



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

Item No. 8.2.2
North West Community Council
April 20, 2015

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: March 31, 2015

SUBJECT: **Case 19464: Appeal of Variance Refusal – 64 MacDonald Point Road,
Seabright**

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (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

A variance request has been submitted for 64 MacDonald Point Road, Seabright to construct an accessory building (Maps 1 and 2) which is already under construction and partially built. In order to facilitate this project, a variance has been requested to relax the left side yard setback requirement of the St. Margarets Bay Land Use By-law (LUB) to enable the current placement of the accessory building. The property also contains a single unit dwelling.

Site Details:

Zoning: MRR-1 Zone, St. Margarets Bay Land Use By-law

| | Zone Requirement | Variance Requested |
|-------------------------------|-------------------------|---------------------------|
| Minimum left side yard | 8 feet | 5.2 feet |

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (Attachment B). The applicant has appealed the refusal and the matter is now before North West Community Council for decision (Attachment C).

DISCUSSION

Development Officer's Assessment of Variance Request:

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 this proposal violates the intent of the LUB.

Building setbacks ensure that structures maintain separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The property is large enough to facilitate the setback and there does not seem to be any evident reason why the setback could not be achieved such as grading or a watercourse buffer which could hinder site development.

2. Is the difficulty experienced general to 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 lot configuration for this lot and abutting lots does not follow a standard configuration relative to lot layout and dimensions. Each lot is somewhat unique and for this reason it has been determined that the difficulty experienced is not general to the area.

3. Is the difficulty experienced the result of an 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. That is the case in this request.

The applicant started construction of the accessory building prior to receiving approval. This resulted in a stop work order. A permit application was then made by the owner which was subsequently refused because it did not meet the requirements of the LUB. Subsequent to the stop work order, a second complaint was received regarding additional work occurring on the accessory building. A site inspection by the Building Official confirmed that additional work had occurred after the date of the initial stop work order.

The applicant continued work on the structure after being notified of the violation resulting in intentional disregard for the requirements of the LUB.

Appellant's Appeal:

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment C) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

| Appellant's Appeal Comments | Staff Response |
|---|--|
| <i>I believe that the "intent" of the land use by-law in this case is to provide adequate building separation to maintain access, safety and privacy. With regard to access and safety there remains more than 20 feet of clear space between the structure and the house on the adjacent property so access and safety are not adversely affected.</i> | The majority of the separation distance which is referenced in the appellants letter is on the adjacent property owners land and not the applicants. Side yard setbacks are measured from property lines not adjacent buildings. This request seems to result from the construction of the accessory building in this location before obtaining the necessary permits. |
| <i>With regard to privacy the building enhances the privacy for both the adjacent property and is a better alternative to a fence.</i> | The requirements and standards are different for fences and accessory buildings. Fences do not require permits unless they are higher than 2 meters and may be located on the property line. |
| <i>It should be also noted that all adjacent property owners, without exception, prefer to have the structure remain as is.</i> | Complaints were filed with HRM which led to an investigation and subsequent stop work order. |

| | |
|---|--|
| <i>Disregard for the requirements was not intentional as I was not aware of the requirements of the time.</i> | The applicant may not have been aware initially of the requirements for setbacks and permitting requirements for an accessory building. However, after notification was presented in the form of a stop work order to the applicant construction of the accessory building continued to occur. |
|---|--|

Conclusion:

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

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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 approval is refused and appealed, a hearing is held by Council to provide the opportunity for the applicant and the appellant(s) to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. North West Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variance.
2. North West Community Council may deny the appeal and uphold the decision of the Development Officer and approve the variance.

ATTACHMENTS

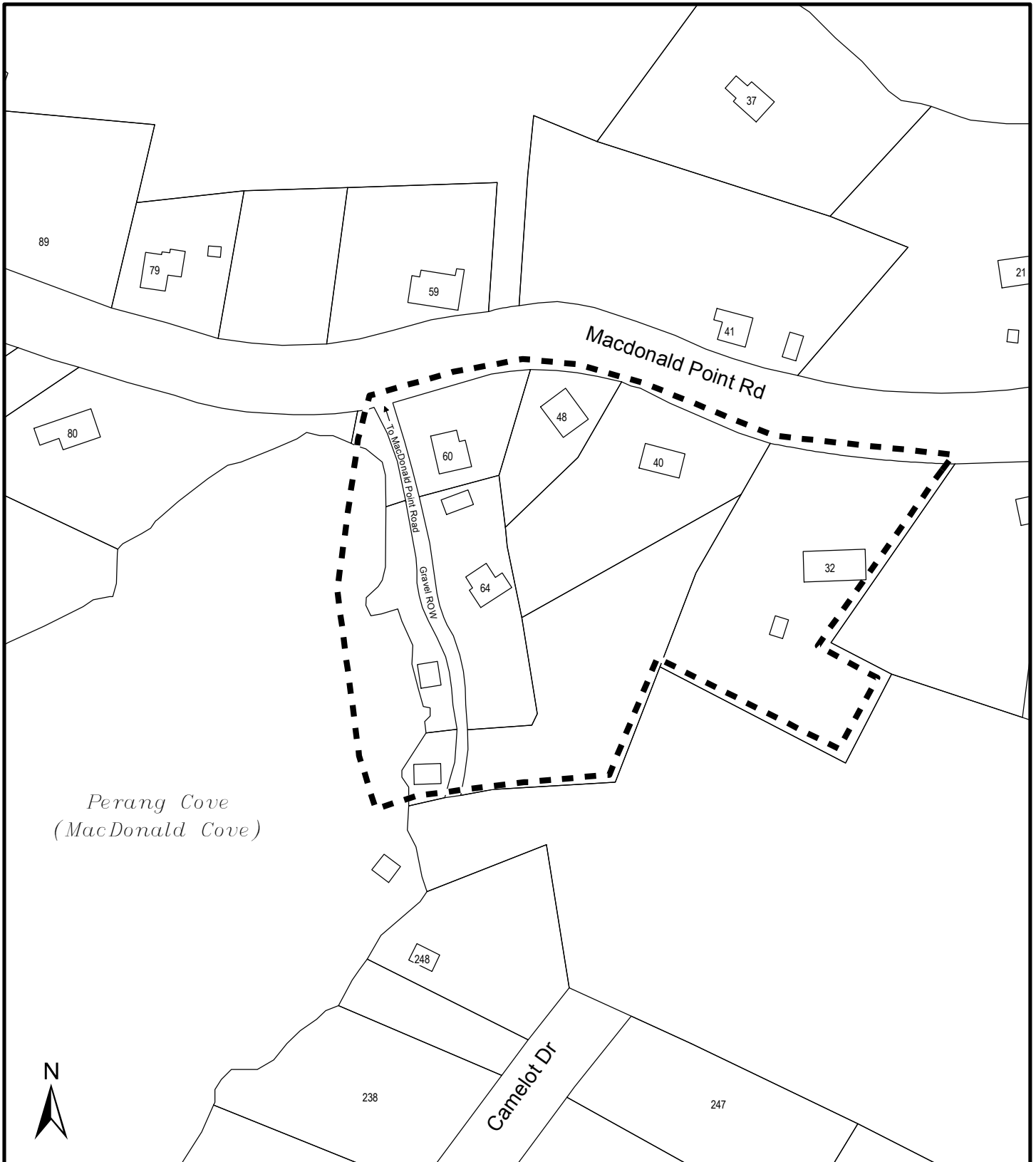
- | | |
|---------------|---------------------------------|
| Map 1: | Notification Area |
| Map 2: | Site Plan |
| Attachment A: | Building Elevations |
| Attachment B: | Variance Refusal Notice |
| Attachment C: | Letter of Appeal from Applicant |

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: Sean Audas, Development Officer, 902.490.4402

Original Signed

Report Approved by: _____
Kurt Pyle, Acting Manager Development Approvals, 902.490.6011



Map 1 - Notification Area

64 MacDonald Point Road
Seabright



Subject Property

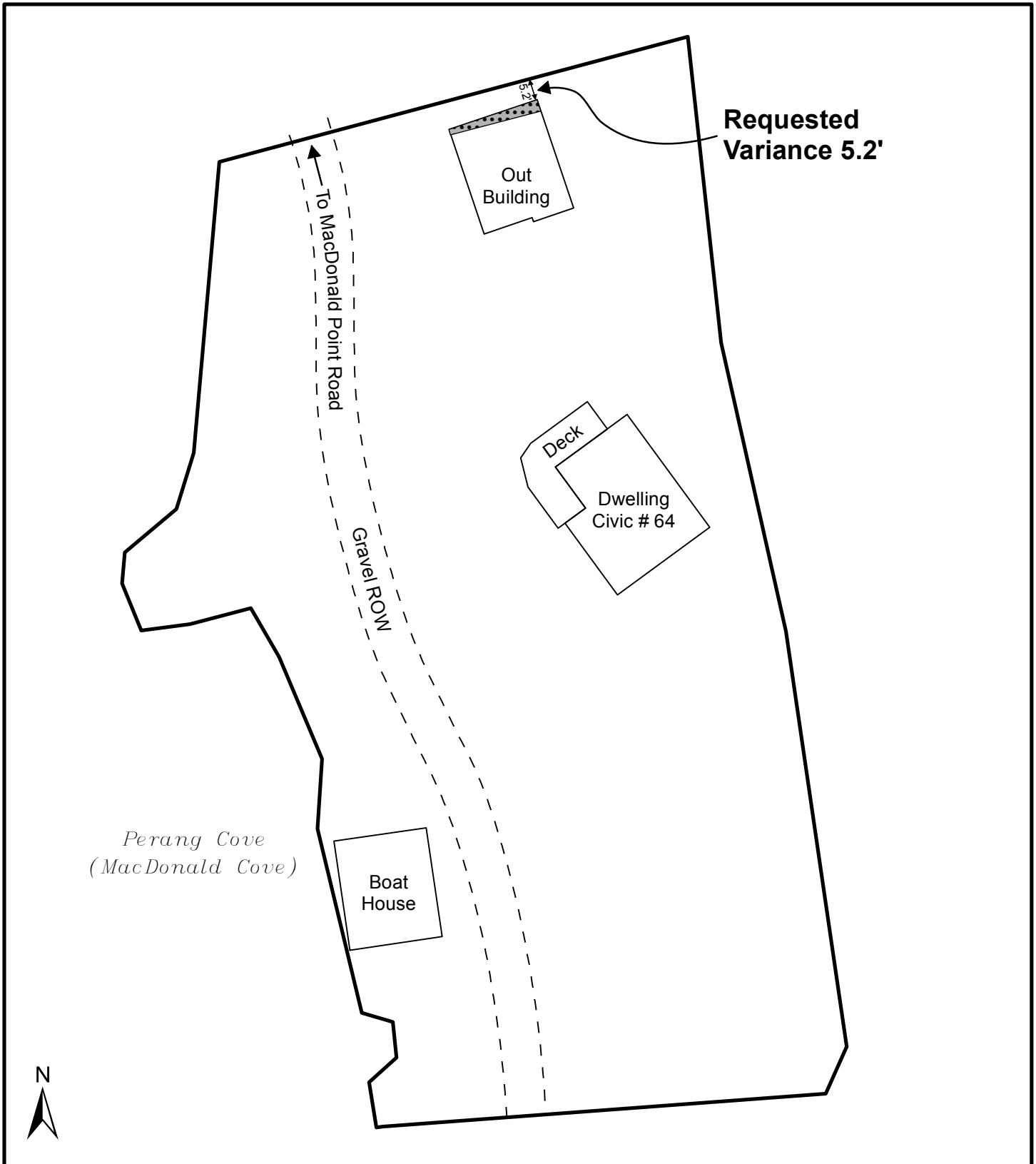


Notification Area

HALIFAX



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



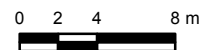
Map 2 - Site Plan

64 MacDonald Point Road
Seabright

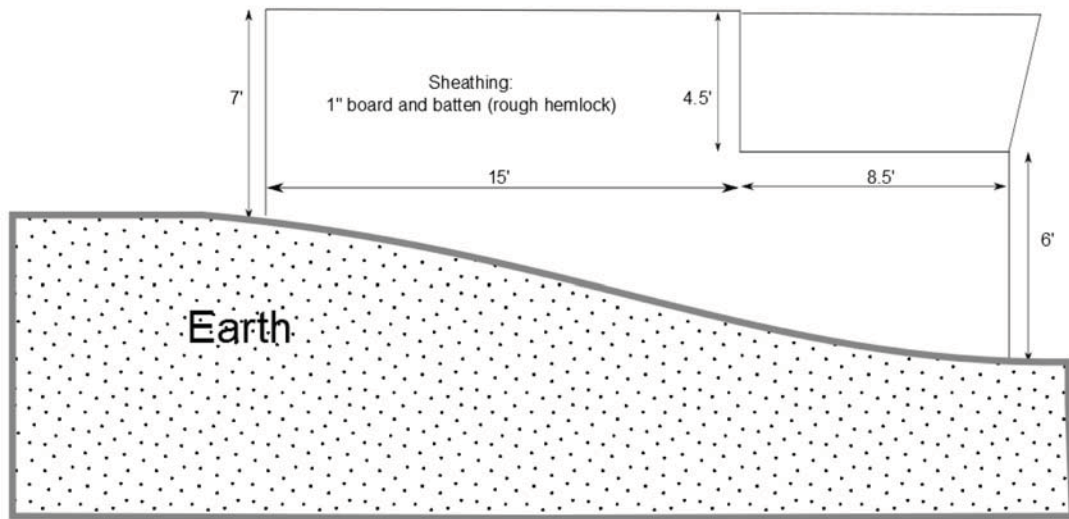
HALIFAX



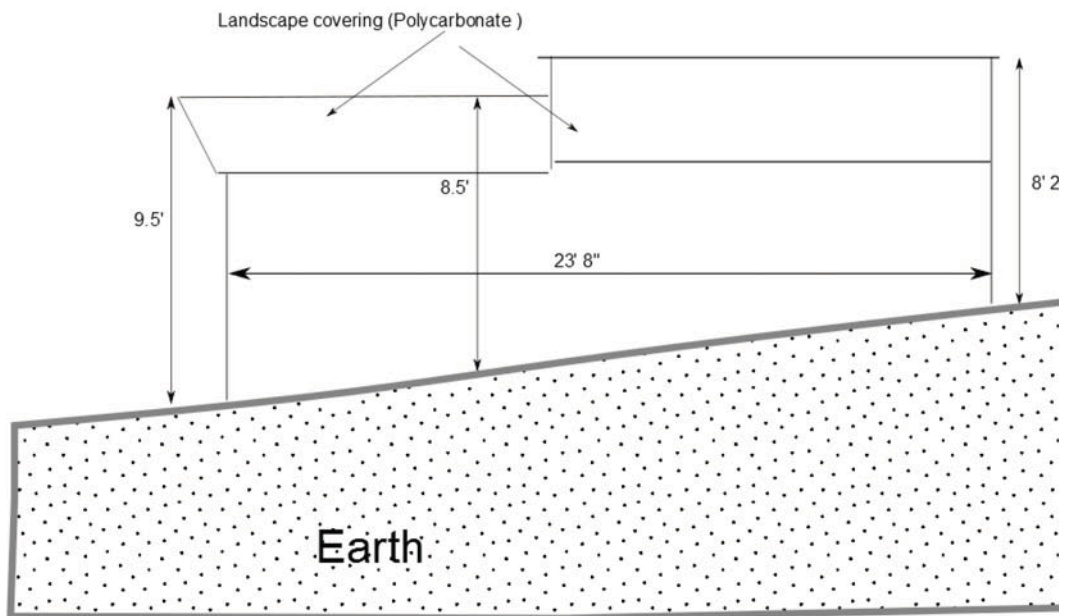
Area of requested Variance



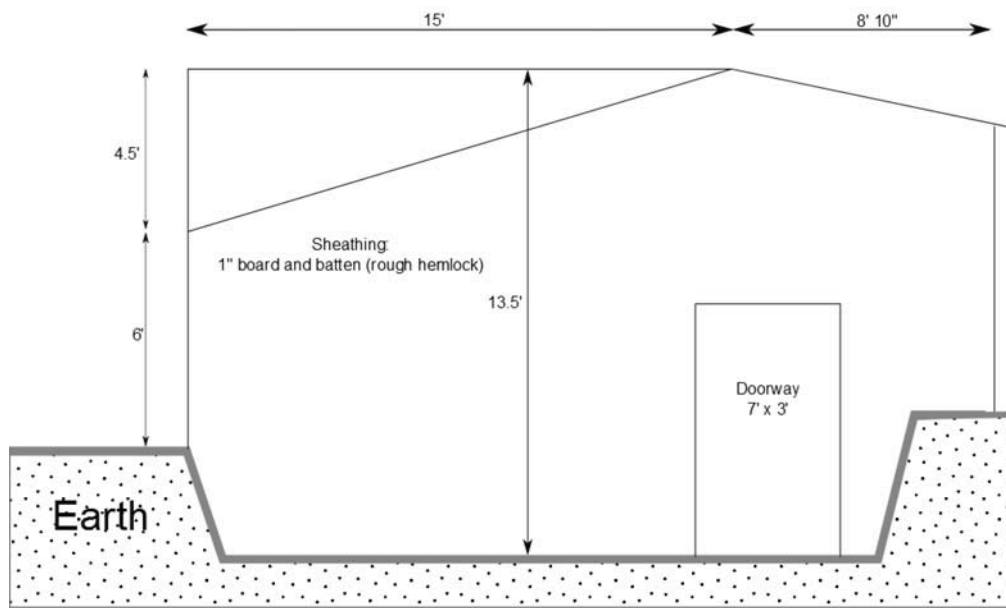
HRM does not guarantee the accuracy of any representation on this plan.



Woodshed North Elevation
64 MacDonald Point Road, Seabright



Woodshed South Elevation
64 MacDonald Point Road, Seabright



Woodshed West Elevation
64 MacDonald Point Road, Seabright

COPY

August 27, 2014

Lorne J. Vaasjo

Dear Mr. Vaasjo,

RE: Variance Application No.19464- Variance for side yard setback requirements of Land Use Bylaw for Districts 1 & 3, to construct an accessory building 64 MacDonald Point Road, NS

This will advise that I have refused your request for a variance from the requirements of the Land Use Bylaw Districts 1 & 3 as follows:

Location: 64 MacDonald Point Road, Seabright
Project Proposal: To construct an accessory building

| | Requirement | Proposed |
|-------------------|-------------|------------------|
| Left Side Setback | 8 feet | 5 foot, 5 inches |

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:

- (a) variance violates the intent of the land use bylaw
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

Pursuant to Section 236(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 Sean Audas, 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 September 15, 2014.

If you have any questions or require clarification of any of the above, please call Brenda Seymour at 490-3244.

~~Sincerely,~~

Original Signed

Sean Audas

Development Officer

cc. Cathy Mallet, Municipal Clerk
Councillor Matt Whitman, (District 13)

Variance Application 19464 Appeal

September 10, 2014

Municipal Clerk / Development Officer(s)
Halifax Regional Municipality

RECEIVED SEP 10 2014

An appeal of the refusal of variance application 19464 is respectfully submitted under the following grounds:

With respect to: (a) the variance violated the intent of the Land Use Bylaw.:

I believe that the 'intent' of the land use bylaw in this case is to provide adequate building separation to maintain access, safety and privacy.

With regard to access and safety there remains more than 20 feet of clear space between the structure and the house on the adjacent property so access and safety are not adversely affected.

With regard to privacy the building enhances the privacy for both the adjacent property and is a better alternative to a fence.

It should also be noted that all adjacent property owners, without exception, prefer to have the structure remain as it is.

With respect to: (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.:

In order to have intentional disregard for the requirements of the Land Use Bylaw I would need to have knowledge of the requirements at the time the foundation and structure were put in place. I assure you that the disregard for the requirements was not intentional as I was not aware of the requirements at the time. I was very surprised when the building permit application was rejected in 2013 because of the setback requirements. If I had been aware of the setback requirements (and thus the need to first obtain a variance) I and certainly would not have submitted the application as I did.

Sincerely

Lorne Vaasjo
