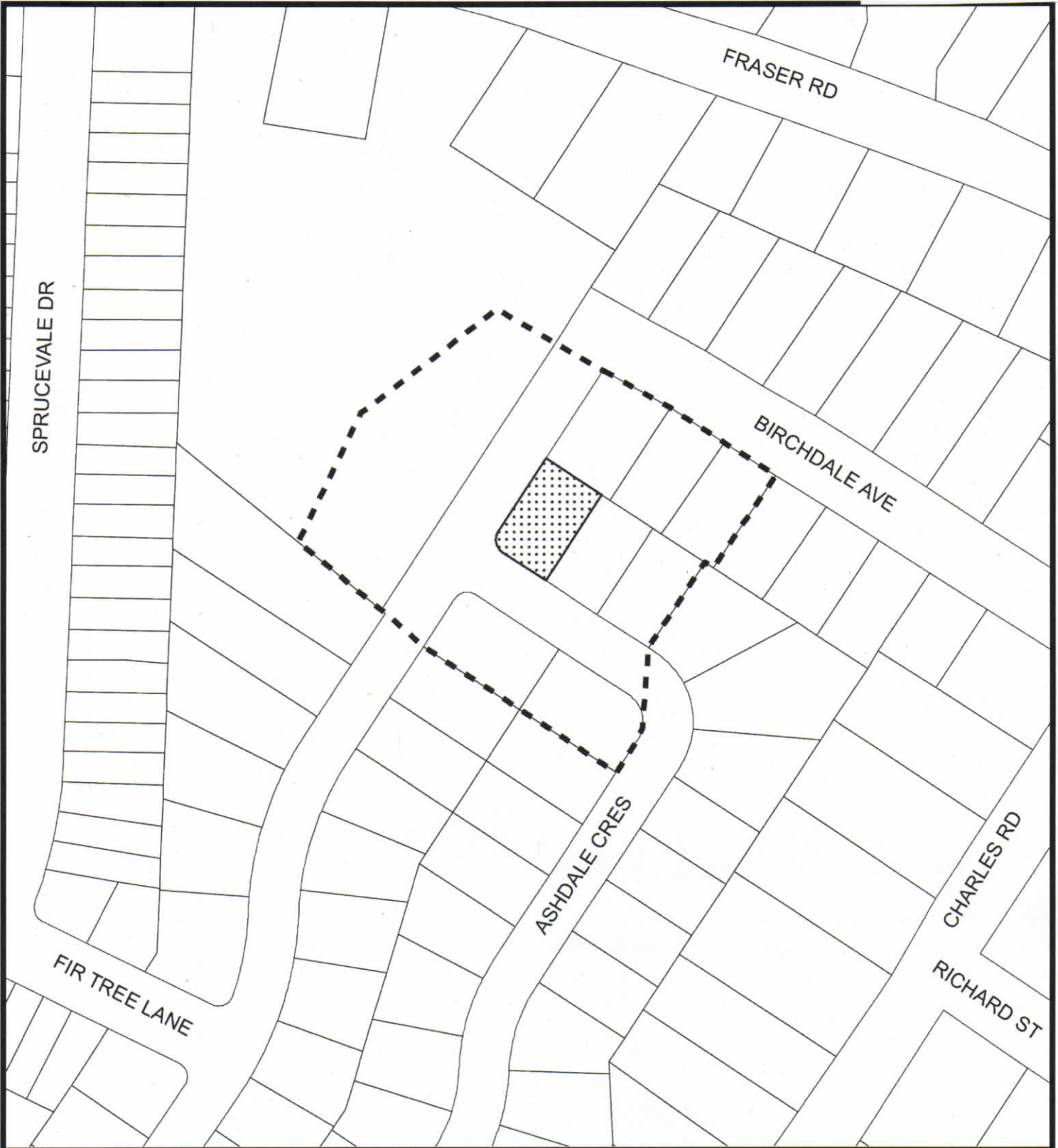
ALTERNATIVES

1. Uphold the decision of the Development Officer to refuse the application for variance.
2. Overturn the decision of the Development Officer, thereby allowing the variance.

ATTACHMENTS


1. Location map
2. Site Plan
3. Refusal Letter
4. Appellant’s Letter

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: Trevor Creaser, 869-4235.

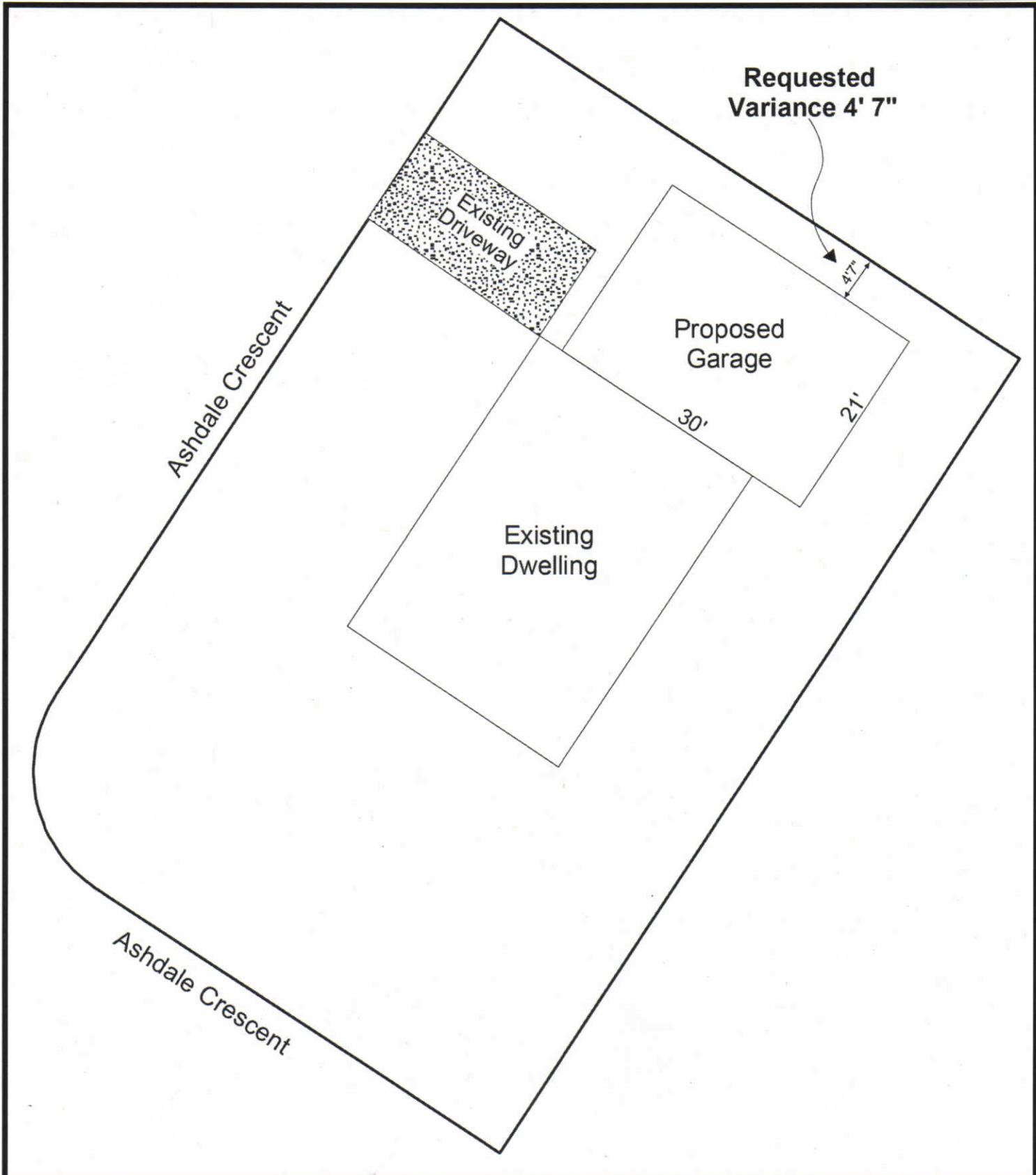


Map 1
Notification Area



- Notification Area
-  Subject Property





Map 2
Site Plan



COMMUNITY DEVELOPMENT

Attachment # 3

August 12, 2010

Mr. Roland Pothier
169 Ashdale Cres
Timberlea, NS B3T 1K1

Dear Mr. Pothier:

RE: Application for Variance # 16283 - 169 Ashdale Crescent, Timberlea

This will advise that I have refused your request for variance from the requirements of the Land Use Bylaw for Planning District Timberlea, Lakeside, Beechville as follows:

| | |
|--------------------------|---|
| Location: | 169 Ashdale Crescent |
| Project Proposal: | Construct an addition on the left side of an existing dwelling and allow the structure closer to the left side yard property line than permitted under the land use bylaw |
| Required Setback: | 8' from the Left Side Property Line |
| Proposed Setback: | 4' 7" from the Left Side Property Line |

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 the intentional disregard for the requirements of the development agreement or land-use by-law.

It is the opinion of the Development Office that this variance would *violate the intent of the Land Use By-Law*. Also, this property is similar in size and configuration as other properties in the area, therefore, *the difficulty is general to properties in the area*.

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:

Trevor Creaser
Development Officer
Halifax Regional Municipality
Development Services - Central Region
636 Sackville Drive
Sackville, NS B4C 2S3

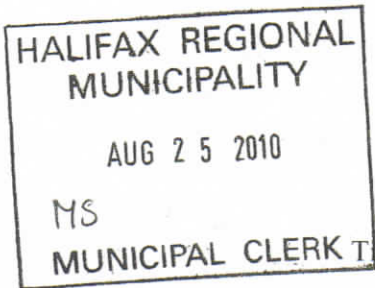
Your appeal must be filed on or before **August 23, 2010**.

If you have any questions or require additional information, please contact **Connie Sexton** at **869-4005**.

Sincerely,


Trevor Creaser
Development Officer

cc. Cathy Mellett, Acting Municipal Clerk
Councillor Reg Rankin



Roland Pothier
169 Ashdale Crescent
Timberlea, NS B3T 1K1
Telephone: 229-7101

August 22, 2010

Mr. Trevor Creaser, Development Officer
Halifax Regional Municipality
Development Services - Central Region
636 Sackville Drive
Sackville, NS
B4C 2S3

Dear Mr. Creaser,

**RE: APPEAL to the decision on Application for Variance # 16283 - 169 Ashdale Crescent,
Timberlea**

We have received your refusal in regards to our request for Variance # 16283 *to construct an addition (attached garage) on our existing dwelling and allow the structure closer to the left side yard property line than permitted under the land use bylaw.*

Please accept this letter as a formal appeal to your decision as we feel our request is not violating the intent of the development agreement or land-use by-law as sufficient space would still remain to ensure our Health & Safety and that of our neighbours. As well, we feel that all fire regulations would still be met and we would ensure the addition was built according to code. Access to our property and that of our neighbours would not be an issue with our proposed setback. Lastly, we are well below our lot coverage in the area of "green space". We currently have two sheds in our proposed building space and feel that a unified attached garage would be more appealing then the two smaller sheds we intend on replacing.

As for the second section you have cited we are in violation of : *the difficulty experienced is general to properties in the area*, we also chose to appeal this as we strongly feel that our property is unique, namely the placement of the existing dwelling (house) on our property which allows us greater flexibility to construct an addition as proposed. We agree that many corner lots in our area are similar, but the house placements and ability to build such addition as we have proposed is far from similar.

Should you have any questions or require further information, please contact me.

Regards,



Roland Pothier

cc. Cathy Mellett, Acting Municipal Clerk
Councillor Reg Rankin