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Halifax, Nova Scotia
B3J 3A5 Canada

Item 8.2.1
Harbour East - Marine Drive Community Council
January 8, 2015

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

SUBMITTED BY: Original signed
Bob Bjerke, Chief Planner and Director of Planning and Development

DATE: January 08, 2015

SUBJECT: **Case 19262: Appeal of Variance Approval – 2235 Shore Road, Eastern Passage**

ORIGIN

Appeal of the Development Officer's decision to grant 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 whether to grant or deny the appeal before them.

BACKGROUND

Proposal:

The property located at 2235 Shore Road (PID 00401430) contains a single unit dwelling (Map 2). The lot has a width of 124 feet and is 52,700 square feet in area. The owner is proposing to subdivide the lot into two lots (Lots Z2A and Z2B). In order to subdivide, a minimum distance of 28 feet is required between the westernmost side lot line and the dwelling. The existing dwelling is only 25 feet from the westernmost side lot line. Therefore, a 3 foot variance is required, which would vary the side yard setback from 8 feet to 5 feet.

All other Land Use By-Law provisions are satisfied.

Site Details:

Zoning: R-1 (Single Unit Dwelling) Zone, in the Eastern Passage/Cow Bay Land Use By-Law.

	Requirement	Variance Requested
Minimum side yard setback.	8 feet	5 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer granted the variance (Attachment A). One of the neighbours appealed the decision of the Development Officer. 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 does not violate the intent of the Land Use By-law. The intent of the 8 foot side yard is to ensure there is an adequate separation distance between dwelling units on adjacent lots. In this instance the 20 foot width of the "pole" of the proposed flag lot is undevelopable and therefore the minimum separation between the existing building and the nearest dwelling is no less than 33 feet. This proposal would therefore not be considered to violate the intent of the HRM Charter as separation is still provided.

2. Is the difficulty experienced is 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.

Both lots on either side of this property have similar configurations. However, the dwellings are located on the lots in a manner that would not require a variance if they were to be subdivided. The properties across the street are either too small or do not have sufficient frontage to create a second lot. Therefore the difficulty experienced is not general to the 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 Land Use By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

The owner has applied for a preliminary subdivision which indicated this setback deficiency. No Final Subdivision Application can be approved until the variance request is resolved. There is no intentional disregard.

Appellant's Appeal:

While the criterion of the *HRM Charter* limits 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 on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
A new dwelling on the lot Z2B would block part of the view of the harbour.	The current Land Use and Subdivision By-law do not protect views and this is not an item that is relevant to consideration of a variance.
There are drainage issues. If you permit Lot Z2B, the area where the dwelling is to be located would have to be built up thus putting more water on appellant's property as well as the lot located on 2235 Shore Road (lot Z2A).	A lot grading plan would have to be provided at the time of a building permit application to ensure appropriate site drainage.
Appellant is also concerned the entrance for the new lot along his property line would affect the stability of the 70 foot retaining wall.	This is a civil matter and the owner is responsible for the safe construction of the driveway and would have to take care not to impact the abutting property.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was granted as it was determined that the proposal did not conflict with the statutory criteria provided by the *HRM Charter*. 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 Section 251 of the *HRM Charter*. Where an approved variance is appealed, a hearing is held by Community Council to provide the opportunity for the applicant and the appellant to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

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

ATTACHMENTS

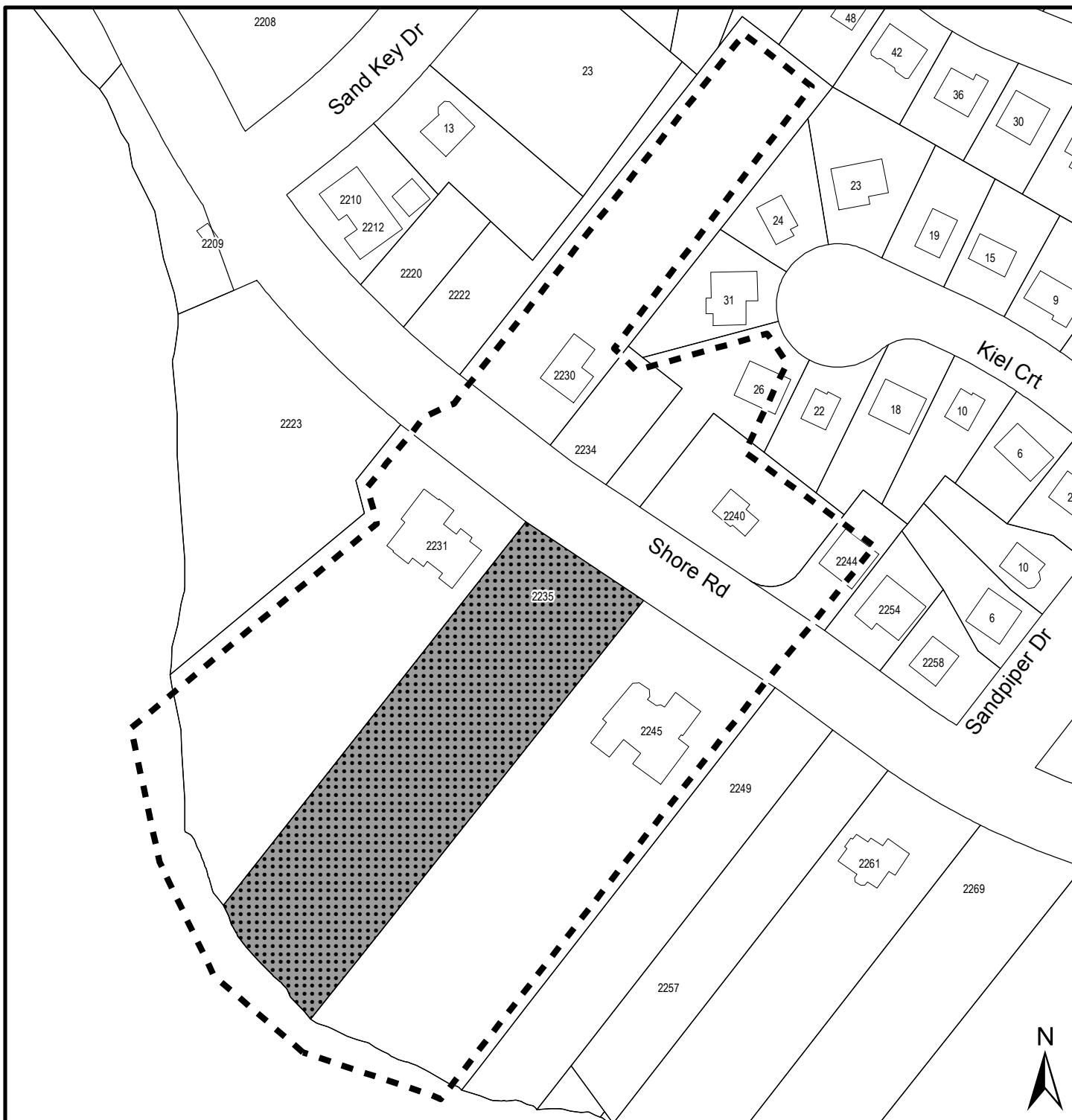
Map 1 – Notification Area
Map 2 – Site Plan

Attachment A - Variance Approval Letter
Attachment B – Letter of Appeal from the Neighbour

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 490-4210, or Fax 490-4208.

Report Prepared by: Paul Boucher, Development Technician, 490-4321 and
Andrew Faulkner, Development Officer, 490-4341


Report Approved by: Original Signed
Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Notification Area

2235 Shore Road
Eastern Passage

 Site of variance

 Area of notification

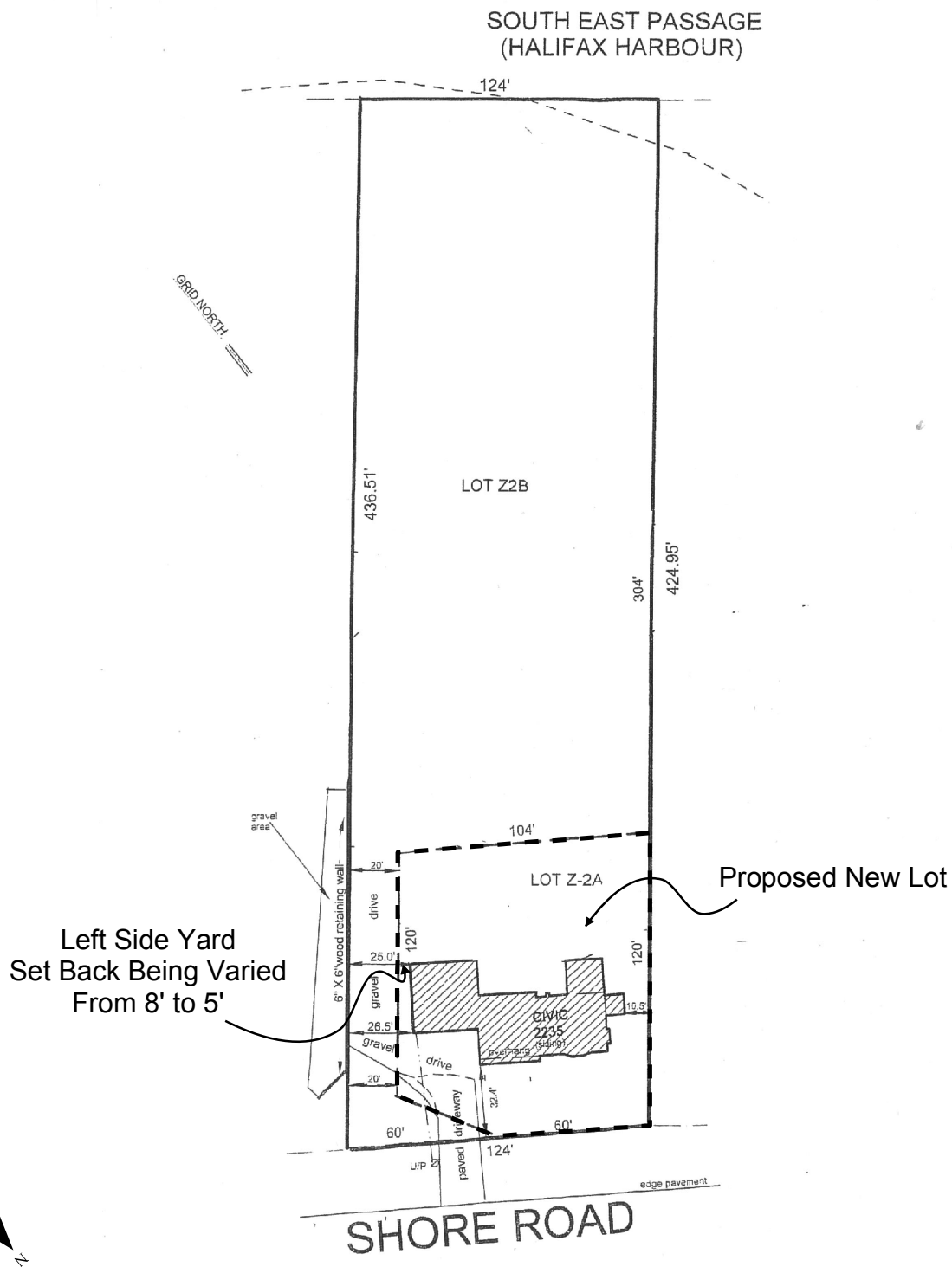
Eastern Passage/Cow Bay
Plan Area

HALIFAX

0 20 40 60 m



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



Map 2- Site Plan

2235 Shore Road,
Eastern Passage



Subject Property

Unknown Scale

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

June 19, 2014

Dear Sir or Madame:

RE: Application for Variance 19262 - 2235 Shore Road Eastern Passage, NS.

As you have been identified as a property owner within 30 metres of the above noted address, you are being notified of the following variance as per requirements of Section 251(3) of the Halifax Regional Charter.

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirements of the Land Use By-law for Eastern Passage/Cow Bay as follows:

Project Proposal:	Proposed subdivision of an existing lot will result in a reduced side yard setback for the existing dwelling.
*Required Setback:	8 feet from dwelling to left side lot line.
*Approved Variance:	5 feet from dwelling to left side lot line.

Pursuant to Section 251(3) of the **Halifax Regional Charter**, assessed property owners within 30 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **Thursday July 6, 2014** stating the reasons and address your appeal to:

Municipal Clerk,
c/o Andrew Faulkner, Development Officer,
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia B3J 3A5 Canada

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require clarification of any of the above, please call Paul Boucher at 490-4321.

Yours truly,

Original signed

Andrew Faulkner
Development Officer

cc: Cathy Mellet, Municipal Clerk
Councilor Bill Karsten

Encl.

Attachment B: Letter of appeal from neighbour

June 25, 2014

Municipal Clerk

C/O Andrew Faulkner, Development Officer
Halifax Regional Municipality
PO Box 1749
Halifax Nova Scotia
B3J 3A5

I am writing to you to appeal your approval for the request for a variance
“Application for variance 19262-2235 Shore Road Eastern Passage”

I live at 2245 Shore Road, next door to the property in question. My property is currently assessed at over \$500,000.00 and thus I pay high taxes to the City. I have great concern that this variance allows that a “flag” lot is being proposed next door, I feel it would greatly depreciate my property costing me tens of thousands of dollars if the lot was ever built on as it would affect both the curb appeal of my house along with blocking part of the view of the harbour.

I also see a big problem with the subdivision of my neighbour lot, if the variance is allowed it turns the back yard into a building lot. The house at 2235 Shore Road currently sits 5-6 feet below road level and they have to pump their sewer up to grade.

The drainage tile from the house, that was put in 5-6 years ago by the previous owners drains out into their back yard within a couple feet of my property line and has created large pools of water on both their and my back yards when we get over 25 mm of rain. Up until then we had no water acclimation on my lot. This has not been a big issue as it is a large lot and other than not being able to cut the grass for a few days I have not complained.

If you allow a flag lot the area currently with the water problem would have to be built up to support a foundation for any future development thus draining more water onto my property and also putting 2235 Shore road in a bowl thus putting the house at risk of flooding.

I am also concerned that if this is allowed any future proposed entrance from Shore Road to the new lot would run along my property line and could affect the stability of a 70 foot retaining wall between the two properties.

My neighbours are good people and I harbour no animosity towards them, I have been told their plans are to sell both 2235 Shore Road and the flag lot therefore they have no concerns about the water as they plan to be gone.
I am therefore appealing variance 19262- 2235 Shore Road.

Yours Truly

Original signed

David and Cynthia Kennah

CC: Cathy Mellet, Municipal Clerk
Councillor Bill Karsten