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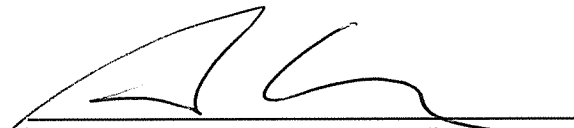


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
November 2, 2006

TO: Chairman and Members of Harbour East Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: October 24, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for
a Variance at 60 Attwood Crescent, Cole Harbour

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance of the side yard setback of a proposed accessory building at 60 Attwood Crescent, Cole Harbour.

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 Unit Dwelling Zone) under the Cole Harbour/Westphal Land Use By-Law.

Existing Use:

The current use of the property is a single unit dwelling. A variance was requested to reduce the side yard requirement of four (4) feet to one (1) foot for an accessory building. The accessory building was already constructed at the time of application. This setback deficiency was brought to the Municipality's attention as the result of a complaint. An order to comply was posted by the Building Official regarding work being conducted without a permit.

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 required side yard setback for an accessory building in the R-1 Zone is four (4) feet. The accessory building is located one (1) foot from the side lot line.
- All residential zones in the Plan Area have a 4 (four) foot side yard setback for accessory buildings.
- A reduction to one (1) foot from the required four (4) feet is a substantial request. This is not supported by the Development Officer, because the majority of the setback is being requested to be varied *which violates the intent of the land use by-law*.

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

- Although this criteria was not identified in the refusal letter many of the lots on this street are similar in size and shape.

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

- The accessory building was constructed prior to this application, without a permit.
- An order to comply was posted by the Building Official regarding work being conducted without a permit.
- The Development Officer feels that because the accessory building was constructed without the necessary permits, *the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.*

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

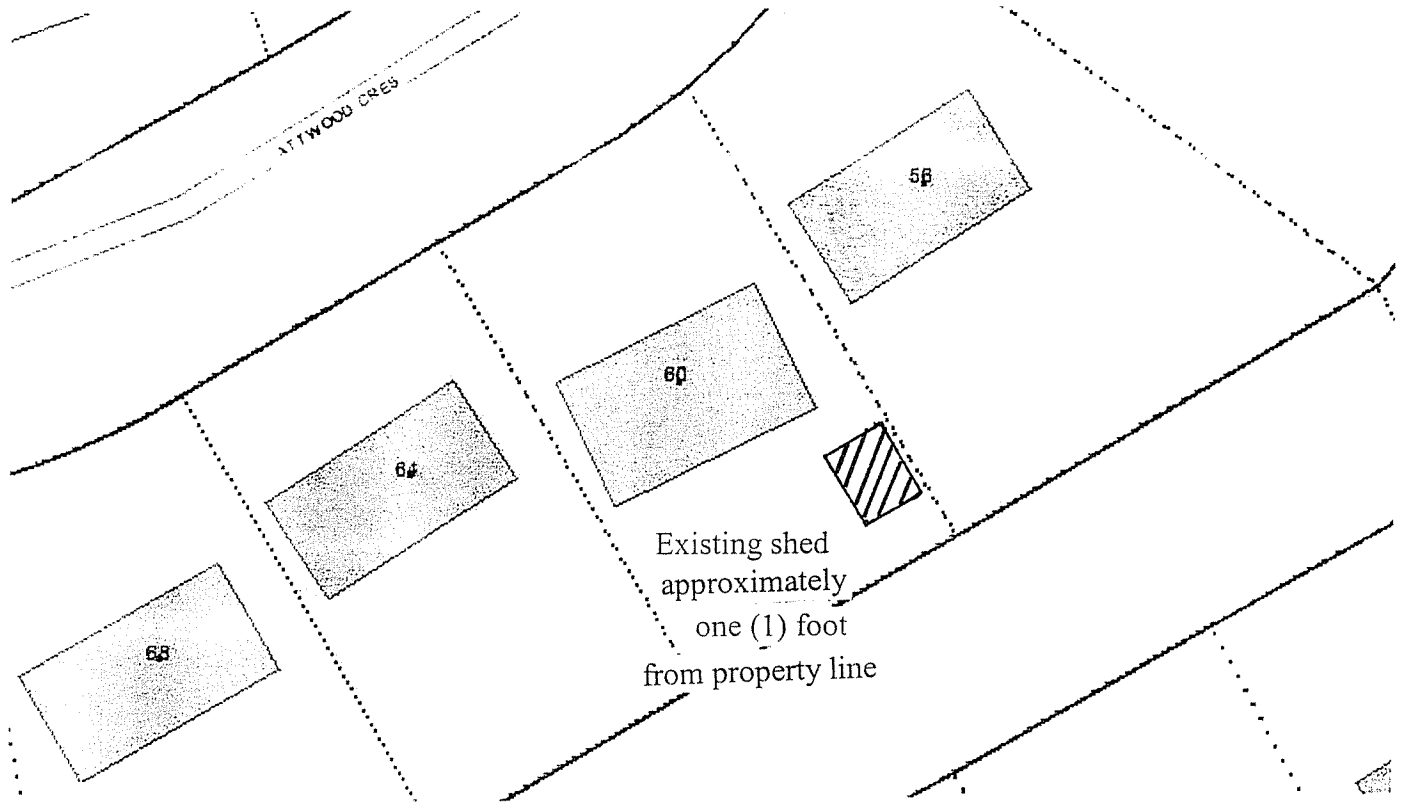
1. Site plan
2. Photos of site
3. Location Map
4. Refusal letter
5. Appeal letter

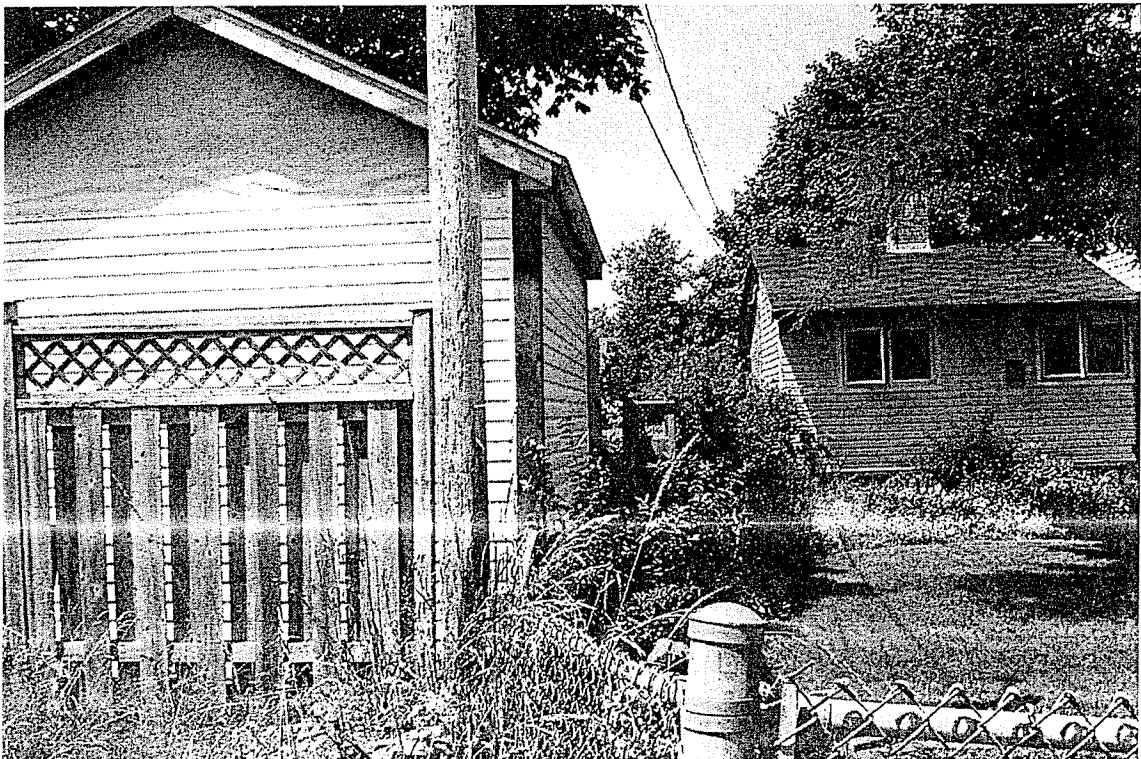
INFORMATION BLOCK

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: Patricia Hughes, Development Technician (490-6257)

ATTACHMENT 1





ATTACHMENT 3



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

October 5, 2006

George Donald Graham
60 Attwood Crescent
Dartmouth, Nova Scotia
B2V 1G7

COPY

Dear Mr. Graham:

Re: Case No. 13315 - Variance at 60 Attwood Crescent, Dartmouth, Nova Scotia

This letter is to advise you that your application for a variance to locate an accessory building within one (1) foot of the side property line of the above noted property has been **denied**.

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;**
- (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 Land Use Bylaw.**

A site inspection of this property confirmed that you have already constructed the accessory building prior to the approval of the variance request and permit being issued. Constructing your accessory building before receiving the necessary approvals constitutes intentional disregard of the Land Use By-Law. While this inspection confirmed that the property in question provides constraint to construction of an accessory building, it is felt that a request to vary the setback to one (1) foot violates the intent of the Land Use By-law.

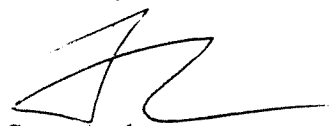
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to Community Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before *October 17, 2005*.

If you have any questions or require additional information, please contact this office at (902) 490-4341.

Sincerely,



Sean Audas
Development Officer

cc.

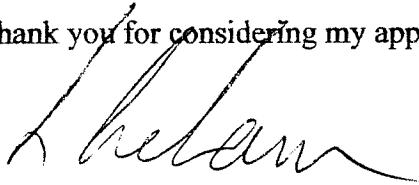
J. Gibson, Municipal Clerk
Harry McInroy, Councillor District 4
Jim Holt, Building Supervisor

To: Sean Audas, Development Officer

Re: Case Number 13315-Variance at 60 Attwood Cr, Dart NS

I would like to file an appeal on the decision not to grant the applied for variance. I was not aware that a permit was required to build the shed that close to the property line. I had asked the neighbours Mike and Leanne MacNeil if it would be a problem if I put the shed on the property line and ran a fence to, and from, the front and back of the shed. They indicated that it would not be a problem and that they would sign a letter to that effect. The placement of the shed was based on the layout and tree in the yard. It was the only place it could go. Most of the sheds and garages in the area are on the property lines including one that I already have that was there when the house was constructed (it is built on a foundation). I spent \$6000 on my new shed. It is well constructed and it adds value to my house. To move the shed also poses a large problem. The tree would have to come out of my back yard at a large cost. Also a crane would be required to move the shed over four feet or the shed would have to be torn down.

Thank you for considering my appeal.



George Graham

