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

Chebucto Community Council
July 4th, 2011

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: 
Andrew Faulkner, Development Officer

DATE: June 20th, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a Variance – 15, 17, 19 & 21 Four Mile Lane, Halifax, Case #16989

ORIGIN

This report deals with an appeal of the Development Officers Decision to refuse a variance of the side yard setbacks and distance between buildings requirements of the Halifax Mainland Land Use Bylaw to permit the construction of four semi- detached dwellings.

RECOMMENDATION

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

BACKGROUND

In July, 2009 Development Services approved a final subdivision application for 22 lots on a newly created street, Four Mile Lane. The subdivision was as-of-right, and the 22 lots met the required public road frontage and lot area laid out by the Halifax Mainland Land Use By-Law (See attachment #1).

After discussions with staff, Development Services received a request to vary the side yard setbacks, and the setback between main buildings on four vacant lots (See attachment #2). The request was received on May 19th, 2011.

Zone Requirements for a Semi-Detached Dwelling

	Requirements	Proposal
Side Yard Setback	8 feet	4.98 feet
Distance Between Buildings	12 feet	9.97 feet

After reviewing the application the variance was formally refused on May 26th, 2011 by the Development Officer, and subsequently appealed by the applicant on June 3rd, 2011 within the appropriate time. Notices were mailed out to all of the assessed owners within 30 metres of the subject properties on June 13th, 2011, but due to the Canada Post strike they were hand delivered on June 20th, 2011. The notices were delivered within the designated time laid out within the *Halifax Regional Municipality Charter*.

DISCUSSION

The *Halifax Regional Municipality Charter* 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 if:*
- (a) the variance violates the intent of the land use bylaw;*
 - (b) the difficulty experienced is general to the properties in the area;*
 - (c) the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”*

Does the proposed variance violate the intent of the land use bylaw?

Throughout 2009 and 2010, building permits were issued for semi-detached dwellings on all of the newly created lots, except for the remaining four lots that are the subject of this Variance. Each of the 18 new semi-detached dwellings met the requirements of the land use by-law without requiring a variance, and they have all been built or are in the final stages of construction. The developer chose to develop the lots at the minimum requirements for lot frontage and areas, and they chose to proceed with that design.

The intent of the minimum side yard setback, distance between main buildings, lot frontage and lot area requirements are to provide adequate separation of buildings from adjacent properties to

maintain access, safety and privacy. This is also to ensure compatibility of uses, and to minimize potential conflicts between neighbouring properties. To permit the variance would violate the intent of the land use bylaw.

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

The lots range in size from 2,529 square feet up to 6,393.97 square feet. Existing land use on Four Mile Lane consists of semi-detached dwellings (all have been issued permits in either 2009 or 2010 with no variances). Although the proposed site is at the smaller end of the scale it is not the smallest, and meets the minimum requirements laid out by the Land Use Bylaw. The difficulty in this case could be seen to be general to properties in the area.

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

As no construction has occurred at this site, intentional disregard was not a consideration in refusing this variance.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 metres) to speak to staff's recommendation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to approve the variance.
2. Council could overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

1. Location Plan
2. Site plan
3. Proposed front elevations
4. Appeal letter

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:


Stephanie Norman, Development Technician 490-4046

Report Approved by:


Andrew Faulkner, Development Officer 490-4402

Date : May 18, 2011

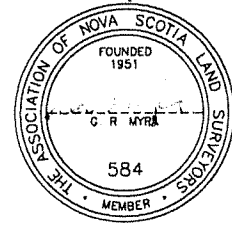
Scale: 1 : 250

Symbol Legend

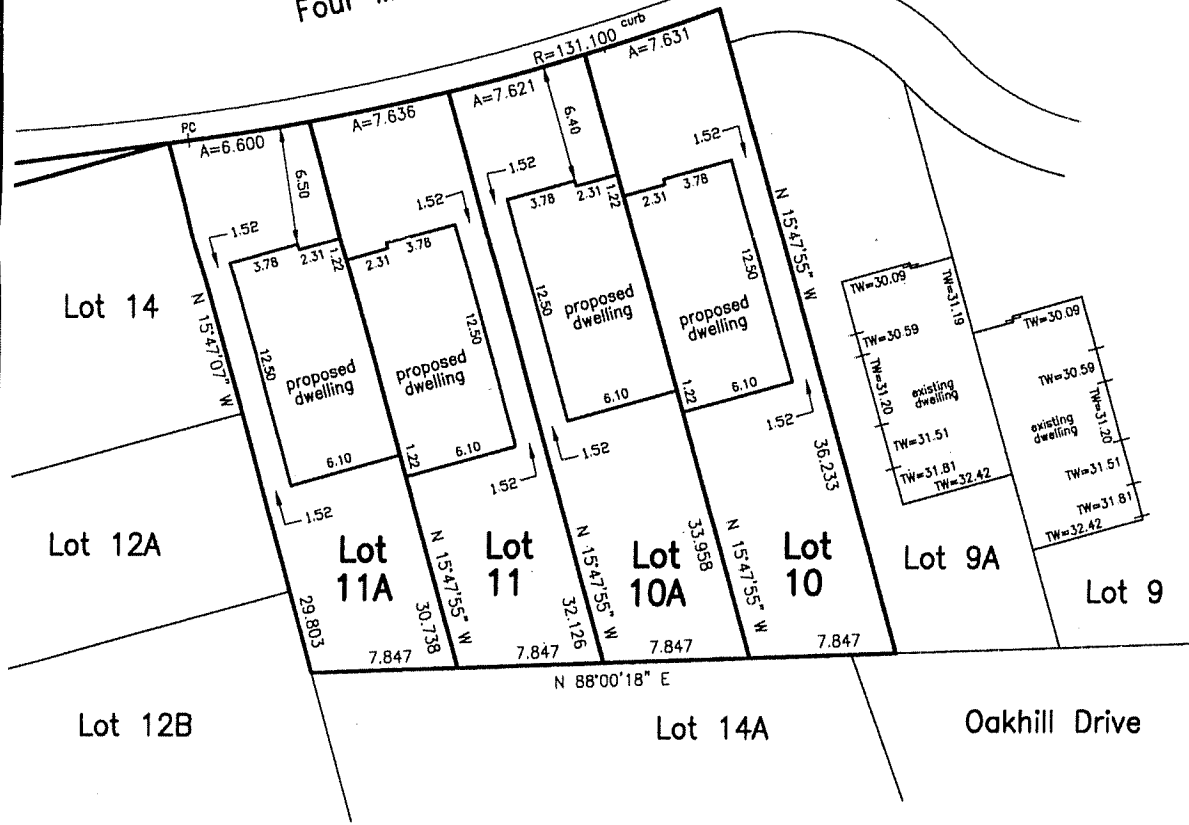
A = arc
P = plan
PC = point of curvature

PROPOSED PLOT PLAN

G. R. Myra Land Surveying Limited
11 Carmans Drive, Lawrencetown, Nova Scotia, B2Z-1C7
435-4379 (tel) 434-3529 (fax) 802-1825 (cel)



Four Mile Lane



P.I.D. No. 41212952 (Lot 10)
P.I.D. No. 41212960 (Lot 10A)
P.I.D. No. 41212978 (Lot 11)
P.I.D. No. 41212986 (Lot 11A)

Variance
Application 16989
Plot Plan
Attachment #2

Issued to: Brighton Homes 2010 Inc.
Concerning: Lots 10, 10A, 11 & 11A, Four Mile Lane, Basinshore Estates Subdivision
Halifax, Halifax County, Nova Scotia

File No. 10526

G. R. Myra, N.S.L.S. No. 584



Variance
 Application 16989
 Front Elevation
 Attachment #3

KWR Approvals

Specializing in getting Tough Land Development
& Real Estate Projects Approved!

June 3, 2011

Mailed, Emailed and Hand Delivered to HRM Office in Bayer's Road Professional Office

Ms. Cathy Mellet

Municipal Clerk

c/o Andrew Faulkner, Development Officer

Halifax Regional Municipality

Development Services – Western Region

P.O. Box 1749

Halifax, Nova Scotia B3J 3A5

Re: Appeal of Development Officers Refusal for Variance Request No. 16989 for Civic Number 15, 17, 19 and 21 on Four Mile Lane, Halifax, Nova Scotia.

Dear Ms. Mellet:

Pursuant to Section 236(4) of the Municipal Government Act KWR Approvals on behalf of our client Brighton Homes (2010) Inc. is via this letter formally appealing the May 26th, 2011 decision in writing of Mr. Andrew Faulkner, HRM Development Officer to refuse a request from my client for the aforementioned variance.

The Development Officer's refusal to grant the minor variance application as per his May 26th, 2011 letter was for the following two reasons:

- (a) Variance violates the intent of the land use by-law and;
- (b) The difficulty experienced is general to properties in the area;

As required under Section 236 (4) of the MGA the grounds of our appeal are as follows:

(a) Variance violates the intent of the land use by-law and;

The request for a side yard variance from the as of right 8 feet to 4.98 feet for both side yards is minor in nature and would not upon close examination affect the aesthetic quality and or functionality of the proposed two semi detached buildings individually and or other homes on the street. As outlined in the initial May 19, 2011 variance application Brighton Homes (2010) Inc. has built the other nine semi's on Four Mile Street. The intent is to built the same type of semi's all ready built on the street in both design and size, but these four lots that make up the variance appeal (civic numbers 15, 17, 19 and 21) are much smaller and narrower than the other lots. The real estate market has changed and smaller semi's are very difficult to sell.

The height, size, front yard, rear yard and all other components of the HRM Land Use By-law would be satisfied so only the side variance to approximately four feet is being requested. The distance between the buildings would be reduced from a required 12 feet to 9.97 feet or less than approximately two feet. In reviewing housing stock in many locations of HRM and on Four Mile Lane such a small reduction in side yard variance of 3.02 feet and distance between buildings of 2.03 feet is really very minor in nature and does not in our opinion violate the spirit of HRM's Land Use By-law.

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Ms. Cathy Mellet

June 3, 2011

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Considering the height, design, front and rear yard variances and all other aspects of the Land Use By-law would be met, it would be difficult to visually tell any difference between these semi's with the variance than any of the other existing nine on the street. The integrity of the Land Use By-law would be maintained.

(b) The difficulty experienced is general to properties in the area;

We are not aware of this difficulty being general to other properties in the area and specifically Four Mile Lane. Brighton Homes 2010 Inc has developed all the other nine (9) semi's on Four Mile Lane without any similar challenges but the smaller lot size of these four and only remaining lots on the street is the only reason for the variance request. If lots 15, 17, 19 and 21 were of similar size to other lots on the street the semi's would have been already built.

The difficulty experienced is in our opinion site specific to these four lots on Four Mile Lane and not general to other properties in the general street area. These lots have already been build on or in the final stages of being built on without issue.

Yours truly,

Kevin W. Riles
President & CEO

Cc: Brighton Homes (2010) Inc.
Councillor Debbie Hum – District 16