

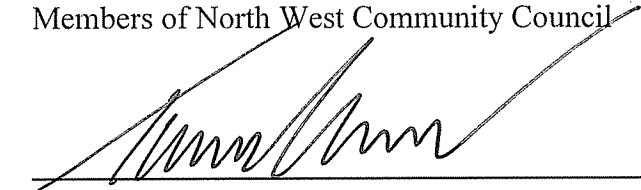


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

North West Community Council
September 24, 2009

TO: Members of North West Community Council

SUBMITTED BY:


Trevor Creaser, Development Officer

DATE: September 17, 2009

SUBJECT: Appeal of the approval of a Variance # 15508 - 903 Old Sackville Road

ORIGIN

This is an appeal of the Development Officer's decision to approve an application for a variance from the flankage yard setback requirements of the Sackville Land Use Bylaw for the construction of a two unit dwelling.

RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to approve the request for variance.

BACKGROUND

The subject property is located at 903 Old Sackville Road, Lower Sackville which is the corner of Connelly Road and Old Sackville Road (refer to Attachment 1). This property is zoned R-2 (Two Unit Dwelling) under the Sackville Land Use Bylaw.

An application for variance was made on July 24, 2009 to allow a portion of a proposed two unit dwelling to be constructed twenty six (26) feet from the flankage property line being common with Connelly Road street right of way (refer to Attachment 2). The requirement under the R-2 Zone is thirty (30) feet. The building meets all other requirements related to setbacks.

The Development Officer approved the variance on August 19, 2009 (refer to Attachment 3) which was appealed by the owners by the owners of 923 Old Sackville Road. It was later discovered these owners were outside the 30 metre notification area and were advised of the error and that their appeal could not be considered.

Further, it was brought to staffs attention that the owner of 97 Connelly Road did not receive a notice. The owner was subsequently notified on September 3, 2009 and has exercised his option to appeal the approval.

Community Council Report

Appeal of Approval of Variance #15508

The appellant has raised a number of issues in their appeal, as noted below:

(1) Construction of a 2 unit building on the newly created Lot 78-3 breaches the restrictive covenants on the title that run with the lands.

The municipality does not, nor have the jurisdiction to enforce private covenants.

(2) ...Furthermore, a side yard clearance on a corner lot should be maintained for safety reasons. The clearance provides sight lines for traffic approaching the intersection as well as additional space for snow removal in the winter."

Engineering has reviewed the application and confirmed there will be no traffic safety issues as a result of the variance.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines 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 guidelines. An assessment of the proposal relative to these stipulations is set out below

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

The intent of minimum flankage yard setback requirements is to provide adequate separation of buildings to the street for sighting and safety. Whereas there is only a small portion of the building that extends 4 feet in to the required 30 foot setback, there is more than adequate separation from the street and therefore would *not violate the intent of the land use bylaw.*

(b) difficulty experienced is general to the properties in the area;

Within the general area, there is a wide range of lot sizes and varying configurations. Although the subject property meets the minimum requirement for frontage and area, the property narrows toward the rear making it difficult to position a dwelling and still meet the setbacks from the street right of way. Therefore, *difficulty experienced is not general to properties in the area.*

(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."

Intentional disregard was not a consideration.

Community Council Report
Appeal of Approval of Variance #15508

BUDGET IMPLICATIONS

None

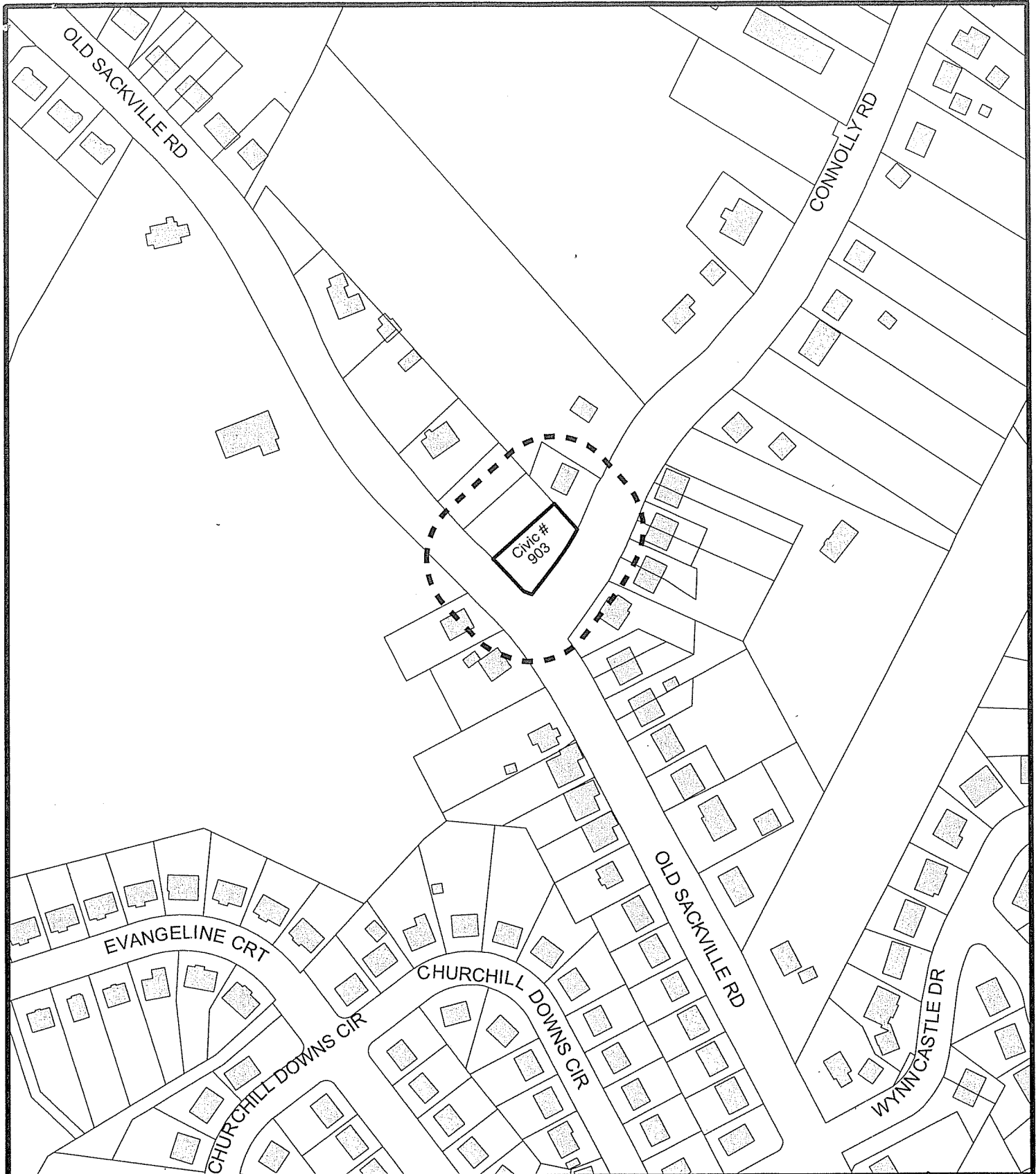
ALTERNATIVES

1. Uphold the decision of the Development Officer to approve the application for variance. **This is the recommended alternative.**
2. Overturn the decision of the Development Officer, thereby refusing the variance.

ATTACHMENTS

1. Location map
2. Site Plan
3. Variance Approval Letter
4. Appellant's 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: Trevor Creaser, 869-4235.

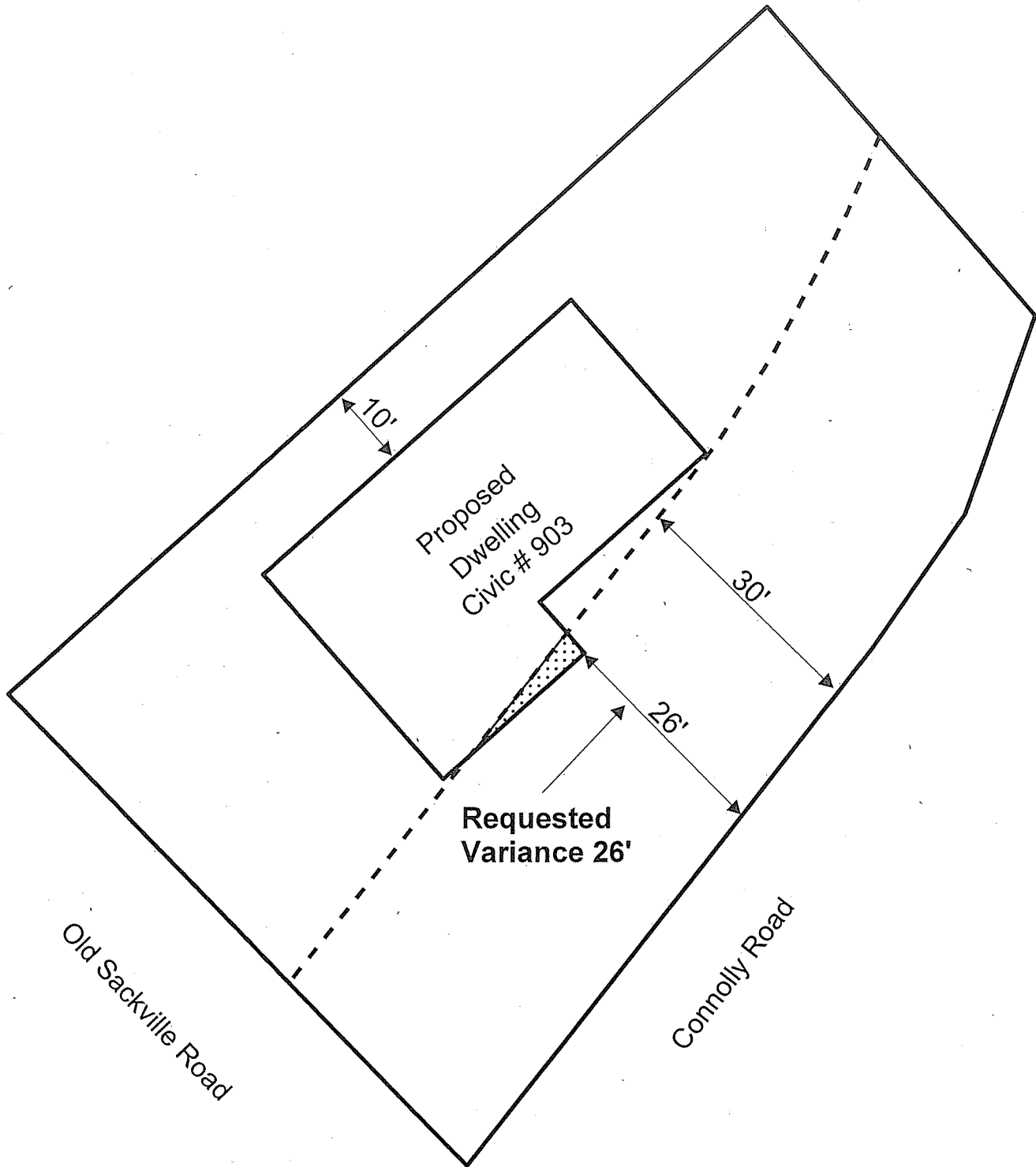


Map 1
Notification Area

--- Notification Area



HALIFAX
REGIONAL MUNICIPALITY
Planning Services



Map 2
Site Plan



HALIFAX
REGIONAL MUNICIPALITY
Planning Services

August 19, 2009

Mr. Charles Randles
86 Sawmill Crescent
Lower Sackville, NS
B4E 3M6

FILE COPY

Dear Mr. Randles:

RE: Variance #15508 - 903 Old Sackville Road

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

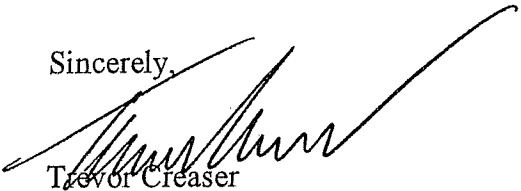
Location:	903 Old Sackville Road
Project Proposal:	To allow a portion of a new two unit dwelling closer to the street right of way than permitted under the land use bylaw, therefore, maintaining all other setbacks
Required Front/Flankage Setback:	30 feet
Approved Variance:	26 feet

In accordance with Section 250 of the Halifax Regional Municipality Charter, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **September 4, 2009**

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact this Connie Sexton at 869-4005.

Sincerely,



Trevor Creaser
Development Officer

cc. Cathy Mellett, Acting Municipal Clerk
Councillor Brad Johns

BURCHELLS

Burchell Hayman Parish
Barristers & Solicitors

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David G. Lewis

dir. 902.428.5301
dlewis@burchells.ca

File No. 1036242

September 17, 2009

Trevor Creaser
Planning & Development Services
Central Region – HRM
636 Sackville Drive
Lower Sackville, NS

VIA FACSIMILE: 869-4254

Dear Mr. Creaser:

Re: Variance Application #15508 – 903 Old Sackville Road

We are in receipt of your letter dated September 11, 2009 advising of the error your office made in providing Mr. and Mrs. MacPhee an opportunity to contest the above referenced variance application. As discussed with Connie Sexton of your office, the error has upset our clients. I was pleased to have Ms. Sexton confirm, as a member of the HRM development team, that she supports our client's position. However, that is little consolation to our clients if you do not accept their objection. The MacPhee property is immediately adjacent to the applicant's property. The only reason they are now in excess of the thirty (30) meter perimeter is because your office approved a plan of subdivision for the applicant's property that is direct contravention of the restrictive covenants contained in the applicant's deed and appearing on the parcel register of the applicant's lands. I hope you will reconsider your decision and accept Mr. and Mrs. MacPhee's objection.

In addition to the MacPhee's appeal, I am pleased to advise you that our office also now represents Mr. David Hoadley, another land owner adjacent to the variance property. I understand your office also erred by not initially providing notice to Mr. Hoadley. At his request, he has now received notice and I understand his deadline to object has yet to expire. Please accept this correspondence as our notice on behalf of Mr. Hoadley's appeal of the variance on the same grounds as provided in our letter of September 1, 2009.

It is evident from the number of neighbours approaching our office to represent them in this matter that there is considerable objection to the applicant's development. My clients have all confirmed that the applicant approached the surrounding neighbours prior to applying for subdivision approval and prior to commencing development. He clearly knew of the restrictive covenants. He did not receive their consent but elected to proceed in light of their objection. We trust your office will consider the position of the applicant's neighbours and deny the applicant the variance application. We also trust you will deny any building permits that result in the construction of anything other than a single residential dwelling on the original two lots, as provided for in the covenants.

It greatly disappoints our clients that they are forced to extend time and money fighting this matter. Municipal officers are assigned to Planning and Development Services to protect the public from this very situation. It concerns me that your office: (1) ignored the restrictive covenants on title, (2) ignored our letter of April 16, 2009 (sent prior to subdivision approval), (3) erred in your dealings with Mr. MacPhee, and (4) erred in providing proper notice to Mr. Hoadley.

Restrictive Covenants should not be taken lightly. They are a recorded interest that appears on a property's parcel register. Restrictive Covenants create a legal burden on the property's title that is akin (and often used in relation) to a development agreement. Should you not find in favour of our clients' objection and reverse the errors already made by your office, you will set a precedent that challenges the validity of HRM's development agreements. I trust your office would not be pleased to have property owners breaching your agreements.

Should you wish to discuss this matter in more detail, my direct line is 428-5301.

Yours very truly,
BURCHELL HAYMAN PARISH



David G. Lewis

cc. client
Brad Johns (by email)
Cathy Mellet (490-4208)