



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

Item No. 8.2.1
Harbour East-Marine Drive Community Council
November 12, 2015

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

SUBMITTED BY: *Original signed*

Bob Bjerke, Chief Planner & Director, Planning and Development

DATE: September 15, 2015

SUBJECT: **Case 19802: Appeal of Variance Refusal – 7 Cherry Drive, Dartmouth**

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part VIII, Planning and Development

RECOMMENDATION

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

BACKGROUND

A variance request has been submitted for 7 Cherry Drive, Dartmouth to construct a two storey addition to the existing single unit dwelling (Maps 1 and 2). In order to facilitate this project, a variance has been requested to relax the required flankage yard setback requirement of the Dartmouth Land Use By-law (LUB).

Site Details:

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

	Zone Requirement	Variance Requested
Minimum flankage yard: (from Slayter Street)	15 feet	6 inches

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 (Attachment B) and the matter is now before Harbour East- Marine Drive Community Council for decision.

Proposal Details:

The subject property is located on the northwest corner of Cherry Drive and Slayter Street in Dartmouth. The dwelling is located 15 feet from the flankage property line along Slayter Street and 23 feet from the front property line along Cherry Drive. The authorized use of the property is a single unit dwelling containing the home-based business, "Sag Physical Therapy Consulting." The applicant proposes to construct an addition to the north wall of the dwelling which will result in the building being situated 6 inches from the Slayter Street property line. To enable the proposed addition, the applicant has requested a variance to relax the minimum flankage yard.

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 *HRM 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.

Building setbacks within the Land Use By-law exist for both aesthetic and practical purposes. In the case of setbacks from streets, they provide visual separation from the street, area for future road expansion, and help to ensure that structures can be maintained without blocking the public right of way.

For this dwelling and all dwellings along Slayter Street between Cherry Drive and Frances Street (see Map 1), the Land Use By-law requires minimum flankage and front yards of 15 feet. Property location certificates on file with the Municipality identify the following existing building setbacks along Slayter Street:

Civic no. 61-61A Slayter Street - 15 feet to the porch
Civic no. 63 Slayter Street - 20.5 feet to the house
Civic no. 67 Slayter Street - 16 feet to the porch

There are no location certificates on file for other properties along Slayter Street within this block, however, based on a review of GIS mapping it appears that no dwellings are closer to Slayter Street than 15 feet.

The request for a reduction of the flankage yard setback to the distance requested is substantial and it is the opinion of the Development Officer that granting this variance would result in violation of the intent of the Land Use By-law to provide an appropriate separation distance between the building and the street line.

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 subject dwelling is situated on a lot that is 5,194 square feet in area. Of the 17 properties within the 30 metre notification area, 15 are approximately 5,800 square feet in area and 2 are approximately 11,000 square feet in area. Therefore, this property is similar in size and configuration to neighboring properties within the notification area. The property owner notes in the variance application that the proposed position of the building addition is due to the grade of the property. The slope of the land also affects the lots on the other side of Slayter Street as well as neighbouring lots in the rear. As shown in Attachment C, a street photo of the corner of Cherry Drive and Slayter Street, the grade of the property is common with others along Slayter Street.

As all the lots within the 30 metre notification area are similar in size, use, and topography the difficulty experienced on the subject property appears to be 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. That is not the case in this request.

The applicant has applied for a Development Permit in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

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
<i>The primary purpose for the addition is to create a fully accessible entrance and main floor, increasing the functionality of the house.</i>	While accessibility is important for the resident's current and future needs, this is not a matter of consideration under the <i>Charter</i> criteria.
<i>The addition will match the style and height of the existing house and would be in keeping with the existing character and style of the neighbourhood.</i>	The building's architecture is not a matter of consideration under the <i>Charter</i> criteria. Staff advise that a structure located 6 inches away from the street line is not in keeping with the character of the neighbourhood.
<i>The proposed addition will make use of existing topographical features to facilitate the creation of a main floor accessible entrance to the building.</i>	While consideration of a lot's topography is a key consideration in locating an addition, it does not supersede the need to maintain an appropriate flankage yard.
<i>Extending towards the rear of the property does not address the creation of a suitable entrance due to the topography of the property.</i>	It appears that there is room at the rear of the property to place a building entrance, however, no alternative designs were proposed.
<i>The property at 10 Shamrock Drive had a variance granted based on the building situated at 208 School Street.</i>	An addition at 10 Shamrock Drive was approved to allow an addition to be located 5 feet from the street line as it did not exceed the established building line on School Street which is 4 feet. This permit did not require the approval of variance as it met the setback requirements of the Land Use By-law regarding established building lines.

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 Harbour East – Marine Drive Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance request.

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. Harbour East – Marine Drive Community Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance.
2. Harbour East – Marine Drive 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

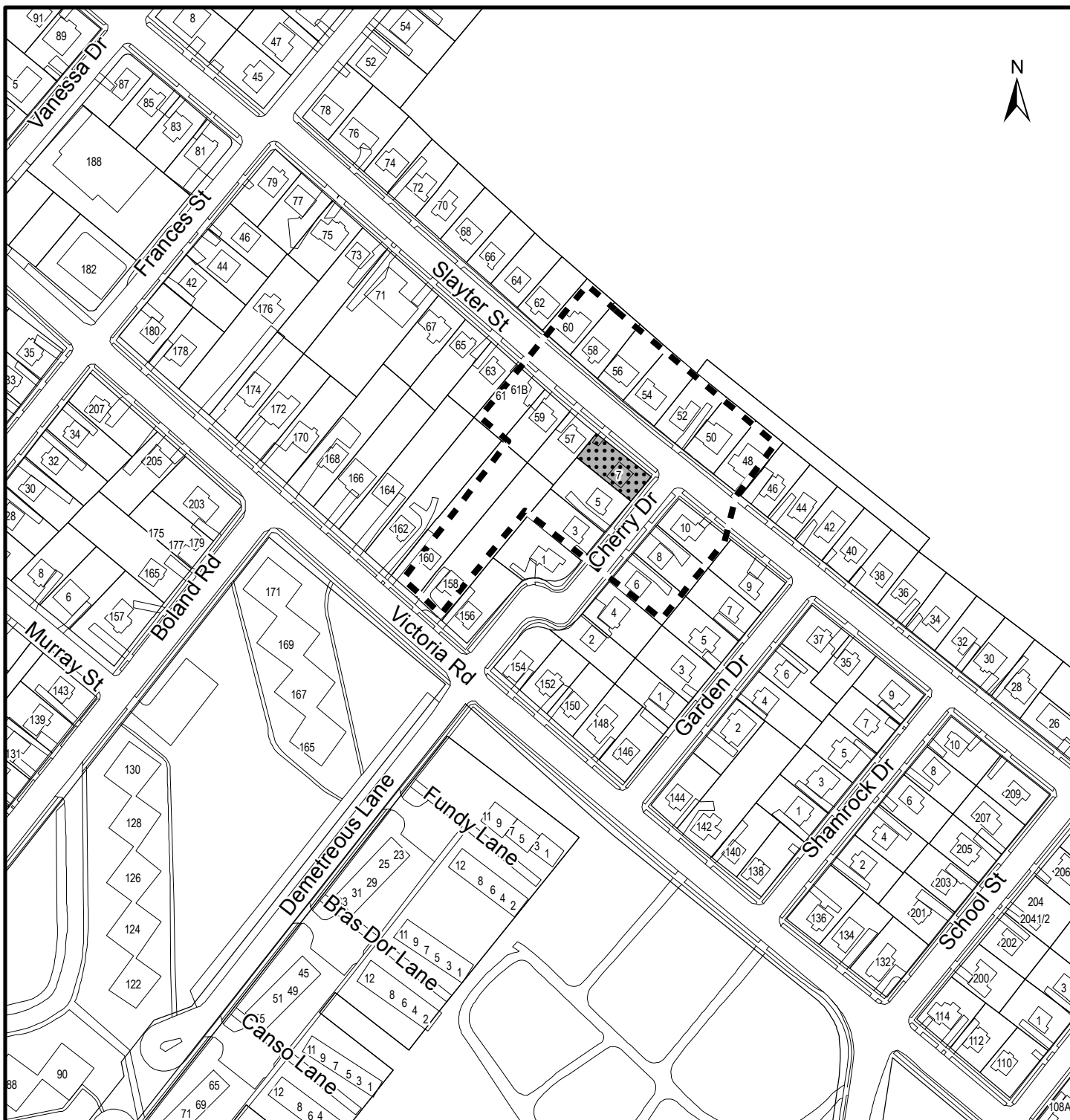
Attachment C – Photo of Street showing General Slope

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
Andrew Faulkner, Development Officer, 902.490.4341


Original signed


Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902.490.4800



Map 1 - Notification Area

7 Cherry Drive
Dartmouth


 Subject Property

 Area of notification

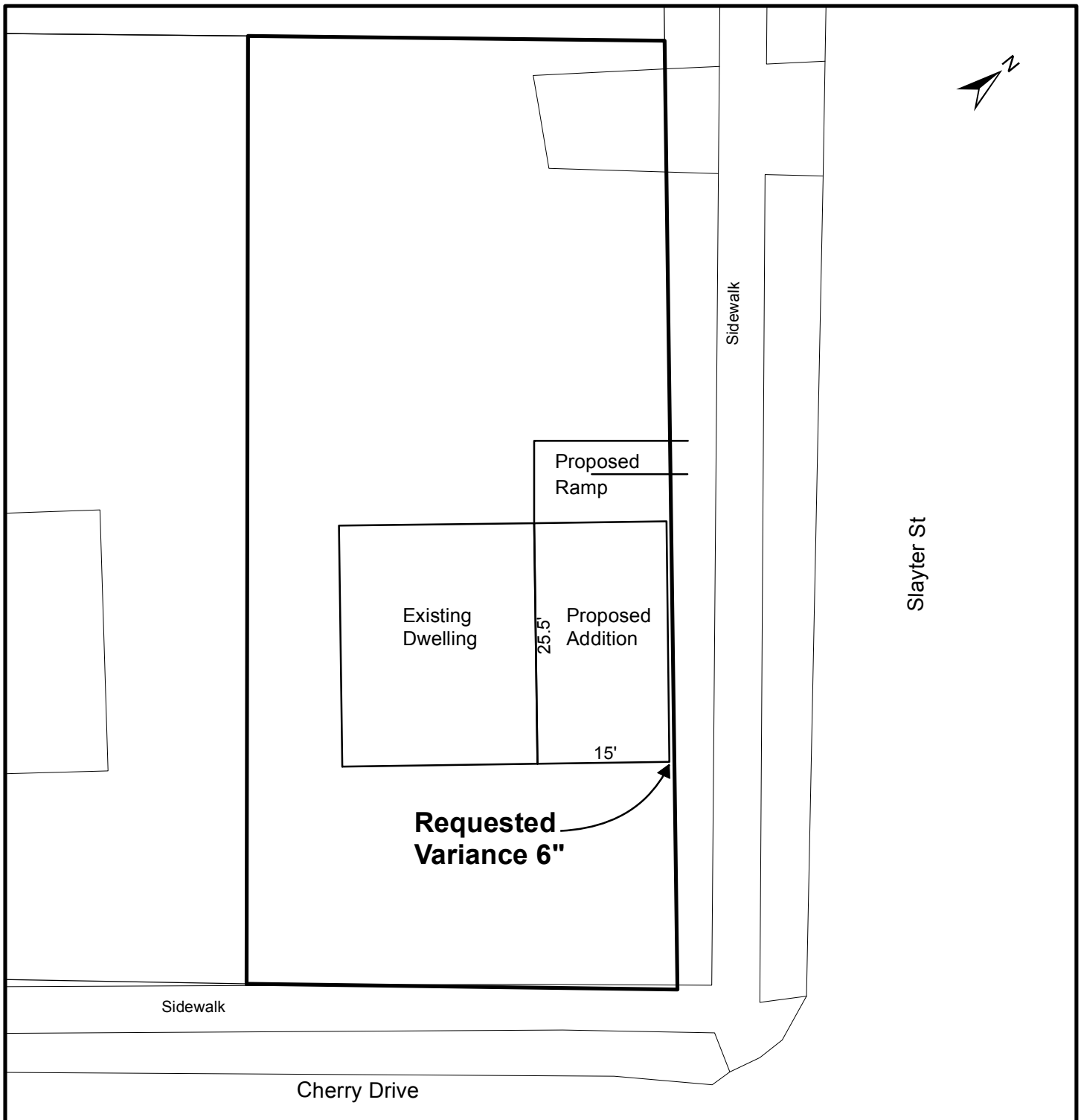
Dartmouth
Plan Area

HALIFAX

0 20 40 60 80 m



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



Map 2 - Site Plan

7 Cherry Drive
Dartmouth

HALIFAX



Dartmouth
Plan Area

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

Attachment A - Variance Refusal Letter

April 14, 2015

Mr. Kirk Aaron Yanofsky
7 Cherry Drive
Dartmouth, NS B3A 2Z1

RE: Application for Variance 19802 – 7 Cherry Drive, Dartmouth

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

Location:	7 Cherry Drive, Dartmouth
Project Proposal:	Two story addition in flankage yard
Required Setback:	15 Feet (mean distance for street)
Refused Variance:	6 Inches

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 by-law;
- (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 request violates the intent of the Dartmouth Land Use By-law and the difficulty experienced is general to the area.

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**

.../2

HALIFAX

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

halifax.ca

Your appeal must be filed on or before **April 24, 2015**. If you have any questions or require additional information, please contact Connie Sexton at 902-490-1208.

Sincerely,

A black rectangular box redacting the signature of Andrew Faulkner.

Original signed

Andrew Faulkner
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor, Gloria McCluskey

Attachment B - Letter of Appeal From the Applicant

April 17, 2015

Andrew Faulkner, Development Officer
C/O Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, NS, B3J 3A5

RE: Application for Variance 19802 7 Cherry Drive, Dartmouth

Mr. Faulkner,

This letter is to advise that we are appealing your decision to deny our request for a variance from the requirements of the Land Use By-Law for Dartmouth:

Location: 7 Cherry Drive, Dartmouth
Project Proposal: Two story addition in flankage yard
Required Setback: 15 Feet (mean distance for street)
Refused Variance: 6 inches

Our grounds for appeal are as follows:

- The primary purpose for the addition is to create a fully accessible entrance and main floor, increasing the functionality of the house. The main floor of the addition will have a fully accessible entrance, bathroom and bedroom.
- The proposal direction, towards Slayter St., matches the style and height of the existing house, and would be in keeping with the existing character and style of the neighborhood
- The proposed addition will make use of existing topographical features to facilitate the creation of a main floor accessible entrance into the building.
- This area has been fenced in for over 10 years (pre-existing the current owners), and the proposed addition would be inside this fenced area.
- Neither the existing fence nor the proposed addition affect the "daylight window" on the corner of Cherry Dr. and Slayter St.
- We require an accessible home because we have extended family members who are wheelchair users, as well as those with limited mobility who are unable to use stairs. We are also preparing to be able to provide care to our aging family members.
- Extending the building forward to create living space would require the removal of a tree, relocation of the existing driveway, and the granting of a variance that would create a building out of character with the existing neighborhood.
- There is not enough space between the existing building and the adjacent building (#5 Cherry Dr.).
- Extending towards to rear of the property does not address the creation of a suitable entrance to the building due to the topography of the property.
- There is existing properties very close to the sidewalk / property line in the neighborhood. #10 Shamrock Drive had a variance granted based on the building situated at 208 School St. This is approximately 180m away and is visible from #7 Cherry Dr.

We look forward to moving forward with the appeal process.

Sincerely,



Original signed

Kirk Yanofsky

Attachment C - Photo of Street Showing General Store

