


8.2.1

TO: Chairman and Members of Harbour East Community Council

SUBMITTED BY:


Sean Audas - Development Officer

DATE: July 25, 2008

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a Variance at 71 Paxton Drive, Cole Harbour

STAFF REPORT

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance of the front yard setback for a proposed addition to a single unit dwelling at 71 Paxton Drive, Cole Harbour, NS

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned R-1 (Single Family Dwelling) Zone under the Land Use By-Law for Cole Harbour/Westphal

Existing Use:

A current use of the property is a single unit dwelling. The subject property is approximately 7,700 square feet. The dwelling is situated approximately 22 feet from the property line. A variance was requested for an addition to the existing building. The addition, if constructed measures 8' x 10' and would establish the dwelling at 12 feet to the front property line. The By-law requires that buildings in a R-1 Zone be setback to the building line at a minimum of 20' feet The established setback of 20-25 feet is consistent on Paxton ~~East~~ ^{Drive} and many of the nearby streets in the neighborhood.

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 Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The setback from the street line required for the R-1 zone is 20 feet. The addition would be reduce this setback to 12 feet.
- All of the dwellings in the neighborhood are at this setback and a 20-25 foot setback is indicative of this street setting .
- Additional reasons for a required setback are for maintenance purposes, such as future expansion of roads, sidewalk construction, signage, drainage issues and snow removal.
- A reduction to 12 feet from the required 20 feet is a substantial request. This is not supported by the Development Officer.

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

- This lot is located on a street with similar building line setback (approx 20 feet).

- Many of the existing buildings on the street are at a similar setback to this property.
- The Development Officer feels that the difficulty experienced is general to the properties in the area.

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

- Work was not started on the project and the applicant is follow proper procedure for the Variance request.
- This criteria was not considered in refusing the Variance request.

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 Municipal Government Act.

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

There are no implications on the Financial Management Policies/Business.

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.

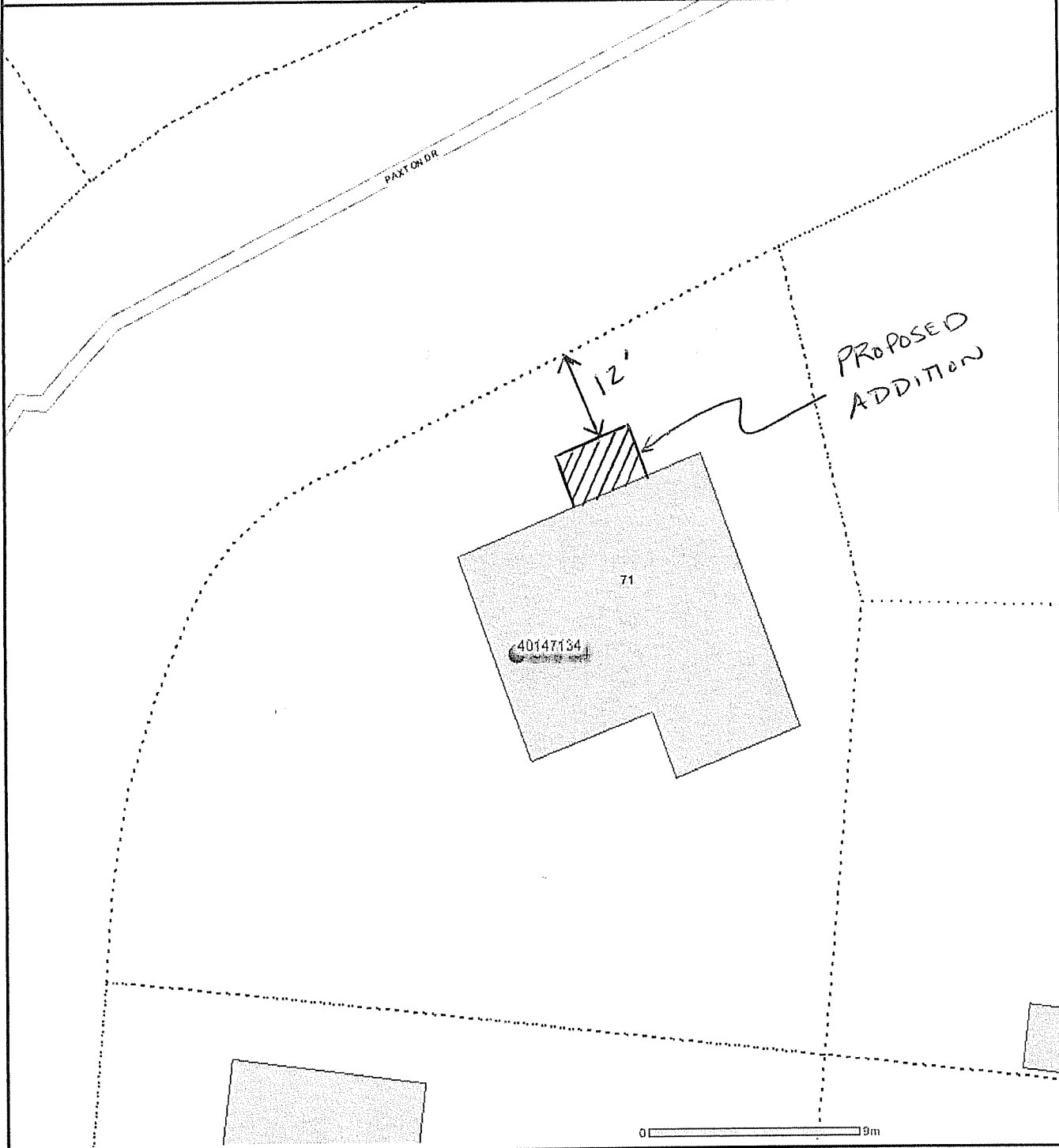
ATTACHMENTS

1. Site plan
2. Location Map
3. Refusal letter
4. Appeal Letter
5. Letters of support from abutting property owners

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)

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 civcadd@halifax.ca. Date of map is not indicative of the date of data creation.

ATTACHMENT 2



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PLANNING & DEVELOPMENT SERVICES: EASTERN REGION

June 13, 2008

Warrick Lockyer
71 Paxton Drive
Dartmouth, NS
B2W 4V2

Dear Mr Lockyer

RE: Application for Variance 14693 - 71 Paxton Dive, Cole Harbour, 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 *Cole Harbour/Westphal* as follows:

Location: 1 Paxton Drive, Cole Harbour
Project Proposal: Reduced front yard setback
Required (i.e setback): Twenty feet (20') from the front property line
Variance Requested: Twelve (12') feet from the front property line

Section 235(3) of the **Municipal Government Act** states that:

No variance shall be granted where:

(a) the variance violates the intent of the Land Use Bylaw; and

Section 7.2 of the Cole Harbour/Westphal Land Use By Law requires that the front yard setback from the property line is to be no closer than 20 feet. Where the existing buildings are set back no closer than 20 feet from the street; to reduce the setback to 12 feet is quite substantially. This is felt to violate the intent of the Land Use By-Law.

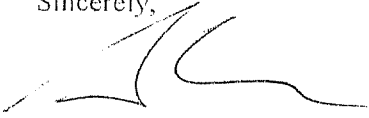
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before *June 25, 2008*.

If you have any questions or require additional information, please contact Laura Walsh at 409- 4462

Sincerely,



Sean Audas
Development Officer

cc.

Julia Horncastle, Municipal Clerk
Councillor Bill Karsten, District 7

Warrick Lockyer
71 Paxton Dr
Dartmouth, NS B2W 4V2

18 June 2008

Sean Audas
Development Officer
Halifax Regional Municipality
Development Services – Eastern Region
PO Box 1749
Halifax, NS B3J 3A5

APPLICATION FOR VARIANCE 14693 –
71 PAXTON DRIVE, COLE HARBOUR, NOVA SCOTIA

Reference: A. Your Letter Re: Application for Variance 14693, June 13, 2008
B. Attachments (enclosed)

Dear Sir

1. I submitted an application for a Variance to the Land Use Bylaw requesting a reduced front yard setback at the aforementioned address from the stated 20 feet to 12 feet for the purpose of building a closed in porch at the front entrance to my residence. Reference A states your refusal to support my request based on Section 235(3) of the Municipal Government Act. I am challenging your assessment of my application for this Variance.
2. I researched every residence bordered by: Forest Hills Parkway, Cole Harbour Road, Spring Avenue, Mount Edward Road, Woodlawn Avenue, and Main Street and found 22 residences in violation of the same Bylaw you are restricting me with. Of these 22 violations; two were garages, not only closer than the 20 feet from the property line but well in excess of the distance of the house from the property line, two were room extensions on bungalows, and the remaining 18 were porches added to older split entries similar to my residence.
3. I feel precedence has been set by allowing these homeowners to build in violation of the expressed Bylaw in question in my Request for a Variance.
4. The majority of homes in this neighbourhood are small bungalows or split entries, like my own. This style of house with its 21 square foot entranceway was designed when heat loss was not a substantial issue, as heating costs were much lower than they are today. Anyone who has ever entered a split entry style house in the winter has realized the difficulty of minimizing heat loss if more than one person is entering at the same time. As well the congestion generated in the entranceway with two or more people at any time is frustrating.

5. My desire is to build a heated, closed in porch that extends 10 feet out from the front of the house to allow ease of flow of people entering and leaving without the congestion, maintain minimum heat loss from excessive time the main entrance door would have to remain open, while adding an aesthetically pleasing addition to the front of my home.

6. At Reference B you will find six letters from my immediate neighbours, all of who believe that the variance I have requested is justified, as it will not only enhance my residence but, help to increase the value of the neighbourhood. This neighbourhood is 30 years old and most homeowners are spending a significant amount of money to modernize their home by replacing siding and roofing, upgrading windows and doors, and adding insulation, not only to make them more attractive and add curb appeal, but to increase the energy efficiency. My intent is to do the same. I moved from the county to this neighbourhood in order to reduce my use of fuel traveling to and from work. This addition is only another method of reducing fuel consumption within my home.

7. In the interest of pleasing everyone I would be in favour of reducing the Request for Variance for a reduced front yard setback to 16 feet, vice the 12 feet originally asked for. Although creating a smaller entranceway than I would prefer, it would provide a much larger area than what I already have.

8. Your earliest review, and approval of my Request for Variance to the Land Use Bylaw for Cole Harbour / Wesphal, Section 235(3) would allow my contractor to complete the project long before the cold weather returns and I am faced with the expense of constant heat loss through the colder months again.

Sincerely,



Warrick Lockyer

Attachments: 6

cc. Councillor Bill Karsten, District 7

Jonathon & Nina Burkeman
70 Paxton Dr.
Dartmouth, NS B2W 4T2

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

RENOVATION ADDITION, 71 PAXTON DRIVE, DARTMOUTH

To Whom It May Concern:

We have been contacted by the owners of 71 Paxton Dr, Warrick Lockyer and Louise Allie about an addition they want to build on the front of their house.

The addition is a porch measuring eight feet wide by ten feet out.

We are agreeable to this renovation, as it will not ruin the aesthetics of the neighbourhood and will only enhance the property value of those around the stated address.

Jonathon Burke

A handwritten signature in black ink, appearing to read 'Jonathon Burke', with a long horizontal flourish extending to the right.

Neal Guthrie & Amanda Osborne
72 Paxton Dr.
Dartmouth, NS B2W 4T2

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

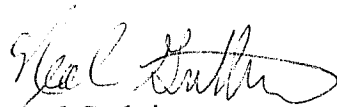
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Neal Guthrie

Adrien and Laurel Ouellette
100 Havelock Cres.
Dartmouth, NS B2W 4T8

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

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Adrien Ouellette

Arnold Roberts
69 Paxton Dr.
Dartmouth, NS B2W 4T2

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

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A handwritten signature in cursive script, appearing to read 'A. Roberts', written in black ink.

Arnold Roberts

Robert & Linda Judge
110 Havelock Cres.
Dartmouth, NS B2W 4V5

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

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Robert Judge

A handwritten signature in black ink, appearing to read 'Robert Judge', written in a cursive style.

Truman & Audrey Law
76 Paxton Dr.
Dartmouth, NS B2W 4T2

4 April 2008

Permits and Inspections
PO Box 1749
Halifax NS, B3J 3A5

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A handwritten signature in cursive script that reads "Audrey Law". The signature is written in black ink and is positioned above the printed name.

Audrey Law