

Halifax and West Community Council
April 22, 2013

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Brad Anguish, Director, Community and Recreation Services

DATE: April 10, 2013

SUBJECT: **Case 18062: Appeal of the Development Officer's decision to approve
a Variance at 4000 Prospect Road, in Shad Bay**

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

Proposal:

A variance request was submitted for the property at 4000 Prospect Road to construct two additions, one on each side, to an existing dwelling. In order to facilitate this project, a variance of the side yard setbacks has been requested. The additions are inaccessible from the residence interior and are to be used for storage purposes. With the exception of side yard setbacks, the project meets all other requirements of the Land Use By-law.

Site Details:

Zoning: RB-1 (Residential B-1) Zone of the Planning District 4 Land Use By-Law.

	Zone Requirement	Variations Requested
Minimum required side yard:	15.0ft	7.7ft to left side line 8.0ft to right side line

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment 2) and notified property owners within 30 metres of the site of this decision and their right of appeal to Community Council. An appeal was subsequently filed by one of the property owners within the notification area (Attachment 3). The matter is now before Halifax and West 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 *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 this proposal does not violate the intent of the Land Use By-law, as the proposed building setback is substantially in conformance with the side yard setback requirement for standalone, residential accessory structures.

A detached accessory structure is permitted to be situated no less than 8 feet from a side lot line and 8 feet from the main building. The existing residence is sited at the minimum setback of 15 feet from the side lot lines, leaving insufficient space on the lot for a detached accessory building to be positioned 8 feet away from the main building and 8 feet from the side lot line. The applicant has proposed attaching the accessory buildings to the main building.

The accessory structures may not be located to the rear of the residence as this area is restricted by the presence of the watercourse setback and buffer. The side yard setback reduction is considered to be minor relative to the requirements of the by-law and, therefore, is believed to be in keeping with the general intent of the Land Use By-Law.

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

Through a review of aerial photography (see Map 1) and lot sizes, it has been determined the difficulty experienced is not general to properties in the area. Within the 30 metre radius of the subject property the lot sizes and dwelling footprints vary greatly. The dwellings on the same side of the road as the subject property do not have the ability to use much, if any, of their rear yards due to the watercourse buffer. However, the dwellings on the abutting properties have room in their side and front yards for accessory structures, while the subject property does not. Further, the properties within the 30 metre radius that are across the road from the subject property have room in all yards to fit an accessory structure, whereas the subject property does not. The difficulty experienced is not general to other properties in the area.

3. Is the difficulty experienced the result of an 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 that 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 the approval of the variance request.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellants have raised points in their letter of appeal (Attachments 3) for Council's consideration. Their concerns are as follows:

Appellant's Appeal Comment	Staff Response
<i>We feel the proposed shed will affect our enjoyment of our property and our view as the variance will allow the shed (with the roof overhang taken into account) to be built within five feet of our property line.</i>	Protection of private views is not regulated by HRM nor a consideration in analyzing a variance request pursuant to the Charter.
<i>There is enough room elsewhere on the property to build a storage shed without encroaching near the property lines or perhaps they could enlarge the proposed shed on the left side of the house.</i>	The siting of the existing residence, coupled with the required watercourse setback and buffer, leaves only the side yards free for location of the storage sheds (Map 2). The applicants wish to locate the structures as indicated on the site plan.

Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved refused as it was determined that the proposal does not conflict with the statutory criteria provided by the *HRM Charter*. The matter is now before 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 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. Council may deny the appeal and uphold the decision of the Development Officer to approve the variance.
2. Council may allow the appeal and overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

- Map 1: Dwelling Footprints within 30 metres of Subject Property
Map 2: Site Plan

Attachment 1: Building Elevation
Attachment 2: Approval Notice
Attachment 3: Appeal Letter

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: Mark Inness, Development Technician, 490-6257 and
Andrew Faulkner, Development Officer, 490-4341

Original Signed

Report Approved by: Kelly Deny, Manager, Development Approvals, 490-4800

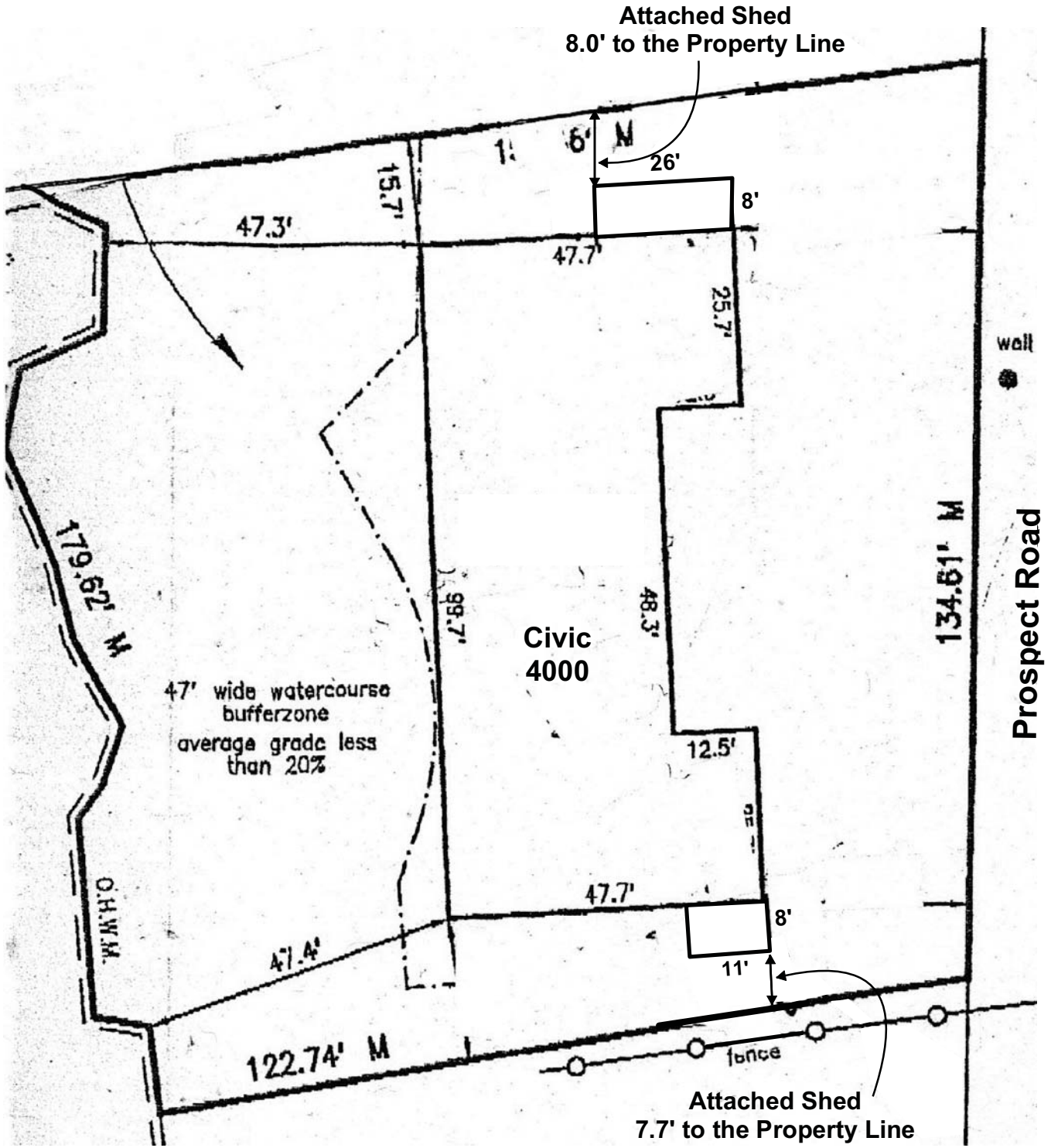


Map 1 - Dwelling Footprints within
30 metres of Subject Property

4000 Prospect Road

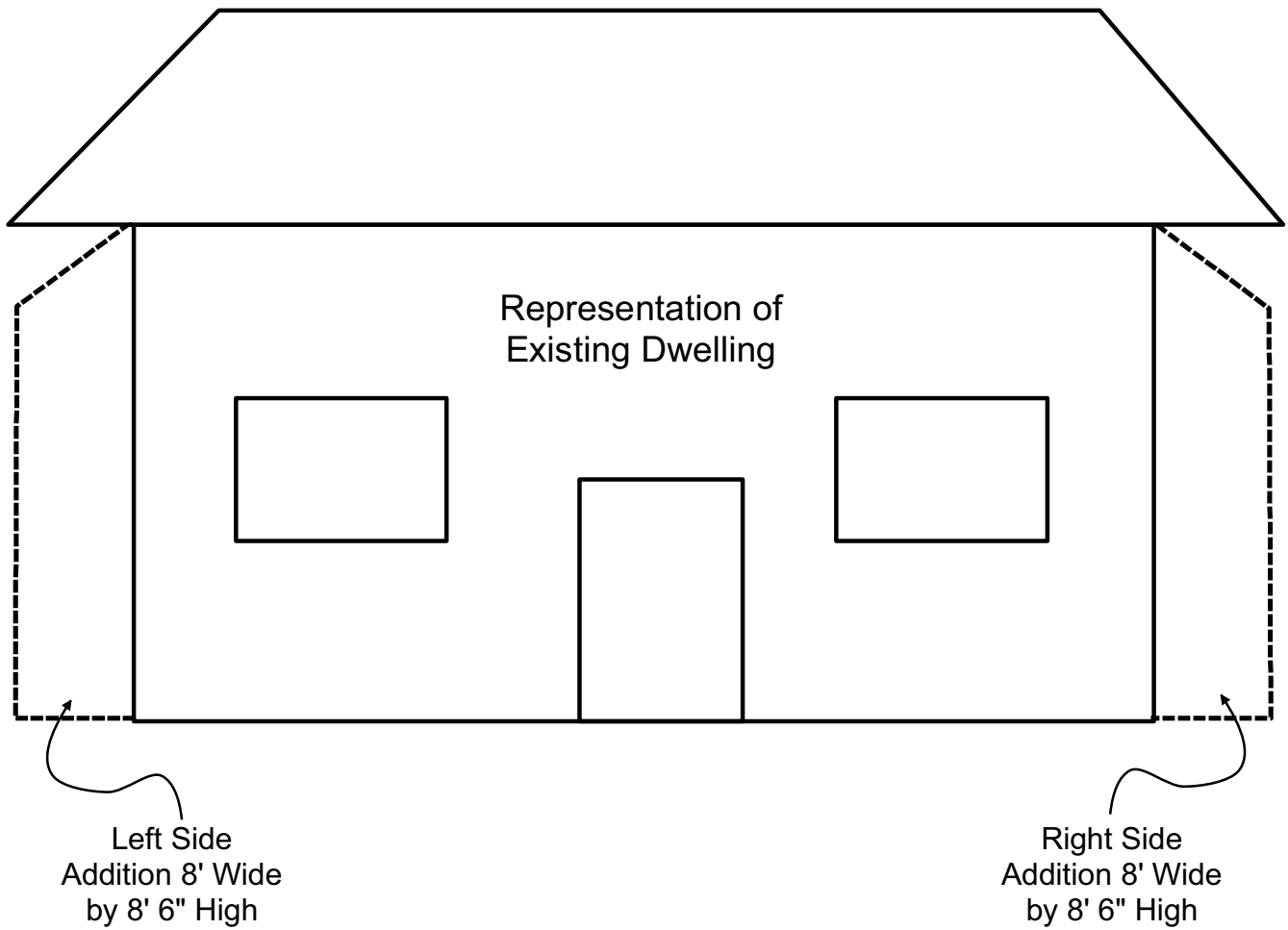
HALIFAX
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DEVELOPMENT APPROVALS

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



Map 2
Site Plan

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



Attachment 1
Building Elevation



Proposed Additions



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

Attachment 2 - Approval Letter



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

October 1st, 2012.

Dear Sir or Madame:

Re: Case No. 18062 - Variance at 4000 Prospect Road.

As a Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the land use bylaw as follows:

Please be advised this is amended variance approval letter, noting the correct set-back to the right side lot line from 11.3' to 8.0'.

Location: 4000 Prospect Road
Property Owner: Nicholas Koskolos
Project proposal: Two shed additions to the Single Unit dwelling (right and left sides).

Variance 1 – Right Side:

Required (i.e. set-back): 15.0ft
Approved (i.e set-back): 8.0ft

Variance 2 – Left Side:

Required (i.e. set-back): 15.0ft
Approved (i.e set-back): 7.7ft

Pursuant to Section 251 of the Halifax Regional Municipality 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 October 18th, 2012**, and address your appeal to:

Andrew Faulkner, Development Officer
c/o Municipal Clerk,
Halifax Regional Municipality,
Planning and Development - Eastern Region,
P.O. Box 1749, Halifax, N.S. B3J 3A5.

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 Mark Inness at 490-6257.

Yours truly,


Original Signed

Andrew Faulkner, Development Officer
Halifax Regional Municipality

copy to: Cathy Mallett, Municipal Clerk
Councillor Reg Rankin, District 22.

COMMUNITY & RECREATION SERVICES – DEVELOPMENT APPROVALS
Eastern Office – 40 Alderney Drive, Dartmouth, NS

Tel: (902) 490-4341 Fax: (902) 490-4661
E-mail: faulkna@halifax.ca Web Site: www.halifax.ca

Attachment 3 - Appeal Letter

4008 Prospect Road,
Shad Bay, N. S.
B3T 2B9
902-852-2919

October 15, 2012

Dear Mr. Faulkner,

Re: Case No. 18062-Variance at 4000 Prospect Road.

We are writing to appeal the variance being granted Mr. Koskolos at 4000 Prospect Road. We feel the proposed shed will affect our enjoyment of our property and our view as the variance will allow the shed (with the roof overhang taken into account) to be built within five feet of our property line. We Believe the 15 foot Regulation was put in place to preserve the privacy and tranquility of both properties not just one and should be enforced in this case. There is enough room elsewhere on the property to build a storage shed without encroaching near the property lines or perhaps they could enlarge the proposed shed on the left side of the house.

Thank You in advance for your consideration,

Original Signed

Bruce and Sharon Marryatt