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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
October 1, 2009

TO: Chairman and Members of Harbour East Community Council

SUBMITTED BY: 
Sean Audas - Development Officer

DATE: September 23, 2009

SUBJECT: Appeal of the Development Officer's decision to approve a Variance at
76 Shore Road, Dartmouth

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a Variance of the flankage yard for a proposed addition at 76 Shore Road, Dartmouth.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to approve the Variance.

BACKGROUND

Zoning:

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

Existing Use:

The subject property is a two unit dwelling located on the corner of Shore Road and Best Street in Dartmouth.

Application:

A Development Permit (#92184) was approved for an addition to the existing dwelling. The applicant revised their plan and wished to construct the addition closer to Best Street than what had been previously approved. Where the revision was proposed to be located closer to Best Street, a Variance approval was required. The applicant requested a reduction in the required flankage yard to 2 feet along Best Street. After conducting a site inspection and consultation with the Development Engineer the variance request was approved. The Halifax Charter outlines the notification requirements for an approved Variance, as a result all property owners within 30 meters of the subject property were notified (Attachment 3). One appeal was received and has been included in Attachment 4.

DISCUSSION

The *Halifax Charter* sets out criteria in part 250(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 addition is relatively minor in nature and is proposed to be 4 feet closer to Best Street. A site inspection of the property indicates that many dwellings in this neighborhood are located close to the street line. Also, a review by our Development Engineer indicated that there were no issues that would impact the road right of way.

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

- This property is somewhat different from many of the properties on Shore Road. Most properties only have to meet the National Building Code for side yard requirements, this property is a corner lot which has further restrictions, an abutting street setback. It was not felt during the review of this application that the difficulty experienced is general to properties in the area.

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

- It is not felt that intentional disregard for the requirements of the Land Use By-law are a consideration for this application as construction has not occurred and the applicant is going through the Variance process.

In summary, staff reviewed all the relevant information and approved the variance request (flankage yard). An appeal was received. The appellant provided another location certificate which differs in side yard setbacks from the dwelling at 76 Shore Road, this is shown on Attachment 5 and Attachment 6. Community Development has been in discussions with the two surveyors and there are various reasons why the setbacks differ. These matters may be corrected if the surveyors agree on the property line position which the owners concur with. An agreement on the property line would have to be filed with the Registry of Deeds. Where the property line in question is on the other side of the dwelling and does not impact the proposed addition it is felt that the Variance request could be approved.

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 approve the Variance. This is the recommended alternative.
2. Council could refuse the Variance request and overturn the decision of the Development Officer.

ATTACHMENTS

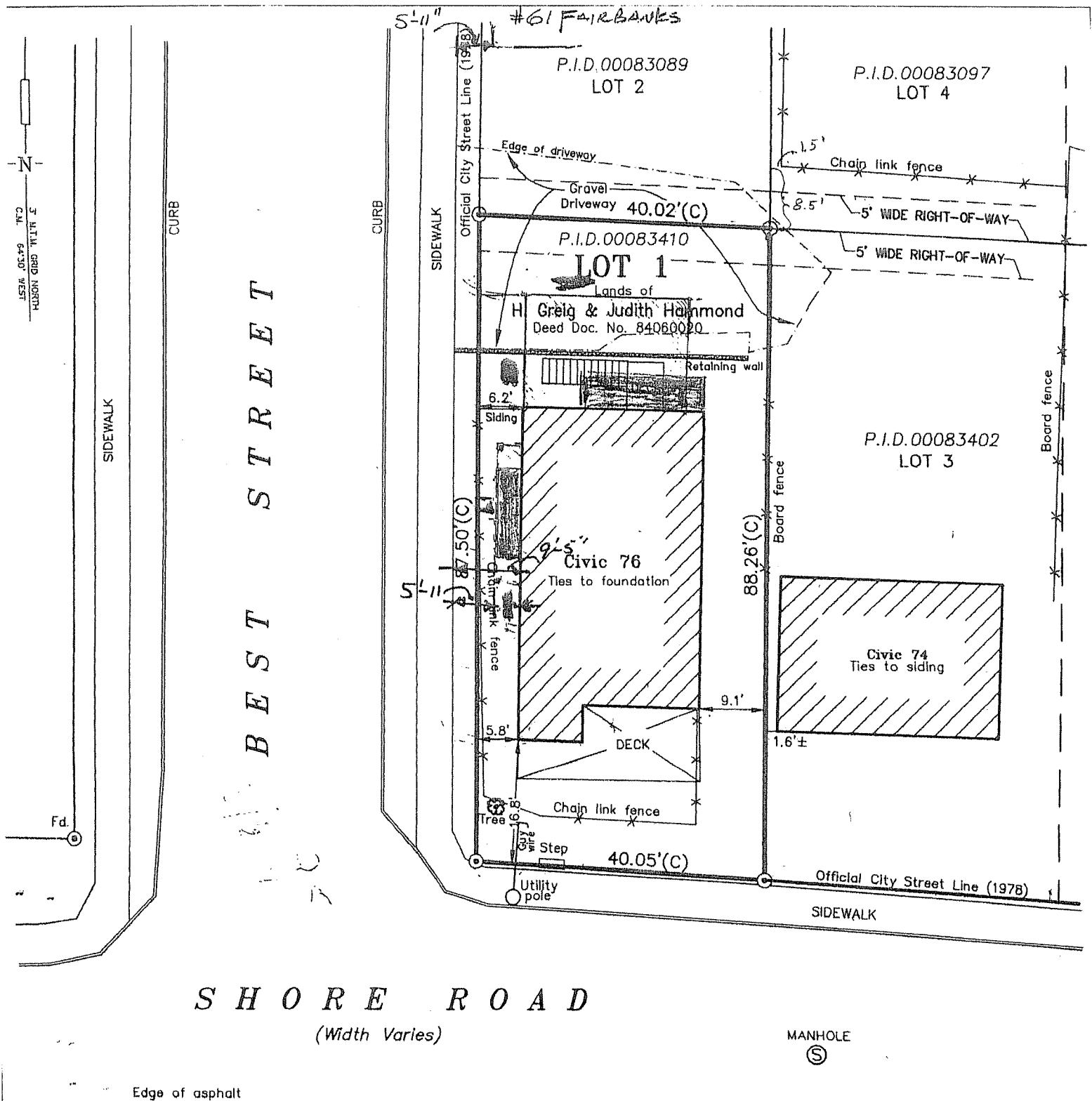
1. Location Map
2. Site Plan
3. Approval Letter
4. Appeal Letter
5. Location Certificate - 74 Shore Road
6. Location Certificate - 76 Shore Road

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 and Approved by: Sean Audas, Development Officer (490-4341)

ATTACHMENT 1





COMMUNITY PLANNING - EASTERN REGION

August 21, 2009

Dear Sir or Madame:

Re: Case No. 15556 - Variance at 76 Shore Road, Dartmouth, NS.

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the Land Use Bylaw for Downtown Dartmouth as follows:

Project proposal: Addition to existing dwelling.
Required (i.e. setback): 6 feet from street line along Best Street.
Approved (i.e. setback): 2 feet from street line along Best Street.

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.

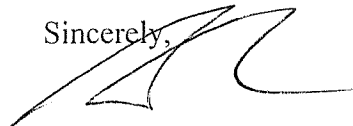
If you wish to appeal, please do so in writing, on or before September 07, 2009, and address your appeal to:

**Municipal Clerk,
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Planning and Development - Eastern Region
Alderney Gate - 40 Alderney Drive
P.O. Box 1749, Halifax, N.S. B3J 3A5.**

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY, THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

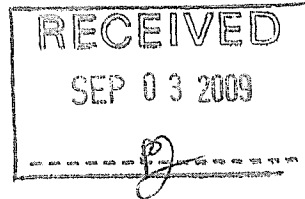
If you have any questions or require clarification of any of the above, please call Paul Boucher at 490-4321.

Sincerely,



Sean Audas, Development Officer
Halifax Regional Municipality

copy to: Cathy Mellett, Municipal Clerk
Councillor Gloria McCluskey



Margo Storey & Rod Murphy
13 Lady Slipper Drive
Halifax, NS B3M 3R5

September 1, 2009

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Planning and Development – Eastern Region
Alderney Gate – 40 Alderney Drive
P.O. Box 1749, Halifax, NS B3J 3A5

Re: Case No. 15556 – Variance at 76 Shore Road, Dartmouth, NS

Dear Mr. Audas:

We are writing in response to the notification we received from you regarding the proposed addition to 76 Shore Road, Dartmouth. We are certainly pleased to see improvements and new developments in the area and believe that they are of benefit to the entire neighbourhood. However, before this particular project proceeds, we would like to ensure that our access will not be impeded along the right-of-way behind 76 Shore Road. This right-of-way is used by many of the homeowners along Shore Road - on the block between Best St. and Mott St. Many of the homes, ours included, don't have parking along the street front and rely on the back route right-of-way to access their homes and for parking.

In total there is a 10' right-of-way. Five feet are allocated from the back of each lot. For example, 5' from 76 Shore and another 5' from the house directly behind it on Fairbanks Street. Under this proposed addition, how close will the building come to the back of the lot and the right of way?

We would also like to determine which property description is being used to develop the plan as there have been some discrepancies found in the past. In 2006, before we had closed on the purchase of 74 Shore Road, I had a call from another neighbor on Shore Road indicating that, Greig Hammond, the owner of 76 Shore Road, wasn't very happy with people cutting across the corner of his lot to park in what would be our back yard. We quickly arranged a meeting with Greig to discuss. At that meeting, Greig told us that he wanted to build a fence and perhaps a concrete planter to prevent people from crossing his property. At this time, we didn't have a property plan so I arranged for Brian Wolfe Surveying to prepare one. Greig also had a plan prepared by another surveying company. Unfortunately, the plans don't fit together.

According to my plan, our house is located 3' from the property line beside his house. Greig had a firm place pin markers and they were located exactly where I expected them to be - according to my plan. But unfortunately, they disappeared within a week, maybe two. According to Greig, my house is located only 1.5 feet from the property line. This would shift his house farther away from Best Street, and also

shift every house on the block. It seems silly to dispute 1 ½' but that makes the difference between having access along the side of my house and not – if a fence built. And I guess it also makes a difference to the location of his property line along Best Street. The pins located at the rear of the lot were placed such that Greig's cars were encroaching on the right-of-way, not other people crossing his property line.

Based on these discrepancies, back in 2006, I called Brian Wolfe to discuss the differences. He was very confident about his results. To get confirmation, I contacted Fred Hutchinson of the Association of Surveyors. He suggested that I look at the original plan at the Registry of Deeds and confirm that that plan was listed on my Deed. I did this and copied the original plan which indicated that we do indeed have 3' along the house and this plan is listed on the deed. I also spoke at great length with Suzanne, the city mapper for Dartmouth. She had spoken with Brian about this and offered to do more research. She called me back on October 11, 2006 to confirm that based on her research, and according to all of the information she had, we do indeed have 3' along that side of the house.

Since that time, Greig has not built a fence or a concrete planter so the issue has not come up again, until your letter arrived. Before any plans receive approval and building starts, we think it best to clarify this once and for all. There have been so many problems encountered at other locations on Shore Road, that I'd like to ensure that this is sorted out before anything is built. I am hopeful that a solution can be found that allows Greig to build an addition however, first we would like to have these questions answered.

If you would like to discuss this further, or see copies of the plans I have, I would be pleased to meet with you to discuss it further.

Thank you,



Margo Storey

Please accept this letter as an appeal to the Development Officer's decision to grant a variance at 76 Shore Rd.

Copy to: Cathy Mellett, Municipal Clerk
Councillor Gloria McCluskey
Paul Boucher, HRM

