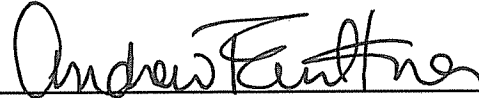


TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: July 19, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a variance at civic 968 Herring Cove Road, Halifax

ORIGIN

Pursuant to Section 251 (4) of the Halifax Regional Municipality Charter any person served notice of a refusal of a variance may appeal the decision of the Development Officer to the Municipal Council.

This report deals with an appeal of the Development Officer's decision to refuse an application for a variance from the requirements of the land use bylaw for property at 968 Herring Cove Road, Halifax

RECOMMENDATION

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

BACKGROUND

The subject property is zoned Herring Cove Residential under Planning District 5 Land Use By-law. This property is 19,857 square feet in area. The minimum lot area requirement is 10,000 square feet

The proposal is to construct a car port at the front of an existing single family dwelling at six (6) feet from the front property line, the minimum setback requirement is twenty (20) feet. All other requirements of this zone have been met.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may not 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.

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

It is the opinion of the Development Officer that the variance does violate the intent of the Land Use Bylaw for Planning District 5. The intent of the bylaw is to keep buildings 20 feet from the front property line. The request is to reduce the minimum requirements to six (6) feet. This proposal will result in a property that is out of character with the other properties in the area. By circumventing the requirement, there is the potential that the existing street scape could be altered by the approval of this structure. As well, the front yard setback requirement is in part required for possible future widening of public streets.

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

Yes, the difficulty experienced is general to the properties in the area. This an established neighbourhood where other dwellings meet the minimum 20 foot front yard setback. Most lots in the neighbourhood have similar setbacks, lot area and frontages as this property.

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

Yes, the property owner began construction without applying for the necessary permits, therefore, the difficulties are a result of intentional disregard of the requirements of the land use by-law

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. 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 approve the variance.

ATTACHMENTS

1. Site plan
2. Refusal letter
3. Appellant letter
4. Notification letter
5. Notification list

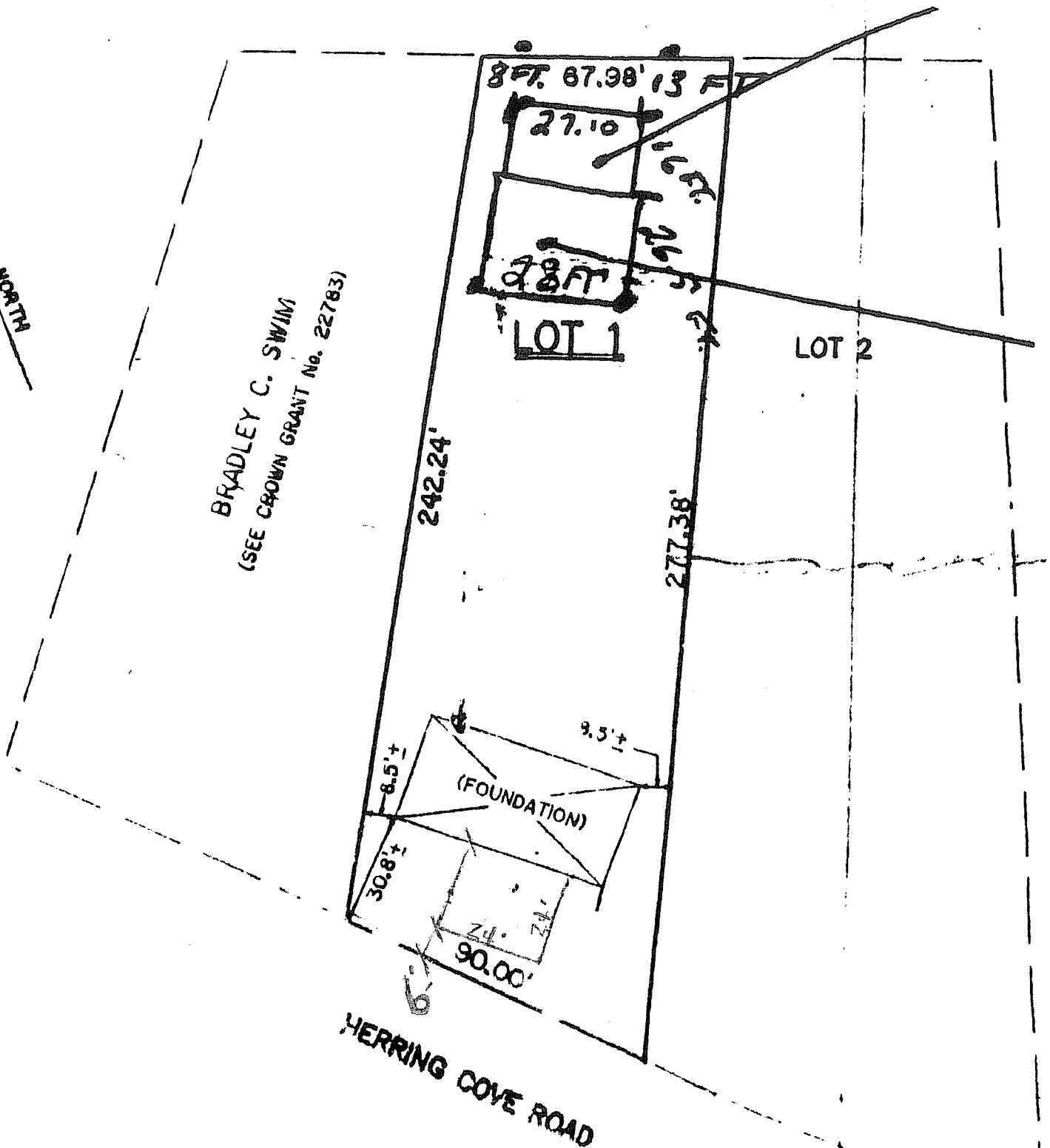
INFORMATION BLOCK

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: Liz Scott, Development Technician - 490-4409

LOCATION CERTIFICATE

UNGRANTED LANDS OF THE
PROVINCE OF NOVA SCOTIA



June 21, 2010

Blain James
968 Herring Cove Road
Halifax, NS
B3R 1Z6

Dear Mr. James:

RE: Application for Variance 16239, at civic 968 Herring Cove Road

This will advise you that as the Development Officer for the Halifax Regional Municipality I have refused your request for a variance from the requirements of the Land Use Bylaw for Planning District 5 as follows:

Location:	968 Herring Cove Road, Halifax
Project Proposal:	Construct car port at front of existing dwelling
Minimum front yard setback:	20 feet
Variance Requested:	6 feet

Section 250(3) of the **Halifax Regional Municipal Charter** states that:

No variance shall be granted where:

- (a) the variance violates the intent of the Development Agreement or 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 Development Agreement or Land Use Bylaw.**

It is the opinion of the Development Officer that the difficulty experienced is general to properties in the area and there has been intentional disregard for the requirements of the Land Use Bylaw.

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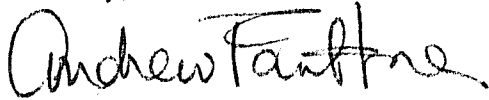
Pursuant to Section 251(4) of the **Halifax Regional Municipal Charter** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5**

Your appeal must be filed on or before *July 1, 2010*

If you have any questions or require additional information, please contact this office at 490-5660.

Sincerely,



Andrew Faulkner,
Development Officer

cc.

Cathy Mellett, Acting Municipal Clerk
Councillor Steve Adams, District 18


COMMUNITY SERVICES - WESTERN REGION

Tel: (902) 490-4402 Fax (902) 490-4645

E-mail: faulknaa@halifax.ca Web Site: www.halifax.ca

June 16 2010

I Blaine James of 968
Henry Cove Rd. here by
Appeal H.R.M. Deemster TO
Deem my Building Permit app.

Per: Blaine James Home owner.


Ph: 499-5116 cell.
475-1080 Home





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

COMMUNITY SERVICES
WESTERN OFFICE

July 5, 2010

Dear Sir or Madam:

RE: Variance Case 16239 at civic 968 Herring Cove Road, Halifax

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 Municipality Charter, Section 251(4).

This will advise you that as the Development Officer for the Halifax Regional Municipality I have refused a request for a variance from the requirements of the Land Use Bylaw for Planning District 5 as follows:

Location:	property at 968 Herring Cove Road, Halifax
Project Proposal:	construct a carport at front of existing dwelling
Variance Requested:	reduce minimum front yard setback from 20 feet to 6 feet

It is the opinion of the Development Officer that the difficulty experienced is general to properties in the area and there has been intentional disregard as the property owner did not apply for the necessary permits before starting construction..

The applicant has appealed my refusal and the objections will be presented to the Western Community Council on Monday, July 26, 2010 at 7p.m. at Keshen Goodman Library, 330 Lacewood Drive, Halifax.

If you have any questions or require additional information, please contact Liz Scott at 490-4409.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

Andrew Faulkner
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Steve Adams, District 18

OWNER1
BOWERS LORE DANA
DEMPSEY SCOTT MICHAEL
HEAVEY LOLA
JAMES BLAINE BRUCE
SIM JUZILLE NADEAN
STROPLE PAUL DONALD
STROPLE-SOMBEEK LIZETH
n/a

OWNER2
DEMPSEY MELANIE JEAN
HEAVEY MARK OLIVER
JAMES LAURA LEE
STROPLE-SOMBEEK LIZETH
STROPLE PAUL DONALD
n/a

ADDRESS1
967 HERRING COVE RD
964 HERRING COVE RD
18 HOWE ST
968 HERRING COVE RD
966 HERRING COVE RD
970 HERRING COVE RD
970 HERRING COVE RD
n/a

ADDRESS2
HALIFAX NS
HALIFAX NS
SALFORD null
HALIFAX NS
HALIFAX NS
HALIFAX NS
HALIFAX NS
n/a

POST CODE
B3R 1Z5
B3R 1Z6
M7 2FS
B3R 1Z6
B3R 1Z6
B3R 1Z6
B3R 1Z6
n/a

Vol # 16237