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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
July 8, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: July 2, 2010

SUBJECT: Appeal of the Development Officer's decision to refuse a Variance at
102 Melrose Crescent, Eastern Passage

ORIGIN

This report deals with an application to reduce the required side yard setback for a deck at 102 Melrose Crescent, Eastern Passage.

RECOMMENDATION

It is recommended that Community Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

Zoning:

The property is zoned R-1 (Single Unit Dwelling Zone) under the Land-Use Bylaw for Eastern Passage/Cow Bay and has a lot classification of D under Schedule A-1 of the Bylaw. This property was formerly regulated under the Heritage Hills Development Agreement. The Development Agreement was discharged by Community Council in October 2009.

Existing Use:

The property contains a single unit dwelling.

Zoning amendments:

In October 2008 a complaint was received regarding the construction of the deck. During the investigation of this complaint it was discovered that there were a number of decks in Heritage Hills which did not meet the requirements as set out in the Development Agreement.

Where there were several decks which did not meet the setback requirements Planning Services agreed to review the Heritage Hills Development Agreement. It was decided that there would be a planning review of the agreement which included public consultation. At the conclusion of that process the Heritage Hills Development Agreement was discharged and new provisions were placed in the Eastern Passage/Cow Bay Land Use By-Law. These amendments included provisions for a reduced setback of decks meeting a set criteria.

Existing deck:

A Construction Permit was approved for this property on November 18, 2008. This permit approved a 5x5 foot landing with staircase and a separate deck at the rear of the dwelling. The approved site plan can be found in Attachment 2. After the planning process was complete a complaint was received that this deck was in violation of the Land Use By-Law. Upon investigation a Notice to Comply was sent to the property owner. The property owner wishes to keep the deck in its current location and has made a Variance application. They are requesting to reduce the side yard setback from 4 feet to 1 - 2 feet, where the existing deck has been constructed.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria are as follows:

"A variance may not be granted where the:

(a) variance violates the intent of the land use bylaw;

*(b) difficulty experienced is general to the properties in the area;
(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

In order to be approved, the proposed variance must not conflict with any of the above statutory criteria. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the Land Use bylaw ?

- The intent of the side yard setbacks is to ensure that structures positioned on lots maintain an appropriate separation distance.
- Planning Services undertook a planning process which included public consultation.
- The current provisions provided for a reduced setback based on certain criteria.
- Where this process was done recently (October 2009) it is felt that the intent of the by-law is not met with this request and the variance request was refused.

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

- This was not a consideration for the Variance request.

Is the difficulty experienced the result of intentional disregard for the requirements of the Land Use Bylaw?

- It can be argued that this request results in intentional disregard for the requirements of the Land Use By-Law as the deck was not constructed in accordance with the approved plans. This was not a consideration because the applicant felt that in discussions with the Building Official that the deck was built meeting the requirements. This has been reviewed and it seems that there is a difference of opinion on what was discussed with the deck construction. For this reason intentional disregard for the requirements of the Land Use By-Law is not a consideration.

Where it was determined that the Variance application did not meet the criteria contained in the *Halifax Regional Municipality Charter* the application was refused. The applicant has appealed this decision, the appeal letter is included in Attachment 4.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

3. Council could overturn the Development Officers decision and approve the variance.
4. Council could uphold the Development Officers decision to refuse the variance, this is the recommended alternative.

ATTACHMENTS

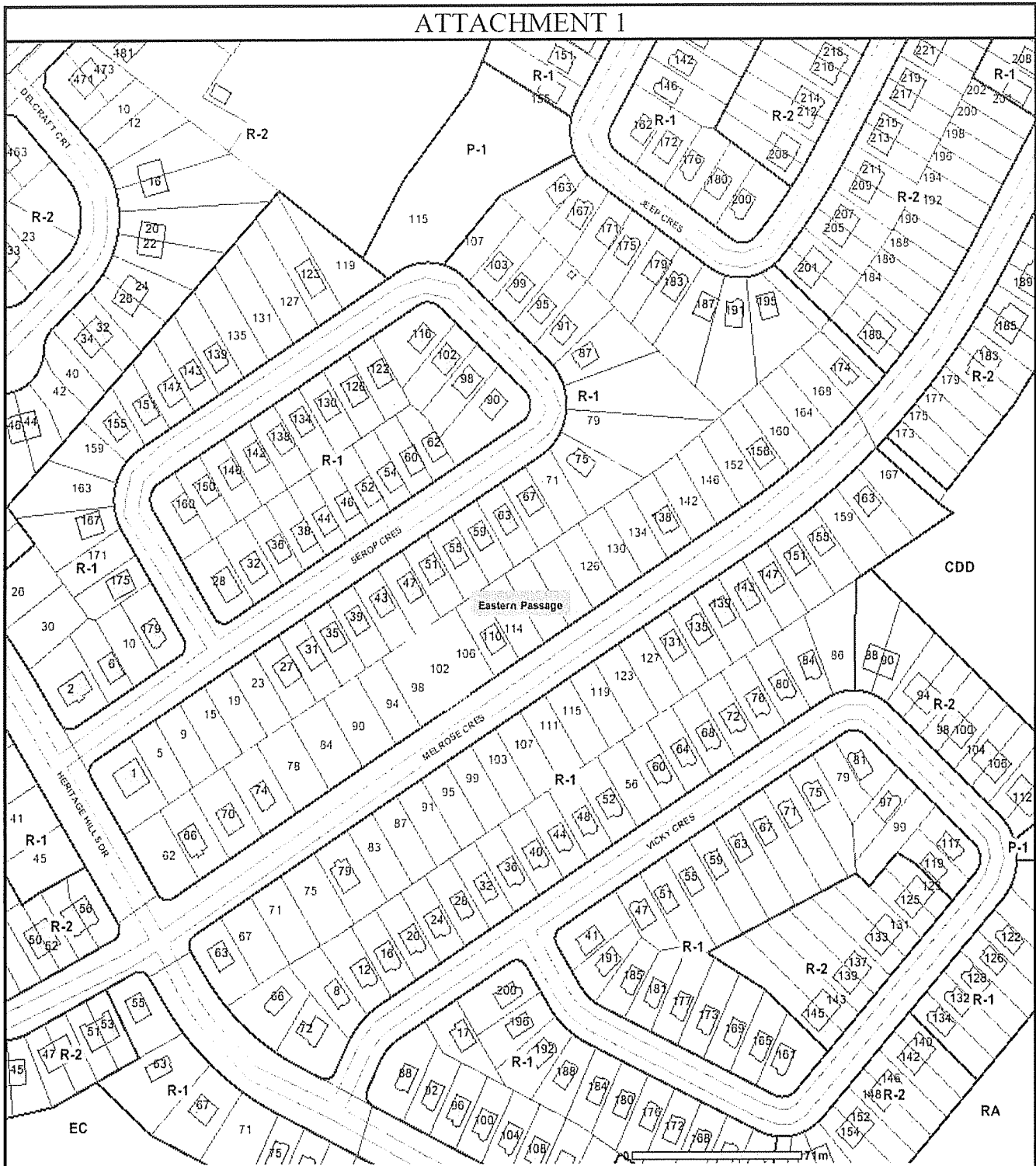
1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal Letter

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Sean Audas, Development Officer (490-4341)

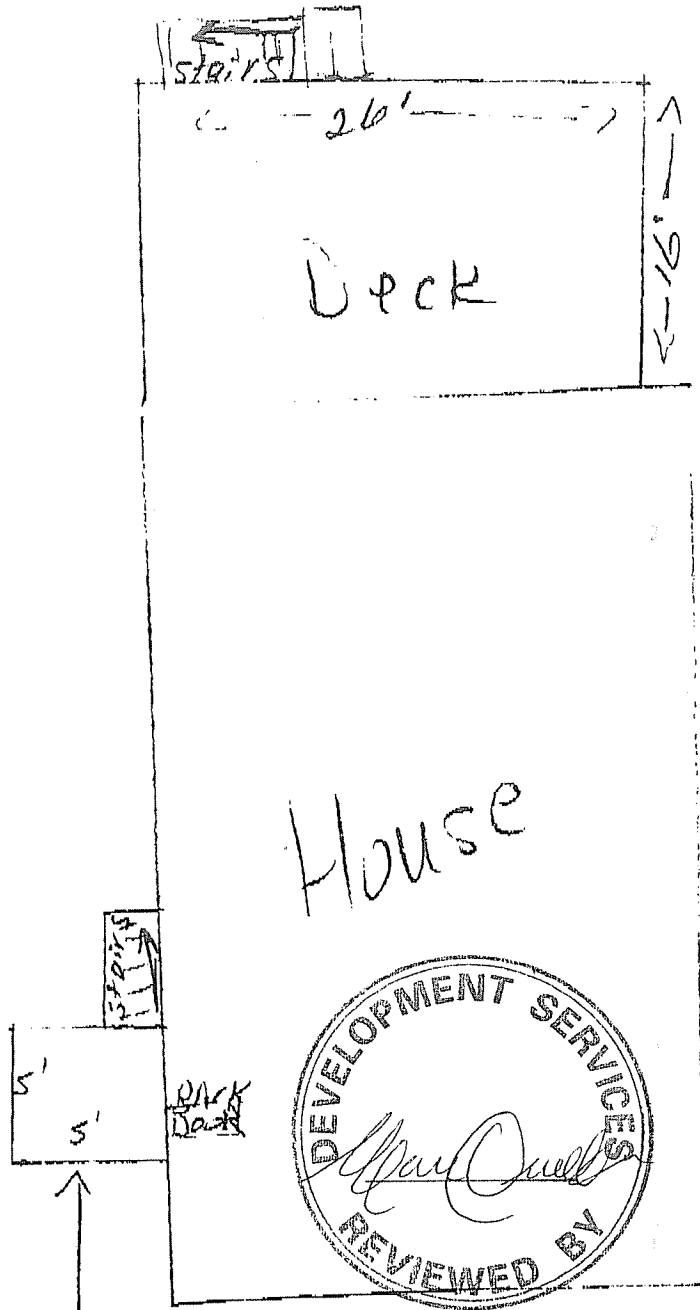
Report Approved by: Sharon Bond, Manager Subdivision and Land Use Compliance (490-4800)

ATTACHMENT 1



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

File # 96900



This plan was the original as is built in 1996.

Permission is hereby granted to

Applicant: ALANNA ANITA MCQUAID
Responsible Contractor(s):

Project Description
CONSTRUCT DECK

This document confirms that all applicable Municipal Permits as listed below have been obtained from the appropriate approval authorities.

Subject Property: PID #40745184 (Lot 292) 102 MELROSE CRES, EASTERN PASSAGE
Property owner(s): ALANNA ANITA MCQUAID

Date of Issue: November 18, 2008

Building Permit

- THIS BUILDING PERMIT EXPIRES 2 YEARS FROM THE DATE OF ISSUE.

Development Permit

These permit(s) have been issued based on plans provided by the applicant. Construction must be strictly in accordance with the approved plans. Any departure from the approved plans requires submission of revised plans and the approval of the Municipality in the form of revised permit(s).

PERMIT IS ISSUED IN COMPLIANCE WITH HERITAGE HILLS DEVELOPMENT AGREEMENT.
PERMIT IS ISSUED BASED ON REVISED PLAN RECEIVED NOVEMBER 14, 2008, SHOWING 5 FOOT BY 5 FOOT LANDING IN SIDE YARD AND BACK DECK EXTENDING TOWARDS THE REAR PROPERTY LINE, FLUSH WITH HOUSE.



HECTOR FERGUSON
Authorized Signature

HALIFAX REGIONAL MUNICIPALITY

Planning & Development Services
Eastern District, Alderney Gate Office

PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Telephone: 902-490-4490
Fax: 902-490-4661

COPY

June 18, 2010

Alanna McQuaid
102 Melrose Cres
Eastern Passage, NS
B3G 1P1

Dear Ms. McQuaid,

RE: Application for Variance - 16195 - 102 Melrose Cres., Eastern Passage, Nova Scotia

This letter is to advise you that your application for a variance to locate a deck closer to the side property line than the required 4 foot setback has been **refused**.

Section 250(3) of the **Halifax Regional Municipality Charter 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 has been determined that your application violates the intent of the Land Use Bylaw.

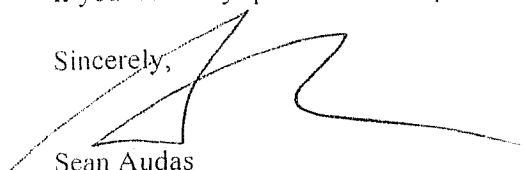
Pursuant to **Section 251(4) of the Halifax Regional Municipality Charter Act** you have the right to appeal the decision of the Development Officer to Community Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Sean Audas, Development Officer C/O Municipal Clerk
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5**

Your appeal must be filed on or before *June 25, 2010*.

If you have any questions or require additional information, please contact this office at (902) 490-4341.

Sincerely,



Sean Audas
Development Officer

cc: C. Mellett, Municipal Clerk
J. Barkhouse, Councillor District 8
J. Belisle, Development Technician

Sean Audas, Development Officer C/O Municipal Clerk
Halifax Regional Municipality
Development Services – Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

June 24, 2010

Dear Mr. Audas,

Re: Appeal in Regards to the Refusal of Application for Variance #16195
Property located at: 102 Melrose Crescent, Eastern Passage, Nova Scotia

I'm writing to Appeal the, Refusal of the Application for Variance #16195, in regards to a letter dated June 18, 2010 that I received by mail.

Grounds for the Appeal are as follows:

I feel there was a miscommunication in regards to the Amendment of Land Use Bylaw of which, I was initially advised by HRM to apply for the Amendment, in regards to the particular style of deck, which I wanted to construct in regards to the side yard.

The stairs are constructed on the side yard because the back door is located in the side yard and the original stairs were located in the side yard, as well. Being a Single woman that lives alone. I wanted the stairs to remain on the side yard, as the stairs would be easily accessible to me and a safe avenue in case of an emergency. As there is neither an outdoor light nor a back door, in the back of the house and in my situation, to have stairs in the back of the house, would not have been a reasonable choice for me. The stairs are designed the way there are, as the stairs could not protrude past the house with the stairs being in the driveway and the stairs would have been very steep.

As the stair requirements had to be a particular width etc. the back portion of the deck on the side yard supports the stairs with giving me access to both the stairs as well as the deck in the back of the house, without going down one set of stairs, walking on the lawn to the back of the house, up another set of stairs to a deck in the back of the house. A privacy fence is located on the back portion of the deck in the side yard for privacy.

Regards,

Alanna McQuaid
102 Melrose Crescent
Eastern Passage, NS B3G 1P1