

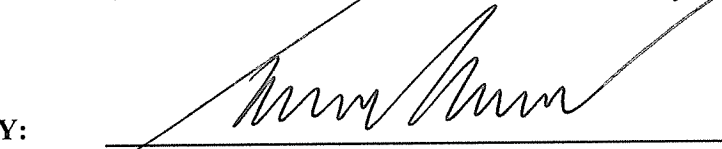


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
June 2, 2008

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: May 20, 2008

SUBJECT: Appeal of the Development Officer's decision to refuse a variance - 45 Amirault Court, Halifax, NS

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the separation distance of the Halifax Mainland Land Use Bylaw to permit a fireplace insert within the left side yard.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to deny the variance.

BACKGROUND

The applicant applied for a permit to construct a single family home on the subject property on August 8, 2007 and the permit was reviewed and issued on August 20, 2007. The property is within an area of land shown as 'Schedule K', in which permits are issued according to a the Development Agreement for the area. The plans submitted at that time in support of the application met the requirements of the Development Agreement and the Halifax Mainland Land Use Bylaw.

Through the inspection process, it was noted by an HRM Building Official that construction on the property was not in accordance with the plans on file. A fireplace insert was being constructed within the side yard of the house. Fireplace inserts are not a permitted encroachment and must maintain setbacks; in this case, minimum separation of 12 feet from buildings on abutting lots.

Revised plans showing the changes were requested and received on Feb. 27, 2008. The plans submitted indicated the fireplace to be 11 feet. The applicant was notified that the revised plans did not conform to the twelve foot minimum separation distance between buildings on abutting lots. The original plans showed a separation of 13 feet between the subject house and the house on the abutting property to the left. The fireplace was indicated by the applicant as being 2 feet deep, resulting in a 11 foot separation between the buildings. A variance (File No. 14499) was applied for and refused as it was determined that the difficulty experienced was general to the area , and the construction was commenced and continued with intentional disregard to the land use bylaw. No appeal was received from the applicant on the refusal of that application.

As a result of this second variance application (File No. 14590), the fireplace and the separation distance have been accurately measured on site by a Building Official. It has been determined that the distance between the two houses is 11.35 feet, 0.65 feet short of the 12 foot requirement.

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 variance does not violate the intention of the land use bylaw. The reduction from twelve feet separation to eleven feet still provides for the improved aesthetic of the streetscape, the practical access to rear yards, and the safety precautions that the separation distance is intended to provide.

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

The difficulty experienced is general to the properties in the area. The Development Agreement requires 8 foot and 4 foot side yards, and further requires that the yards be co-ordinated to allow for the separation distance throughout the Category A through D lots, the majority of the community. The lots are uniform in width and so each owner is provided the same envelope within which they must build.

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

The difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.

project's construction. The Building Official advised that revised plans must be submitted and approved by Development Services. Despite this, construction continued without revised plans being submitted showing the changes. It wasn't until a later inspection that the point was pressed and revised plans were submitted by the applicant.

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.

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.

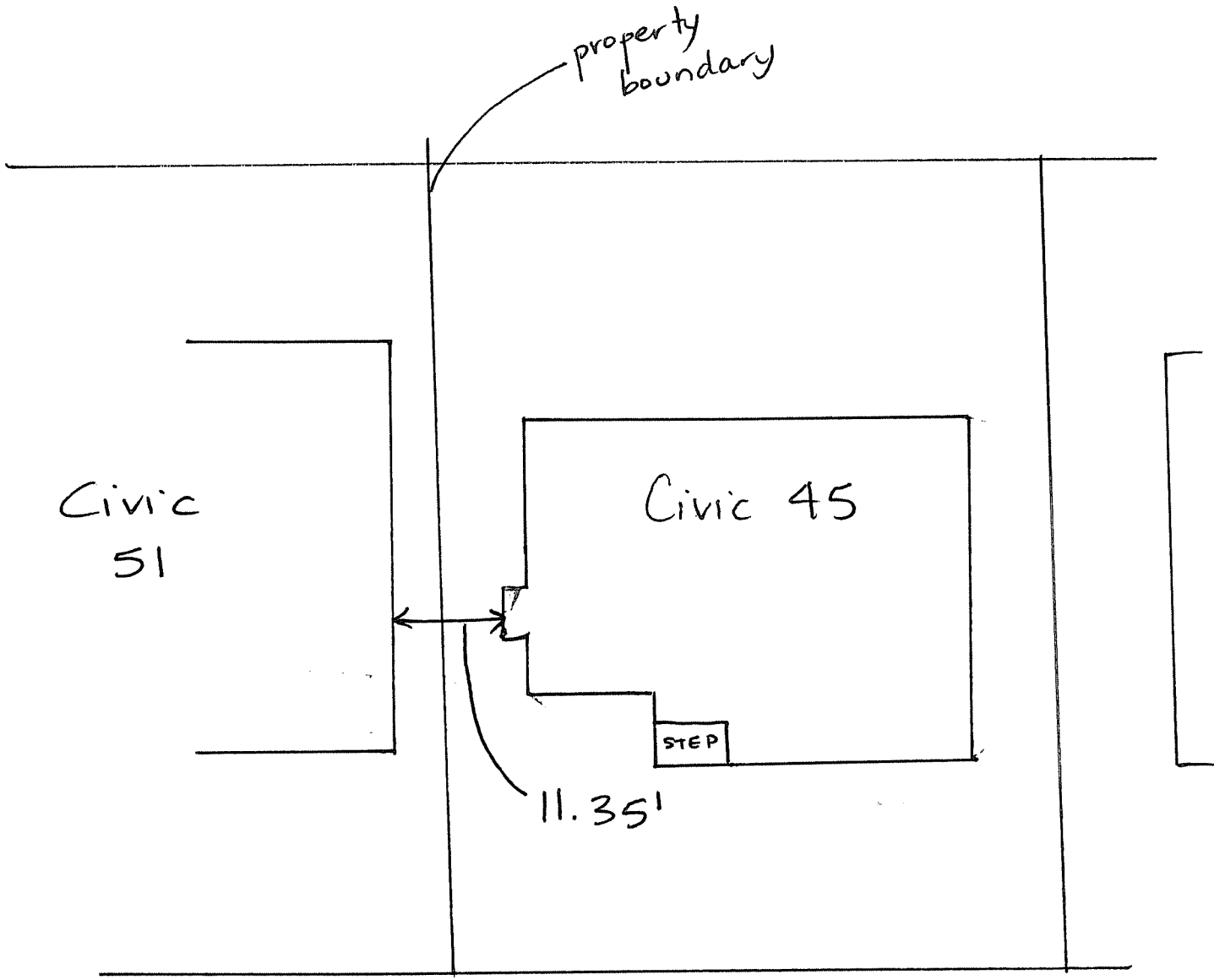
ATTACHMENTS

1. Location Map
2. Site Plan
3. Refusal Letter
4. 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: Andrew Faulkner - Development Officer (490-4402)



Amirault Court

April 28, 2008

Gerald Mitchell Contracting Limited
c/o Gerald Mitchell
299 Rocky Lake Drive, Unit 12
Bedford, NS
B4A 2T3

Dear Mr. Mitchell:

Re: Case No. 14590- Variance at 45 Amirault Court, Halifax, NS

This letter is to advise that the Development Officer for the Halifax Regional Municipality has refused your request for variance from the requirements of the *Halifax Mainland Land Use Bylaw* as follows:

Location:	45 Amirault Court, Halifax, NS	
Property Owner:	Albert Chaisson	
Project Proposal:	Construction of Single Family Dwelling	
Variance Requested:	Minimum Separation between buildings: 12 feet minimum required	11.35 feet proposed

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 this variance application does not merit approval because:

- (b) the difficulty experienced is general to properties in the area, and
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

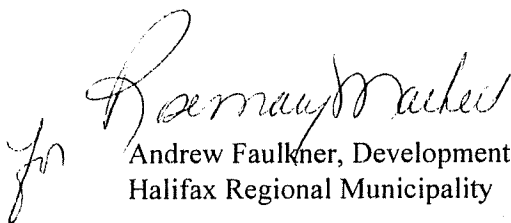
Pursuant to Section 236 (4) of the of the Municipal Government Act you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services- Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5**

Your appeal must be filed on or before May 8, 2008.

If you have any questions or require additional information, please contact Erin MacIntyre, Development Technician, at (902) 490- 4338.

Sincerely,



Andrew Faulkner, Development Officer
Halifax Regional Municipality

cc. Julia Horncastle, Acting Municipal Clerk
Councillor Debbie Hum, District 16

May 6, 2008

Municipal Clerk
C/O Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services – Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5

REFERENCE: Case #14590, Appeal

Gerald Mitchell Contracting Limited is appealing your refusal to the above noted case.

Please notify us when this will be taken to council.

Office: 835-6847

Cell: 456-0368

Fax: 835-6702

Yours truly,

Gerald Mitchell Contracting Limited

Jay Manuel

for.

Gerald Mitchell
President

CC: Blackburn English Law (Enfield) Limited
Al Chiasson, Royal LePage