



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

**Marine Drive, Valley & Canal Community Council
December 10, 2009**

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

SUBMITTED BY:


Sean Audas - Development Officer

DATE: November 26, 2009

SUBJECT: Appeal of the Development Officer's decision to refuse a Variance at 414 Ponderosa Drive, Lake Echo

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a Variance of the front yard for an accessory building (garage) at 414 Ponderosa Drive, Lake Echo.

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 Land Use By-Law for Planning Districts 8 & 9 (Lake Echo/Porters Lake).

Existing Use:

The subject property contains a single unit dwelling and a shed.

Application:

A Variance was requested to reduce the required front yard setback from 20 feet to 4 feet. The subject property is rectangular in shape and borders Lake Echo. The configuration of the lot along with Riparian buffer provisions require the accessory building to be located in the front yard. The existing dwelling is setback quite far from the street right away and it appears that there is sufficient room to locate an accessory building and meet the minimum setback.

DISCUSSION

The *Halifax Regional Municipal 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 if:

- (a) The variance violates the intent of the development agreement or land use bylaw;*
- (b) The difficulty experienced is general to properties in the area; or*
- (c) The difficulty experienced results from an intentional disregard for the requirements of the development agreement or 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 uses.

- The required front yard setback for the R-1 Zone is 20 feet. The accessory building is proposed to be located 4 (four) feet from the front lot line.
- All zones in the Plan Area typically have either a 20 or 30 foot front yard setback.
- The setback requirement of 20 feet is indicative of a suburban and rural setting which have larger lots and greater setbacks.
- Reasons for a required setback are for maintenance purposes, such as future expansion of roads, sidewalk construction, signage, drainage issues and snow removal.

- This type of request is generally considered when there are extenuating circumstances or difficulty with the property, such as a wider road right of way, steep slope, rock outcrop or other physical constraints with the property. While it is agreed that the riparian buffer requires the accessory building to be located in the front yard, it is felt that the majority of the properties in the area face similar challenges.
- A reduction to four (4) feet from the required 20 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 ?

- The difficulty experienced for this property is not general to properties in the area.
- This criteria was not a consideration for this application.

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

- Intentional disregard for the requirements of the land use by-law was not a consideration.

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 Halifax Regional Municipal Charter.

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

ATTACHMENTS

1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal Letter

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



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

COPY

November 4, 2009

Victoria Ann Palmeter
414 Ponderosa Drive
Lake Echo, NS
B3E 1E2

Dear Ms. Palmeter:

RE: Application for Variance, File No. 15636 - 414 Ponderosa Drive, Lake Echo, 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 *Planning Districts 8 & 9* as follows:

Location: 414 Ponderosa Drive, Lake Echo
Project Proposal: To construct detached garage 4 feet from front property line
Variance Requested: Vary front yard setback from 20 feet to 4 feet

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

A variance may not be granted if:

- (a) the variance violates the intent of the development agreement or land use by-law;**
- (b) the difficulty experienced is general to properties in the area; or**
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter** 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**

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Victoria Ann Palmeter, FILE 15636
November 4, 2009

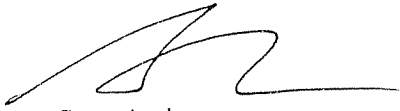
COPY

**P.O. Box 1749
Halifax, NS B3J 3A5**

Your appeal must be filed on or before *November 16, 2009*.

If you have any questions or require additional information, please contact Marc Ouellet at at **490-5985**.

Sincerely,



Sean Audas
Development Officer

cc. Cathy Mellett - Acting Municipal Clerk
Councillor David Hendsbee

414 Ponderosa Drive
Lake Echo, NS
B3E 1E2
November 4, 2009

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

To Whom It May Concern:

Re: Application for Variance, File No. 1536 – 414 Ponderosa Drive, Lake Echo, NS

Further to the letter received on November 4, 2009, from Sean Audas, Development Officer for the Halifax Regional Municipality, I would like to appeal the variance request of a varied front yard setback from 20 feet to 4 feet decision made on File No. 1536.

The variance was requested on the grounds of similar types of structures on the street, no other space for a garage structure on the property and the request was made in consideration of local environment i.e lake and trees.

If the variance is not granted we would not be able to build the structure on our property unless a 100 year old hemlock tree was removed along with a large maple and birch tree. We are looking at trying to maintain the integrity of the property and of the neighborhood. There are similar structures on the street and we feel that the variance should be granted. We would like to appear in front of community council to present our case.

If you need any additional information, please feel free to contact either Paul or Vicki Palmeter at 832-9550.

Regards,

Vicki Palmeter