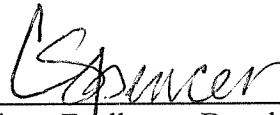


Chebucto Community Council  
October 3, 2011

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY:   
for Andrew Faulkner - Development Officer

DATE: September 26, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application  
for a Variance at 91 Douglas Crescent, Halifax

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**STAFF REPORT**

**ORIGIN**

This report outlines an appeal of the Development Officer's decision to refuse a variance for a reduced right side setback for a single unit dwelling at 91 Douglas Crescent, Halifax

**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 Family Dwelling Zone under the Land Use By-Law for Halifax Mainland.

### **Existing Use:**

A current use of the property is a single family dwelling. On July 18, 2011 the property owner made applications for both a building permit (#117562) and a variance (#17107). The building permit was for an addition to an existing deck which would reduce the existing setback from 8 feet to 4 feet.

A site visit was conducted on September 1, 2011 to review the variance application. During this site visit it was noticed that deck addition had already been built. The applicant indicated that their contractor had told them that the 4 foot side setback for the deck was acceptable.

## **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 bylaw?**

The variance does not violate the intent of the land use bylaw. The intent of the side yard setback requirement is to provide spatial separation between dwellings (including decks). This separation distance under the land use bylaw is meant to provide privacy, to provide usability of space for recreational purposes or to provide an area for the location of a driveway and to provide access to the rear of the property.

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

The difficulty experienced is general to the area. All of the lots in the notification area are similar in frontage, area and in established setbacks.

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

A site visit was conducted on September 1, 2011, at which time it was discovered that the addition to the deck had already been built. The HRM Charter stipulates the criteria against which a variance must be evaluated. A variance may not be granted where it violates the intent of the land use bylaw, where the difficulty experienced is general to properties in the area, and where the difficulty experienced results from a intentional disregard for the requirements of the land use bylaw. Where the deck addition was built before securing a permit and/or a variance, this is an intentional disregard of the bylaw.

In summary, staff have reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined that the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw. Also the difficulty was found to be general to properties in this area.

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

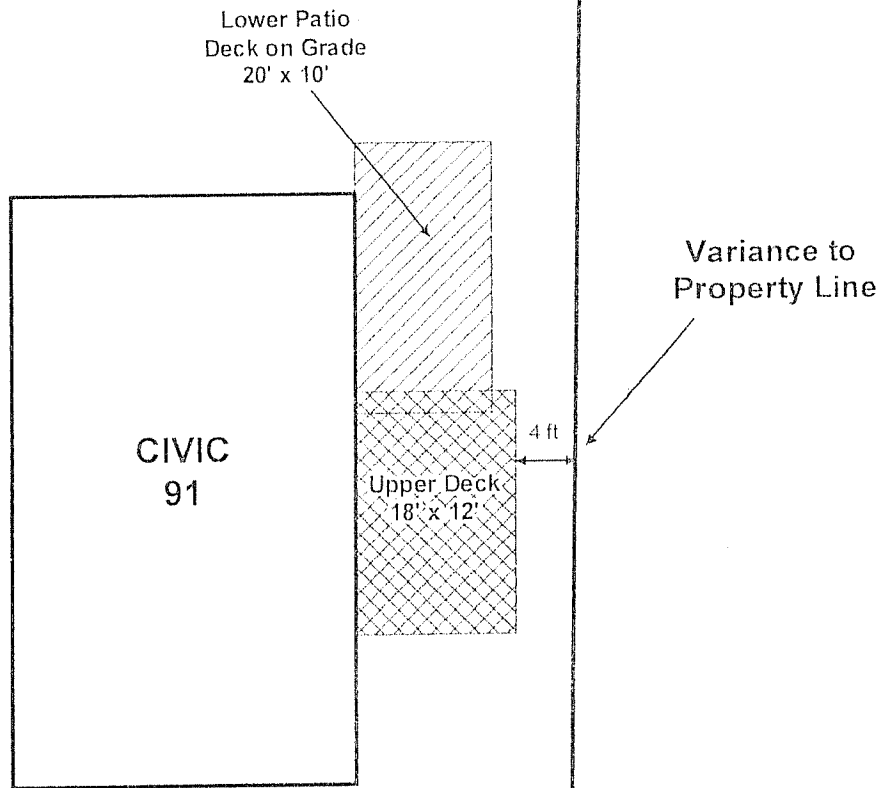
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**ATTACHMENTS**

1. Site plan
2. Location Map
3. Refusal 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: Laura Walsh, Development Technician (490-4462)



Douglas Crescent

Map 1  
Site Plan

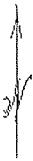


HRM does not guarantee the accuracy of any base map information on this plan

# ATTACHMENT 2



**HALIFAX**  
REGIONAL MUNICIPALITY



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 [civicadd@halifax.ca](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation.

COMMUNITY DEVELOPMENT - EASTERN REGION

September 1, 2011

David & Sherry Sellers  
91 Douglas Crescent  
Halifax, NS  
B3M 3B6  
sherryseller@eastlink.ca  
davidseller@eastlink.ca

Dear Mr. And Mrs. Sellers:

**RE: Application for Variance, File No. 17107 - 91 Douglas Crescent, Halifax, 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 *Halifax Mainland* as follows:

<b>Location:</b>	91 Douglas Crescent, Halifax
<b>Project Proposal:</b>	To increase size of deck located in right side yard
<b>Variance Requested:</b>	Vary side yard setback from 8 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 (b) the difficulty experienced is general to properties in the area and that (c) the difficulty experienced results from an intentional disregard for the requirements 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

COPY

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Sellers, FILE 17107.  
September 1, 2011

writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk  
*c/o Andrew Faulkner, 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 September 12, 2011.

If you have any questions or require additional information, please contact me at 490-4341.

Sincerely,



Andrew Faulkner  
Development Officer

cc. Cathy Mellett - Municipal Clerk  
Councillor Debbie Hum - District 16