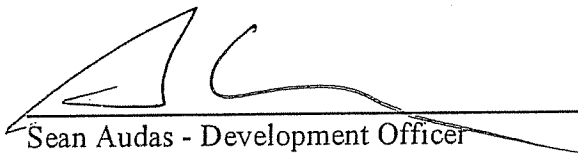




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley & Canal Community Council
March 26, 2008

TO: Chairman and Members of the Marine Drive, Valley & Canal Community Council

SUBMITTED BY: 
Sean Audas - Development Officer

DATE: March 18, 2008

SUBJECT: Case #14182 - Appeal of the Development Officer's decision to refuse a Variance at 21 Williams Road, Ostrea Lake

ORIGIN
This report deals with an appeal of the Development Officer's decision to refuse a variance at 21 Williams Road, Ostrea Lake.

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

BACKGROUND

Zoning:

The property is zoned MU (Mixed Use) Zone under the Eastern Shore West Land Use By-Law.

Existing Use:

The property is occupied by a single unit dwelling and a baby barn. The property is a waterfront lot of approximately 25,000 sq.ft. in area with varying grades.

Proposed Use:

An application was made on September 4, 2007, to construct a 10 foot by 14 foot shed. The applicant proposed to locate the shed 10 feet from the front property line. On September 13, 2007 the applicant was notified that the permit could not be issued because the proposal did not meet the minimum setback of 30 feet. Application for a Variance was made on September 28, 2007. The application form indicated that the shed had been constructed on September 21, 2007.

Provincial Approvals:

Tom Gouthro, P.Eng., Area Manager for the NS Department of Transportation and Public Works (TPW), advised Development Services by letter dated October 30, 2007 that TPW had conducted a site visit and did not have any concern with the shed's proximity to the southerly boundary of Williams Road.

Lot configuration:

The dwelling may very well be located within the riparian buffer, and if so would preclude locating the shed any closer to the watercourse than the existing house (Subsection 4.18(2) of the LUB). There does not appear to be enough space to permit the shed to be constructed in the rear yard and still meet the minimum separation distance required between the accessory building and the dwelling, which is 8 feet. Furthermore, the land slopes down significantly from the location of the house towards the watercourse.

The left-hand side of the property which contains the driveway slopes upward from the house. Locating the shed in the left yard would require some levelling off of the property, but it may be possible to locate it close to the driveway. The right yard contains a well and a baby barn that restricts the location of an additional accessory building. It appears that it would be possible to accommodate the accessory building in the front yard and increase the front yard setback further from the front property line than the proposed 10 feet.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may 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 ?

The character of the area is rural and is comprised mainly of single unit dwellings. The majority of the main buildings and accessory building in this area are setback a considerable distance from the road. The location chosen for the accessory building is only 10 feet away from the front property line. It appears that the accessory building could be accommodated within the front yard, but with a setback considerably greater than the proposed 10 feet, or potentially in the left side yard, close to the driveway. It is therefore the opinion of the Development Officer that the proposed variance violates the intent of the Land Use By-law.

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

The location of the house in proximity to the watercourse and the fact that the topography of this property is quite uneven presents challenges to the location of the accessory building. It is therefore the opinion of the Development Officer that the difficulty experienced is not general to the properties in the area.

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

The accessory building was constructed without a permit being issued and before the assessment for the variance application was complete. It is therefore the opinion of the Development Officer that the difficulty is the result of an intentional disregard for the requirements of the land use by-law.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

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 grant the variance.

ATTACHMENTS

1. Location Plan
2. Refusal Letter
3. 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: Marc Ouellet - Development Technician (490-5985)

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.

November 6, 2007

COPY

Paul Thomas Patterson
21 Williams Road
Musquodoboit Harbour, NS
B0j 2L0

Dear Mr. Patterson:

RE: Application for Variance, File No. 14182 - 21 Williams Road, Ostrea Lake, NS

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 *Eastern Shore West* as follows:

Location: 21 Williams Road, Ostrea Lake
Project Proposal: To construct accessory building 10 feet from front property line
Variance Requested: Vary front yard setback from 30 feet to 10 feet

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.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use Bylaw, and (b) the difficulty results from the intentional disregard of the requirements of the Land Use By-law, therefore your request for a variance has been refused.

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

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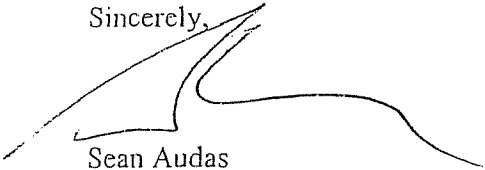
Paul Patterson, FILE 14182

November 6, 2007

Your appeal must be filed on or before *November 16, 2007*.

If you have any questions or require additional information, please contact Marc Ouellet at at 490-5982.

Sincerely,



Sean Audas
Development Officer

cc.

Municipal Clerk
Councillor Steve Stretch

Marc Ouellet - Appeal Variance Refusal File # 14182

From: paul patterson <paulpatterson1@eastlink.ca>
To: <horncaj@halifax.ca>
Date: 13/11/2007 6:39 PM
Subject: Appeal Variance Refusal File # 14182
CC: <audass@halifax.ca>, <ouellem@halifax.ca>

Sirs:

I wish to appeal the decision refusing the variance requested for file # 14182.
The civic address is 21 Williams Road, Musquodoboit Harbour, B0J 2L0.
Please confirm receipt of this appeal. Thank you.

Paul T. Patterson