



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

Item No. 8.2.1
Northwest Community Council
April 20, 2015

TO: Chair and Members of North West Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner & Director, Planning and Development

DATE: February 27, 2015

SUBJECT: Case 18572: Appeal of Variance Refusal – 6 Woodhill St., Lower Sackville

ORIGIN

Appeal of the Development Officer's decision to refuse a request for variances.

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development.

RECOMMENDATION

The question before North West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

Proposal:

Variance requests have been submitted for the property at 6 Woodhill Street, Lower Sackville in association with the placement of an accessory structure on the property. In order to facilitate this proposal, two variances have been requested to relax the minimum flankage yard and the minimum separation distance between the accessory building and the main building. The property is currently developed with a single unit dwelling.

Site Details:

Zoning: R-1 (Single Unit Dwelling) Zone
Sackville Land Use By-law

	Zone Requirement	Variance Requested
Minimum Flankage Yard	20 feet	5 feet
Minimum separation distance between dwelling and accessory building	8 feet	5 feet

The accessory building has been located on the property without a permit and there is an active by-law enforcement case against the property. To respond to the by-law enforcement matter, the applicant submitted this variance request to bring the property into compliance with the requirements of the land use By-law.

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variance (Attachment A). The applicant subsequently filed an appeal of the refusal on December (Attachment B) and the matter is now before the North West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Requests:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, *the HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

"250(3) 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;*
- (c) *the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law."*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

It is the Development Officer's opinion that the proposal violates the intent of the Land Use By-law to establish and maintain appropriate open space on suburban lots developed with low density residential dwellings.

Flankage yard setbacks and separation distances between main dwellings and accessory structures exist for both aesthetic purposes and practical reasons. The flankage yard creates uniform yards adjoining streets, provides a visual separation between buildings and the street and also preserves an area free of obstruction at street intersections opening sight lines for vehicular traffic. Adequate separation between dwellings and accessory structures needs to exist for such reasons as fire separation and maintenance.

For accessory buildings, the area Land Use By-law requires a minimum flankage yard of 20 feet and a separation distance between the main dwelling and accessory building of 8 feet. In this case, the accessory building has been placed 5 feet from the public street right-of-way and 5 feet from the main dwelling. The requests for relaxations to these requirements, especially in the case of the flankage yard, are substantial and accordingly, it is the opinion of the Development Officer that granting these variances would result in a violation of the intent of the Land Use By-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The dwelling is situated on a lot that is 6,352 square feet in area which is similar to neighboring properties. There are 11 properties within the 30m variance notification radius of the subject property. The lot areas of these properties range from 6,048 square feet to 7,200 square feet. All the properties in the 30m radius contain single unit dwellings and many also contain accessory structures. The applicant has indicated in the variance application that the accessory building is placed at the front corner of the lot due to the grade of the property. It should be noted that slope of the land affects the lots across the street as well as neighbouring lots to the rear and on both Hillsdale Crescent and Sunnyvale Crescent, therefore, the grade of the property is not unique to the subject property.

As all the lots within the 30m radius are similar in size, configuration, use, and topography the difficulty experienced on the subject property is general to properties in the area.

3. Is the difficulty experienced the result of intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

Staff's review of the variance application concluded that the request for these variances is an attempt to legalize the accessory structure that has been placed on the property without a permit and a direct result

of the by-law enforcement case. The owner was aware that the requirements of the Land Use By-law were not being met, therefore, it is the Development Officer's opinion there was intentional disregard for the requirements of the land use by-law.

Appellant's Appeal:

While the criteria of the *HRM Charter* limit Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment B) for Council's consideration. These points are summarized and staff's comments are provided in the following table:

Appellant's Appeal Comments	Staff Response
Not intentional disregard as they requested information from the municipality regarding the placement of the accessory building.	Staff regularly provides information to clients respecting the siting of buildings. In all cases, a permit is required prior to construction.
Quotes Section 21(h) of <i>Halifax Mainland</i> Land Use By-law as requiring 10 feet from the flanking street.	The actual section that pertains to this property is Section 4.11(a) (ii) of the <i>Sackville</i> Land Use By-Law, the minimum set-back from the public street is 20 feet.
The difficulty experienced is not general to properties in the area due to the fact that this is a corner lot and the grade is too steep to place the accessory building elsewhere on the property.	The grade of properties within the 30m notification area slope down from the top of Hillsdale Crescent towards Sunnyvale Crescent, therefore, the site constraint of sloping land is a difficulty for all properties located within the 30m notification area.
There is virtually nowhere else on the property where the shed can be feasibly <i>moved a second time</i> . The shed was moved from the applicant's former property in Lake Echo. The only location on the subject lands where the shed could be placed is already occupied by a garden shed.	Regardless of the applicant's decision to retain ownership of the accessory building from their former property, it must be placed on the subject property in keeping with the requirements of the land use by-law.

Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were refused as it was determined that the proposal conflicts with the statutory criteria provided by the *HRM Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

None.

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*. Where a variance refusal decision is appealed, a hearing is held by Council to provide the opportunity for the applicant and all assessed owners within 30 metres of the variance to speak.

ENVIRONMENTAL IMPLICATIONS

None.

ALTERNATIVES

1. Council may deny the appeal and uphold the decision of the Development Officer to refuse the variances.
2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variances.

ATTACHMENTS

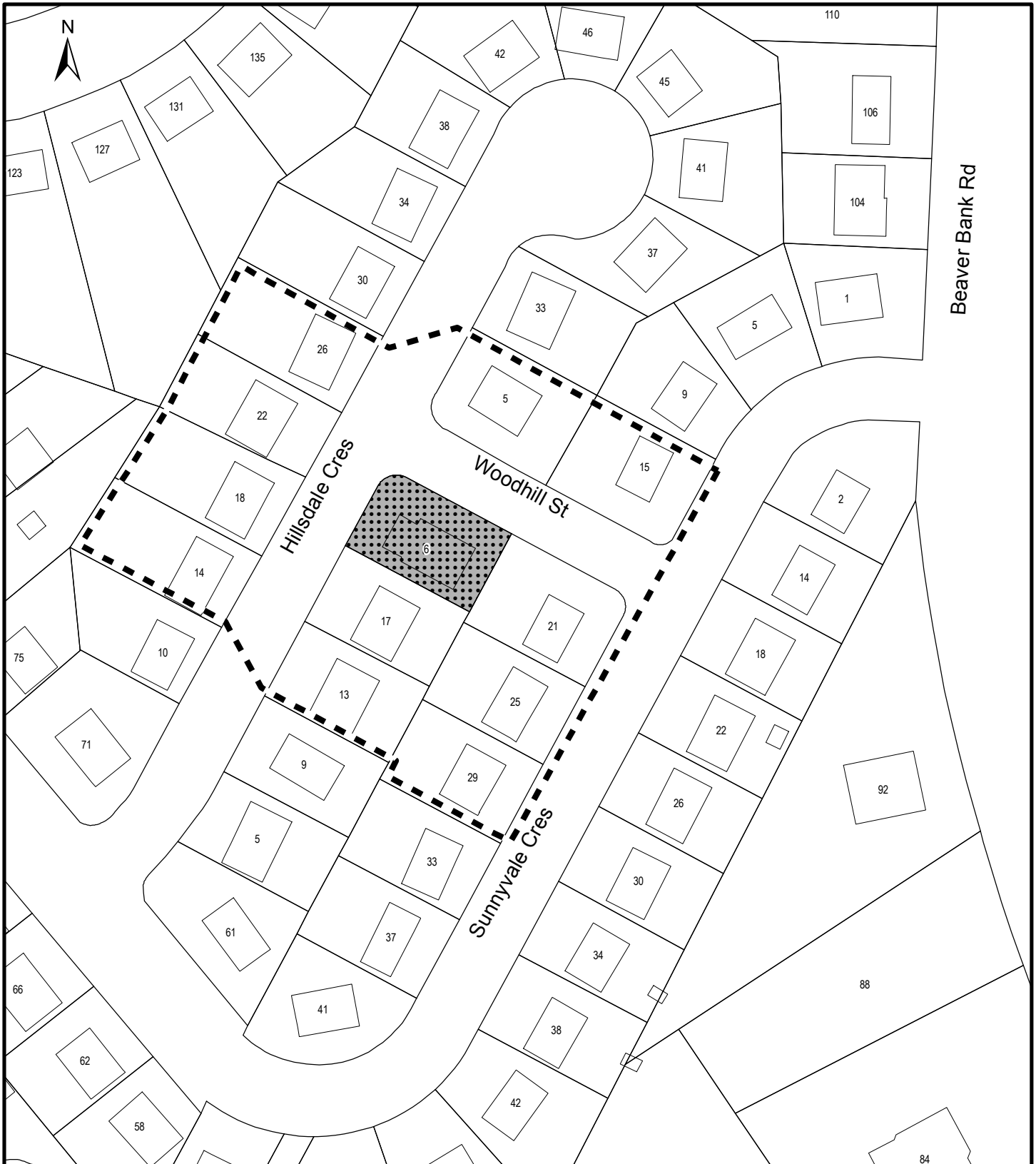
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Refusal Letter
Attachment B	Applicant's Appeal Letter

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Connie Sexton, Development Technician, 902-490-1208 and
Andrew Faulkner, Development Officer, 902-490-4341

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902-490-4800



Map 1 - Notification Area

6 Woodhill Street
Lower Sackville



Subject Properties



Notification Area

HALIFAX



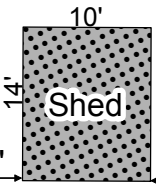
HRM does not guarantee the accuracy of any representation on this plan.

Woodhill Street

Curb

Paved Driveway

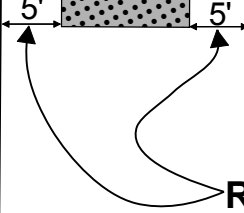
Curb



Existing Garage

Existing Dwelling

Requested Variances 5'



Hillsdale Crescent



Map 2 - Site Plan

6 Woodhill Street
Lower Sackville

HALIFAX



Area of Requested Variance



HRM does not guarantee the accuracy of any representation on this plan.

December 12, 2013

Mr. Adam B. Holley

Dear Mr. Holley;

RE: Application for Variance # 18572 – 6 Woodhill Street, Lower Sackville

This will advise that I have refused your request for a variance from the requirements of the Land Use Bylaw for Sackville as follows:

Location: 6 Woodhill Street, Lower Sackville

Project: The allow a shed to remain closer to the dwelling and Hillsdale Crescent street right of way (flanking yard) than permitted under the land use bylaw.

	Requirement	Refused
Setback between house and shed	8 ft	5 ft
Setback from Hillsdale right of way	20 ft	5 ft

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

No variance shall be granted if:

- (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 development agreement or land use bylaw

It is the opinion of the Development Officer that the variance violates Section 250 (3) (a) (b) and (c) of the Halifax Regional Municipality Charter as listed above.

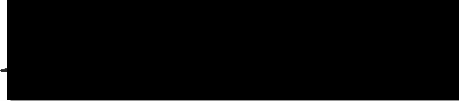
Pursuant to Section 251(5) of the *Halifax Regional Charter* you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Trevor Creaser, Development Officer c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5**

Your appeal must be filed on or before **December 22, 2013**.

If you have any questions or require additional information, please contact Connie Sexton at 490-1208.

Sincerely,

A large black rectangular redaction box covers the signature area. Two thin lines extend from the top corners of the box, suggesting a signature or a mark.

Trevor Creaser
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor, Steve Craig

ATTACHMENT B

Adam and Michelle Holley


December 18, 2013

Trevor Creaser
Development Officer c/o Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5

Mr. Creaser,

This letter is in reply to the refusal of our application for variance #18572 in reference to a shed we moved from Lake Echo to Lower Sackville three years ago. We would like to appeal that decision, and draw your attention to several points in both our experience and our reading of the by-laws.

Our application was refused on three points from section 250 (3) of the *Halifax Regional Charter*, which does state that “no variance shall 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; or (c) the difficulty experienced results from the intentional disregard of the requirements of the development agreement or land use bylaw”.

We will discuss the potential difficulty experienced and the intent of the land use bylaw below, but we would first like to discuss the third point.

Neither the placement of this shed nor our application for a variance was an “intentional disregard of the development agreement or land use bylaw”. Prior to **moving this shed from our former dwelling in Lake Echo in 2011**, we did contact HRM to confirm that we were not violating any bylaws by moving the shed, and did not require permits. Based on the information we received at that time, we transported the shed from Lake Echo and placed it on the only portion of the property feasible due to the steep grade (see photos from original application) and which, according to what we understood at the time, conformed to HRM bylaws. We concede that we were either given incorrect information or that it may not have been communicated to us clearly, but we certainly did not choose this placement in any kind of “intentional” disregard of the land use bylaw. The same is true of our application for a variance.

Our second concern lies with the “intent of the land use bylaw”. Based on conversations with your office, we were given to understand that the shed should be set back from the “curb” on the Hillsdale Crescent side. This is why we now draw your attention to section 21 (h) of the *Halifax Mainland Use By-Law*, which is concerning BUILDINGS ON CORNER LOTS and states that “where a building is situated on a corner lot, it shall be at least 10 feet from the flanking

street abutting such lot” (NOT 20 FEET). The street that flanks the shed is Hillsdale Crescent. Given the fact that the 5 foot space immediately adjacent to the curb is not currently purposed, as such we have requested a 5 foot variance, which would give us the 10 feet total required from the curb. This leaves only the space between the garage and shed where we are currently outside the bylaw, and have requested a variance to include this portion of the property as well. The space between our garage and shed is not far off what is required by the bylaw, so we have requested that another three feet be included here (i.e., allow the space between the shed and garage to be 5 feet instead of 8 feet).

Another item of concern for us is that “the difficulty experienced is general to the properties in the area”. Since (counting ours) there are only four corner lots in the area noted on the map and of those, each has a different shape and steepness of grade, we would argue that these difficulties are unique. Ours is also the smallest lot of the four, which presents further obstacles in terms of space.

Lastly, we draw your attention to the fact that there is virtually nowhere else on the property where the shed can feasibly be *moved a second time*. Again, we remind you that **we owned this shed prior to purchasing this property and did not build it here.**

The photos included in our original application show that the grade is too steep for the shed to have been placed on the opposite side of the house (the one that is not flanked by a street), either when we moved it from Lake Echo or at the current time, and there is a garden shed which was already in place when we purchased the property in the only spot where there is enough room to place our storage shed in the back yard.

We are more than willing to make *reasonable* changes to allow us to keep the shed in its current position, such as pushing the shed a little closer to the garage and/or adding a fence to the property. However, we submit that it would be impossible for us from a practical and financial standpoint to alter the property to a point where the shed could actually be moved to the other side of the lot. As such, we respectfully request recommendations as to specifically what changes would need to be made either to allow us to be within HRM’s bylaws or to have a variance request that can be approved.

Thank you for your consideration,

Adam and Michelle Holley

