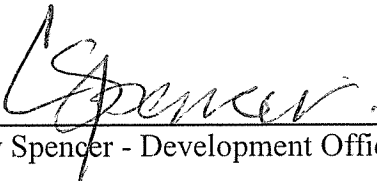




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
April 18, 2011

TO: Chairman and Members of Western Region Community Council

SUBMITTED BY: 
Cathy Spencer - Development Officer

DATE: April 11, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance at 8161 St. Margarets Bay Road, Ingramport.

STAFF REPORT

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a Variance to permit a building, intended to be used for a service industry, closer to the right side lot line than 25 feet as required by the Land Use By-law for Planning Districts 1 & 3.

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned MU-1 (Mixed Use 1) under the Land Use By-law for Planning Districts 1 & 3.

Existing Use:

The property is currently developed with a single unit dwelling and an accessory building. The dwelling has been existing for a number of years. The accessory building was constructed in 2009. The application in 2009 was "to construct an accessory building – residential". The required setback for a residential accessory building under the Land Use By-Law for Planning Districts 1 & 3 is 8 feet. The accessory building was therefore permitted to be setback at 8 feet from the right side lot line.

The proposal:

The owner of the property now wishes to occupy the accessory building with a repair shop and MVI station for small trailers. Such use is considered a service industry under the Land Use By-law for Planning Districts 1 & 3. Section 12.9 of the Land Use By-law requires a minimum setback of 25 feet from the building to the side lot line for any building which has a service industry use located in it. The existing accessory building does not meet the required setback.

DISCUSSION

The *Halifax Regional Municipality 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 By-law ?

- 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 distance of 25 feet from a building, containing a service industry, to a side lot line is to ensure such businesses are far enough from neighbouring properties as not to create a nuisance.
- A permit was issued in 2009 for a residential accessory building.

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

- It is felt this is not general to the properties in the area as most of the properties are larger than the subject property.

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

- The property owner has applied for the necessary permits and no construction was started without a permit.

In summary, staff carefully reviewed all the relevant information in this case. As a result, the variance was refused as it was determined to violate the intent 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

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

ALTERNATIVES

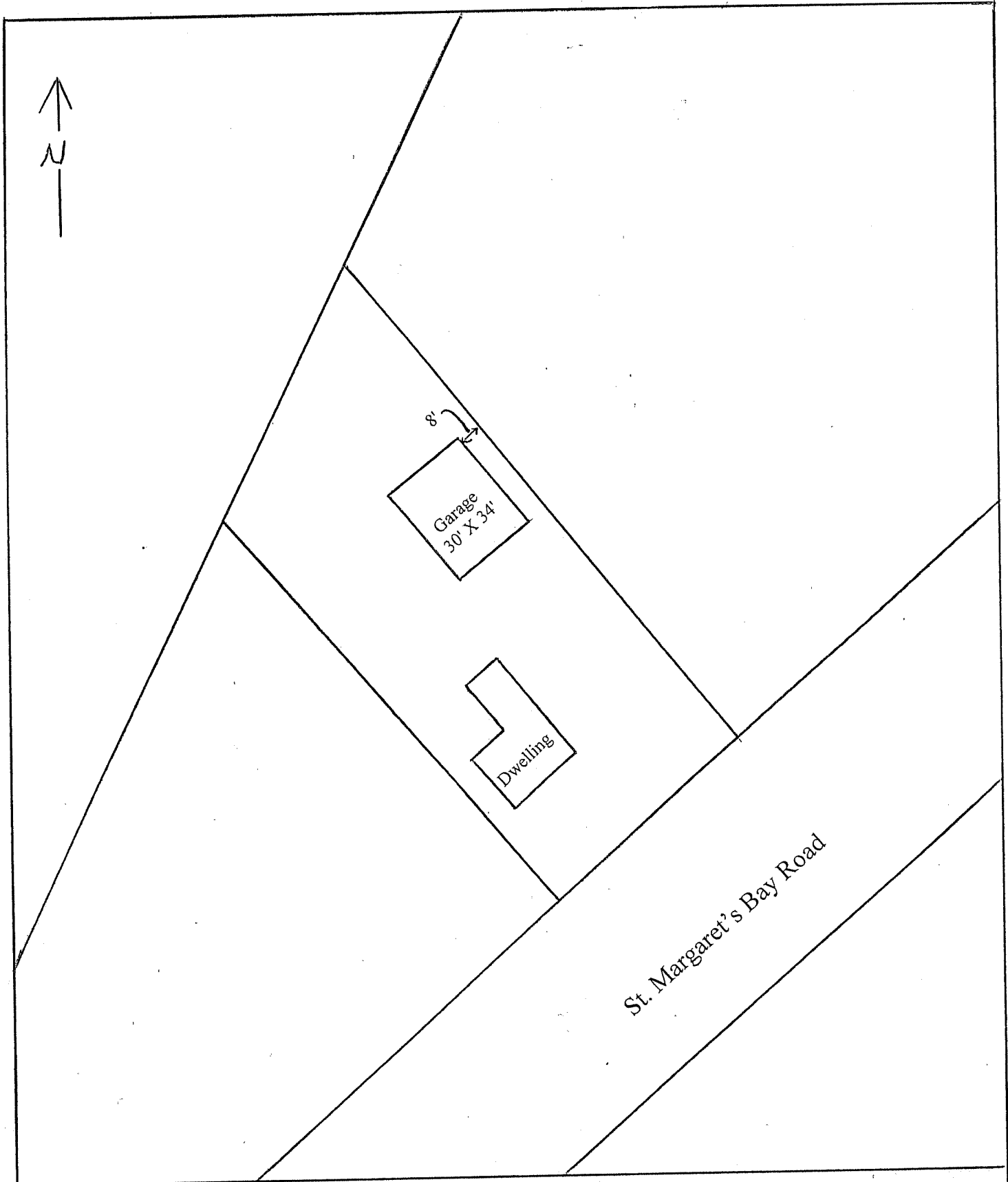
1. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the variance request.

ATTACHMENTS

1. Site plan
2. 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: Cathy Spencer, Development Officer (490-4341)



Site Plan

Not To Scale

ATTACHMENT 1



COMMUNITY DEVELOPMENT - EASTERN REGION

March 23, 2010.

Mr. Timothy Fillmore

B3Z 3Y7-1G7

Dear Mr. Fillmore,

RE: Application for Variance #16797 - 8161 Saint Margarets Bay Road Ingramport, 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 District 1 & 3** as follows:

Project proposal: Convert existing garage to commercial repair shop for small trailers.
Required setback (i.e. setback): 25 feet from right side lot line.
Variance requested (i.e. setback): 8 feet from right side lot 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;
- (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; (a) the variance violates the intent of the Land Use Bylaw.

Pursuant to Section 251(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 Cathy Spencer, 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 April 02, 2011.

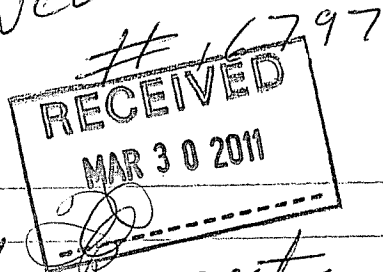
If you have any questions or require additional information, please contact Paul Boucher at 490-4321

Sincerely,


Cathy Spencer
Development Officer

cc. Cathy Mallett, Municipal Clerk
Councillor Peter Lund, District 23

VARIANCE



RECEIVED MAR 30 2011

Apr 2 2011

The Property at St Margarets Bay road owned by Timothy H. Willmore is appealing the decision of the variance set back concerning the footage between the properties in?

And in all do respect the intent of my business plan will not disturb the property management of house of the owner at 8153. She has acknowledged the variance and welcomes the proposal as a community asset as well as her own.

The building is designed with no windows on the adjacent side to her Property at 8153 St Margarets Bay road the grounds between the property in? has a drainage ditch and a septic system excreting on her property at 8153 the buildings are 55' apart and does not have any impact or restriction towards her Property Management as she has her own business and work shop and this would ~~be~~ ^{enhance} her business and the Community as well.

I've been out of work for a year and a half and in that time I got involved in the CEEDS program and took a trailer safety inspection course and got accepted into starting a small business course and thought this would be a great time to start this out of my own garage with the support of the U.S. government CEEDS Program and ACOA.

Tim Willmore