



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

Item No. 8.2.1
Harbour East-Marine Drive Community Council
October 2, 2014

TO: Chair and Members of Harbour East - Marine Drive Community Council

Original signed

SUBMITTED BY:

Brad Anguish, Director, Community and Recreation Services

DATE: September 10, 2014

SUBJECT: **Case 19371: Appeal of Variance Refusal – 19 Graham Street,
Dartmouth**

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development.

RECOMMENDATION

The question before Harbour East – Marine Drive Community Council is to grant or deny the appeal before them.

BACKGROUND

Proposal:

Variance requests have been submitted for the property at 19 Graham Street in Dartmouth to permit the site to be developed with a new semi-detached dwelling (Map 2). The property is currently vacant. In order to facilitate this project, two variances have been requested to relax the minimum required side yards.

Site Details:

Zoning: R-2 (Two Family Residential) Zone, under the Dartmouth Land Use By-law

	Zone Requirement	Variance Requested
Minimum side yard:	8 feet	4 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variances (Attachment A). This decision was appealed by the applicant (Attachment B) and, as such, the matter is now before the Harbour East - Marine Drive 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.

The Dartmouth Land Use By-law was amended in 2001 by the addition of Section 33(4). The intent of this section was to establish and standardize side yard setbacks for R-1 and R-2 zoned properties in Dartmouth. So as not to impact existing vacant lots and existing developed properties, these requirements apply only to lots created since the date of the amendments. The side yards for vacant lots and developed properties created prior to October 13, 2001 in Dartmouth, are regulated by the Building By-law and not the Land Use By-law.

The impact of the 2001 amendments was to require that any development of newly created infill lots or development in new residential areas in Dartmouth have consistent standards for side yard setbacks. This lot was approved on December 30, 2010. As this lot was approved following the effective date of the 2001 amendments, reducing the side yards for this property would violate the intent of the Land Use By-law.

In addition, within this residential area the majority of dwellings, including semi-detached, duplex, and single family dwellings have been developed with side yards which are approximately 8 feet (Map 2). Reducing the side yards for this vacant property to 4 feet would result in a development with setbacks which are substantially different from the established neighbourhood standard.

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

The difficulty experienced is general to properties in the area. This property has a similar lot size and frontage to the majority of the properties on Graham Street with the exception of two adjacent properties at 17 and 19 Graham Street which are substantially larger. There is nothing unique about the size or configuration of the vacant lot at 19 Graham Street which would restrict its ability to be developed as a semi-detached dwelling while meeting the required side yard setbacks of 8 feet.

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 Land Use By-law relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case in this request. The applicant has applied for variances prior to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the refusal of the variance requests.

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 raised certain points in their application for a variance for Council's consideration. Please note that the appellant did not raise these points in the appeal, but in the original application. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Application Comments	Staff Response
<i>The minimum size of a realistic semi is 21 feet per side and this is an R-2 lot in an area of semi's and multi-unit buildings.</i>	<p>This area contains a variety of residential development including converted dwellings with multiple or two units, semi-detached dwellings, and single unit dwellings.</p> <p>This lot, given its area and frontage, can be developed for a two unit dwelling without a variance for side yards. It can be developed as a semi-detached (side-by side), a duplex (over and under) or a single family with a basement unit, while meeting all of the requirements of the Land Use By-law.</p>
<i>Most properties in the area have at least 60 feet of road frontage.</i>	<p>There are some properties in the area which have more than 50 feet of frontage, however the majority, including all of the semi-detached dwellings from 3 - 11 Graham Street, have frontages of less than 60 feet (Map 1).</p> <p>The lot at 19 Graham Street was granted subdivision approval in 2010 with a frontage of 50 feet which meets the by-law requirements for the development of a two unit dwelling.</p>

Conclusion:

In summary, the Development Officer has determined the proposal to vary the side yard setbacks for this property: 1) violates the intent of the Land Use By-Law, and 2) is a result of difficulties experienced which are general to the properties in the area. Staff has reviewed all the relevant information in this variance proposal. As a result of this review, the variance requests were refused. The matter is now before 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 refusal decision is appealed, a hearing is held by Community Council to provide the opportunity for the applicant and all assessed owners within 30 metres of the variance to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

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

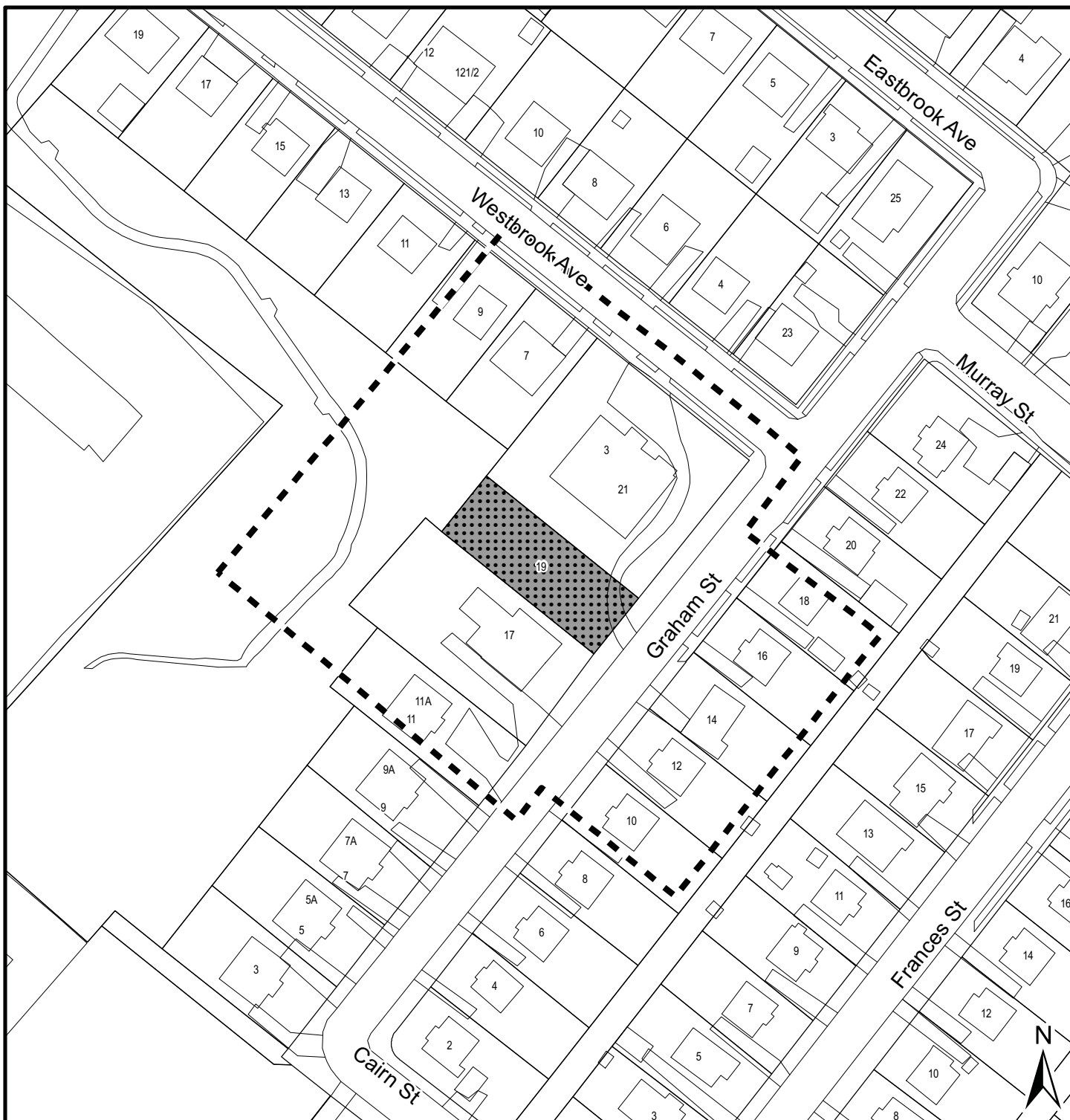
ATTACHMENTS

Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Refusal Letter
Attachment B	Letter of Appeal from the Applicant

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 902-490-4210, or Fax 902-490-4208.


Report Prepared by: Shelley Dickey, Development Technician, 902-490-1204 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

19 Graham Street
Dartmouth

 Site of proposed variance

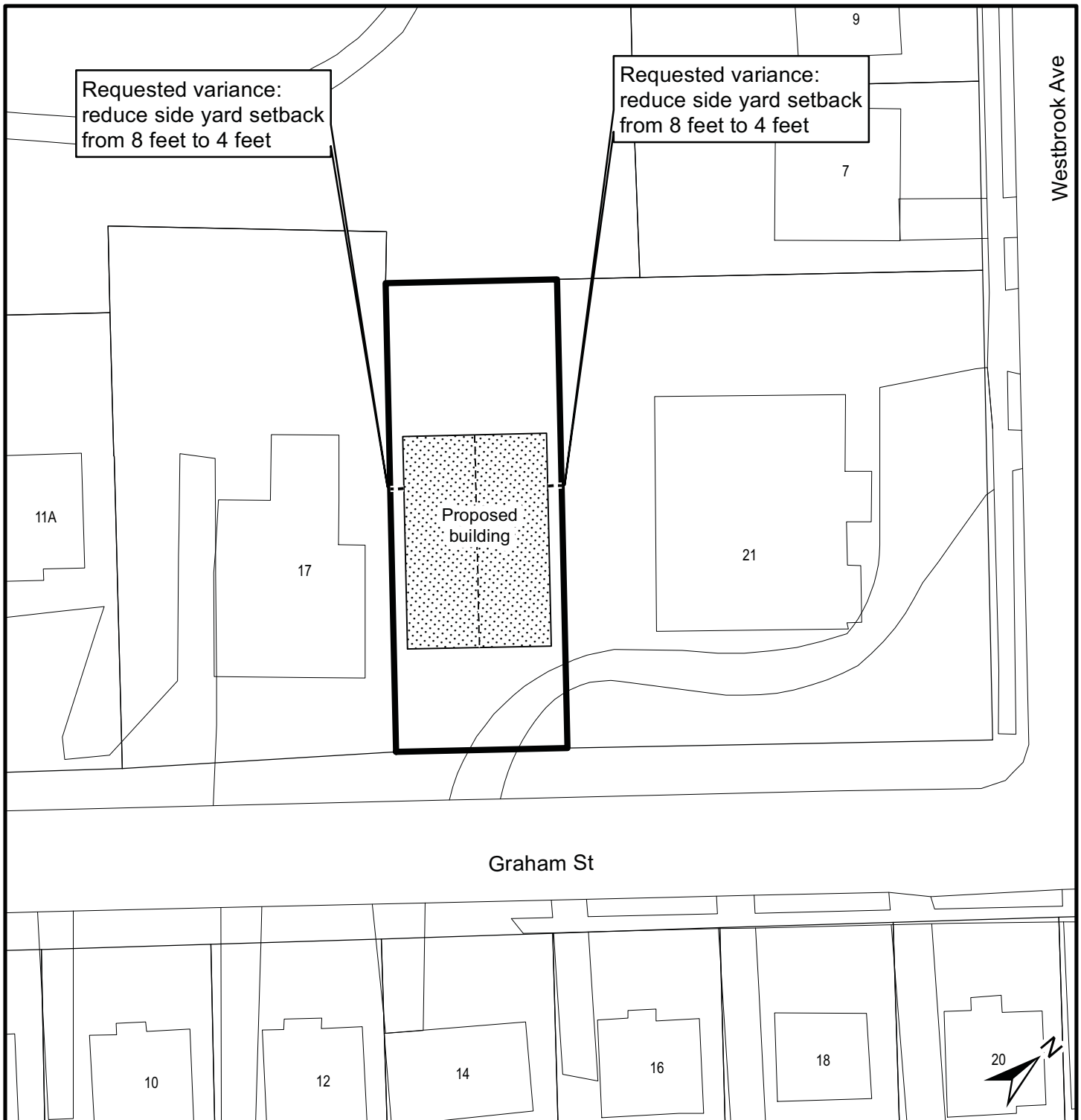
 Area of notification

Dartmouth Plan Area

HALIFAX

0 20 40 m


The accuracy of any representation on this plan is not guaranteed.

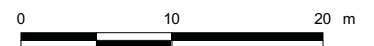


Map 2 - Site Plan

19 Graham Street
Dartmouth

HALIFAX

 Site of proposed variance



Dartmouth Plan Area

The accuracy of any representation on
this plan is not guaranteed.

Attachment A: Variance Refusal Letter

August 11, 2014

Clark Wilkins
Metro Premier Properties
P.O. Box 21047,
Dartmouth, NS B2W 6B2

Dear Mr. Wilkins:

RE: Application for Variance # 19371- 19 Graham Street, Dartmouth (PID # 41334558)

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

Location:	19 Graham Street, Dartmouth
Zoning:	R-2 (Two Family Residential)
Project Proposal:	Construction of semi-detached dwelling
Required Side Yards:	8 feet per side
Refused Variance:	4 feet per side

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

No variance shall be granted if:

- (a) the variance violates the intent of the development agreement or 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 this requested variance violates the intent of the Dartmouth land use by-law specifically Section 33(4) of this bylaw which relates to lots approved after 13 October 2001.

Furthermore, the difficulty experienced is general to properties in the area. There is nothing unique about the size or configuration of 19 Graham Street which would restrict its ability to be developed as a two unit dwelling while meeting the required side yard setbacks of 8 feet.

HALIFAX

Halifax Regional Municipality
PO Box 1749, Halifax, Nova Scotia
Canada B3J 3A5

halifax.ca

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:

**Andrew Faulkner, 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 **August 21, 2014**.

If you have any questions or require additional information, please contact Shelley Dickey at 490-1204.

Sincerely,

Original signed 

**Andrew Faulkner
Development Officer**

cc. **Cathy Mellett, Municipal Clerk
Councillor, Gloria McCluskey**

Attachment B: Letter of Appeal from the Applicant

Dickey, Shelley

From: [redacted]
Sent: August-22-14 11:40 AM
To: Dickey, Shelley; [redacted]
Attachments: Scan0069.pdf

Shelly, as per my phone message yesterday August the 21st and our conversation this morning g August the 22nd, I will be appealing Andrews decision and Geoff Keddy will be handling the appeal.

Clark Wilkins