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Harbour East Community Council
July 5, 2007

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:


Sean Audas, Development Officer, Community Development

DATE: June 26, 2007

SUBJECT: Appeal of Variance approval at 73 King Street, Dartmouth

ORIGIN

This report deals with the appeal of the Development Officer's decision to approve a variance of the maximum front yard setback at 73 King Street, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council uphold the Development Officer's decision to approve the variance at 73 King Street.

BACKGROUND

Zoning:

The property is zoned DB (Downtown Business) Zone under the Land Use By-Law for Downtown Dartmouth.

Proposed Use:

A permit was issued for the construction of an accessory building for the existing funeral home at 29 Queen Street. Before this permit was issued, a Statutory Declaration was provided by the owner which outlined their intention to consolidate the existing lots into one as per subsection 268A of the Municipal Government Act. The owner had already started construction when they were notified that the Statutory Declaration would not be approved. This left the owner exploring other options where the building was already under construction.

The building could be considered a main use of the property, however it would have to meet the requirements of the land use by-law. The DB Zone provides for a maximum front yard setback of 2 feet. The building did not meet this provision and a Variance would have to be approved in order to complete construction.

DISCUSSION

The *Municipal Government Act* sets out criteria in part 235(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 by-law sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The intent of the Downtown Business Zone is to require buildings be located near the street and maximize the building area.
- Some lots existed prior to the requirements and cannot be practically developed based on the current regulations and their existing configuration.
- The Development Officer feels *that the proposal does not violate the intent of the land use by-law as the existing lot is not able to be developed without a variance.*

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

- Many of the existing lots have sufficient road frontage to support a building.
- This is the only flag lot within this block of the downtown.
- A right of way is also used for access which restricts the construction of a building near King Street.
- *The difficulty experienced with this lot is not general to properties in the area.*

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

- Construction started as the intention was to consolidate the property with 29 Queen Street under the Municipal Government Act.
- The permit was issued in good faith by HRM as a result of a Statutory Declaration provided by the owner.
- The declaration was rejected, which is rare, after construction had started. The Statutory Declaration and the permit were done in good faith and when the problem was identified the applicants lawyer informed the Municipality.
- *Intentional disregard for the requirements of the land use by-law was not a consideration in this application.*

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was granted as it complied with the provisions of the Municipal Government Act.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report

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 and approve the variance. This is the recommended alternative.

2. Council could overturn the decision of the Development Officer and refuse the variance request.

ATTACHMENTS

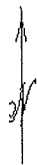
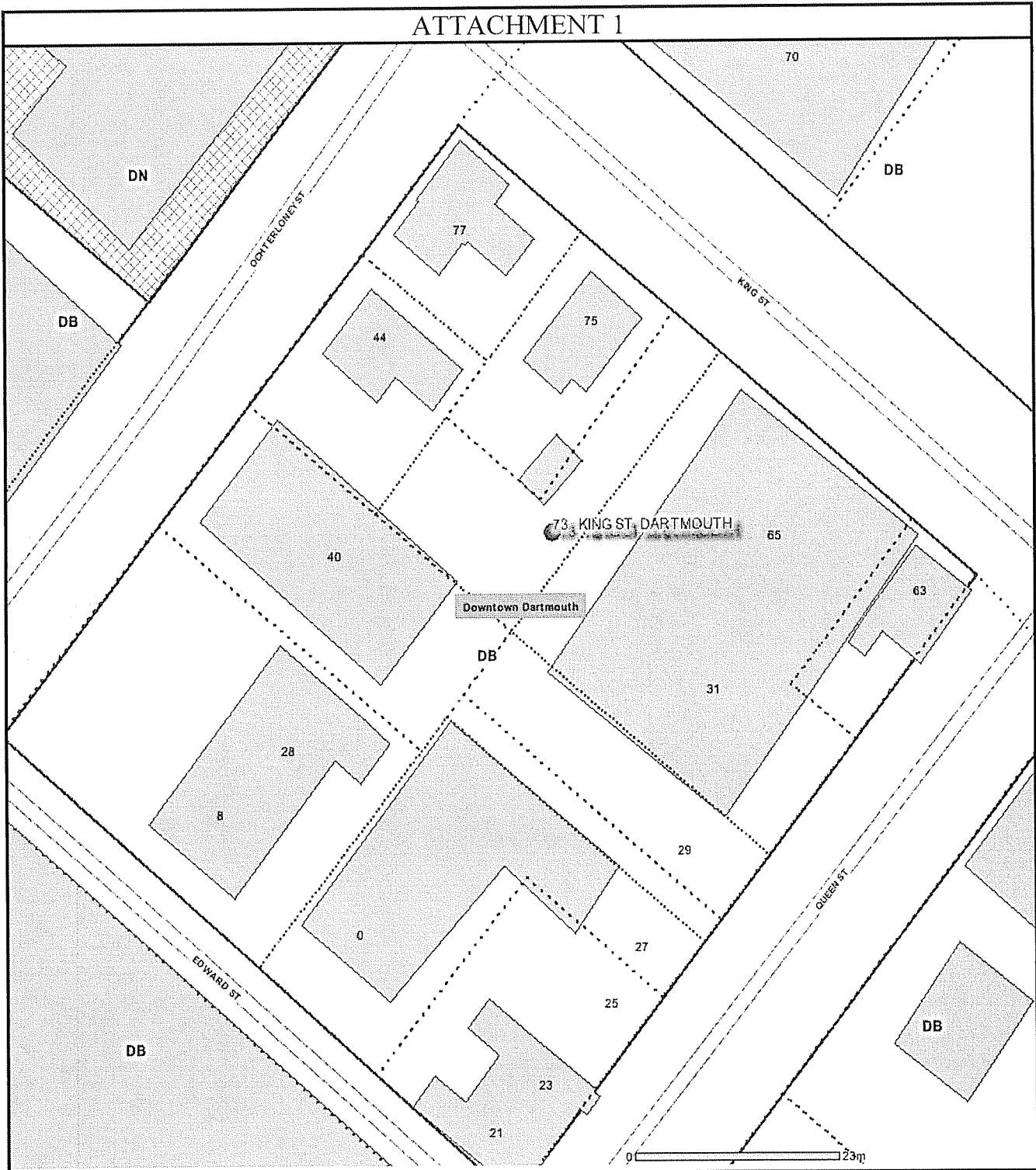
1. Location Map
2. Approval Letter
3. Appeal Letter

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 : Marc Ouellet, Development Technician, 490-5985

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

ATTACHMENT 1



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.

HALIFAX REGIONAL MUNICIPALITY

Planning & Development Services
Eastern District, Alderney Gate Office

PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Telephone: 902-490-4490
Fax: 902-490-4661

May 23, 2007

Dear Sir or Madame:

Re: Case No. 13609- Variance at 73 King Street, Dartmouth, Nova Scotia

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 Municipal Government Act, Section 236.

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

Location:	73 King Street, Dartmouth
Project proposal:	Vehicle storage
Applicant:	Phillip Levandier
Minimum Setback:	2 feet (0.6 m) from street line
Approved Variance:	82 feet (24.99 m) from street line

In accordance with Section 236 of the **Municipal Government Act**, all assessed owners of property within 30 metres (100 feet) of 23 Gloster Court, Dartmouth have been notified of this variance. As one of these property owners you have the right to appeal the decision of the Development Officer to the Municipal Council. An 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
P.O. Box 1749
Halifax, NS B3J 3A5**

Notice of the appeal must be filed on or before June 9, 2007.

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

If you have any questions or require clarification of any of the above, please call Marc Ouellet at 490-5985.

Yours truly,


Sean Audas, Development Officer
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk
Gloria McCluskey, Councillor District 5



QUACKENBUSH, THOMSON & ROBBINS
BARRISTERS AND SOLICITORS

2571 WINDSOR STREET HALIFAX, NOVA SCOTIA B3K 5C4
TELEPHONE (902) 492-1655 FACSIMILE (902) 492-1697

June 8, 2007

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, Nova Scotia B3J 3A5

Dear Mr. Audas:

Re: Case No. 13609 - Variance at 73 King Street, Dartmouth, NS

My client, Greg Sheffer, owner of 77 King Street (PID# 00083915), 40 Ochterloney St. (PID# 00084 and 44 Ochterloney St. (PID # 00108019), hereby files an appeal of the granting of a variance to the construction of a building at the rear of 73 Kings St. (PID# 00083931).

The variance procedure is normally used for minor issues such as decks too close to property line should not be used to allow the development of a lot which could not be built on without the application of the variance. Normally when a variance is granted, the neighbouring property owners have a certain comfort that the development applied for will be the end use. That comfort is not present here. Once a variance is granted the owner will be permitted to build any use that is permitted in the zone. It is believed that some of the permitted uses could have a negative affect on the development of Sheffer's property.

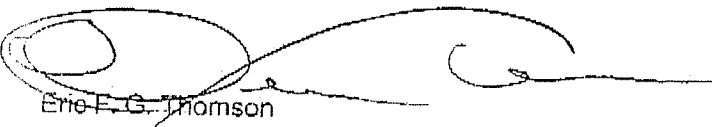
Council should also be concerned about the history of the application. The building permit was granted based on the applicant's submission that it would consolidate the lot with another property and the garage would be an accessory use only. Now it is being proposed as a main use.

It has no fire prevention materials. We are told this is not necessary because it is 4 feet from the property line. We do not believe that it is. The building appears to be very close to the property line.

In conclusion, variances should not be granted to clear mistakes that have been made. There should be proper planning and neighbourhood impact should be analyzed. This has not been done. It has been considered based on the presence of a garage, not other uses that will now be permitted as a result of the waiving of the 2 foot front set back requirement.

Yours truly,

QUACKENBUSH, THOMSON & ROBBINS



Eric F. G. Thomson

EFGT / vs