



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

Item No. 8.1.1

Halifax and West Community Council
March 25, 2014

TO: Chair and Members of Halifax and West Community Council
Original Signed

SUBMITTED BY: for: Brad Anguish, Director, Community and Recreation Services

DATE: March 11, 2014

SUBJECT: Case 18757: Appeal of Variance Refusal – 34 Westgate Drive, Halifax

ORIGIN

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

A variance request has been submitted for the property at 34 Westgate Drive to permit an accessory building to be located within the required flankage yard. In order to facilitate this project, a variance has been requested to relax the required flankage yard. The accessory building was erected without a permit. The property is currently developed with a single unit dwelling.

Site Details:

Zoning: R-1 (Single Family Dwelling) Zone, Halifax Mainland Land Use Bylaw

	Zone Requirement	Variance Requested
Minimum Flanking Yard	10 feet	2 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer refused the requested variance and notified the property owner of this decision and their right to appeal this decision to Community Council. An appeal was subsequently filed and the matter is now before the Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

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 of land use bylaw;*
 - (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 bylaw*

In order to be approved, any proposed variance must not conflict with any 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?

The building is situated two feet from the property line flanking the Purcells Cove Road right-of-way. The minimum setback requirement is ten feet. This required setback helps to ensure that buildings maintain adequate separation from adjacent street for safety and aesthetic purposes.

The structure does not meet the R-1 Zone's requirements for accessory buildings situated on corner lots. Section 21(h) of the By-law states, "where a building is situated on a corner lot, it shall be at least 10 feet from the flanking street line abutting such a lot." The subject site is a corner lot as defined by the By-law as follows: "...any lot situated at the junction of two or more streets which at their point of junction, form an angle of not more than 135 degrees adjacent to such corner lot." The requirements for main buildings and accessory buildings on corner lots relative to flanking yard setback are the same.

The ten foot building setback from the lot line along a flanking street is the common standard contained within the land use by-law. Reducing the setback to two feet is a substantial reduction of the required minimum setback and, as such, violates the intent of the Land Use By-law.

2. Is the difficulty experienced general to 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 property is a standard sized corner lot and is subject to no special or unique conditions such as irregular shape or features that would warrant a variance. A standard lot provides sufficient area to accommodate the placement of an accessory building entirely within the rear yard. Although not cited as a reason for refusal of the variance by the Development Officer, the difficulty experienced is, in fact, 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 should 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.

In this case the applicant erected the accessory building without the necessary permits. Complaints were made to the municipality and upon investigation it was determined that a permit had not been issued for the accessory building. After being notified of the violation, the applicant submitted a permit application for the existing structure.

The applicants have since stated that they had no knowledge of the requirement to obtain a permit for the accessory structure. While the owner did not have knowledge that a permit was required, it is their responsibility to obtain the necessary permits and ensure that the requirements of the land use by-law are met. For this reason, the Development Officer determined that the difficulty in meeting the By-law was the result of intentional disregard.

Conclusion:

Staff had 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 conflicts with the statutory criteria provided by the *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 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 refuse the variance.
2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

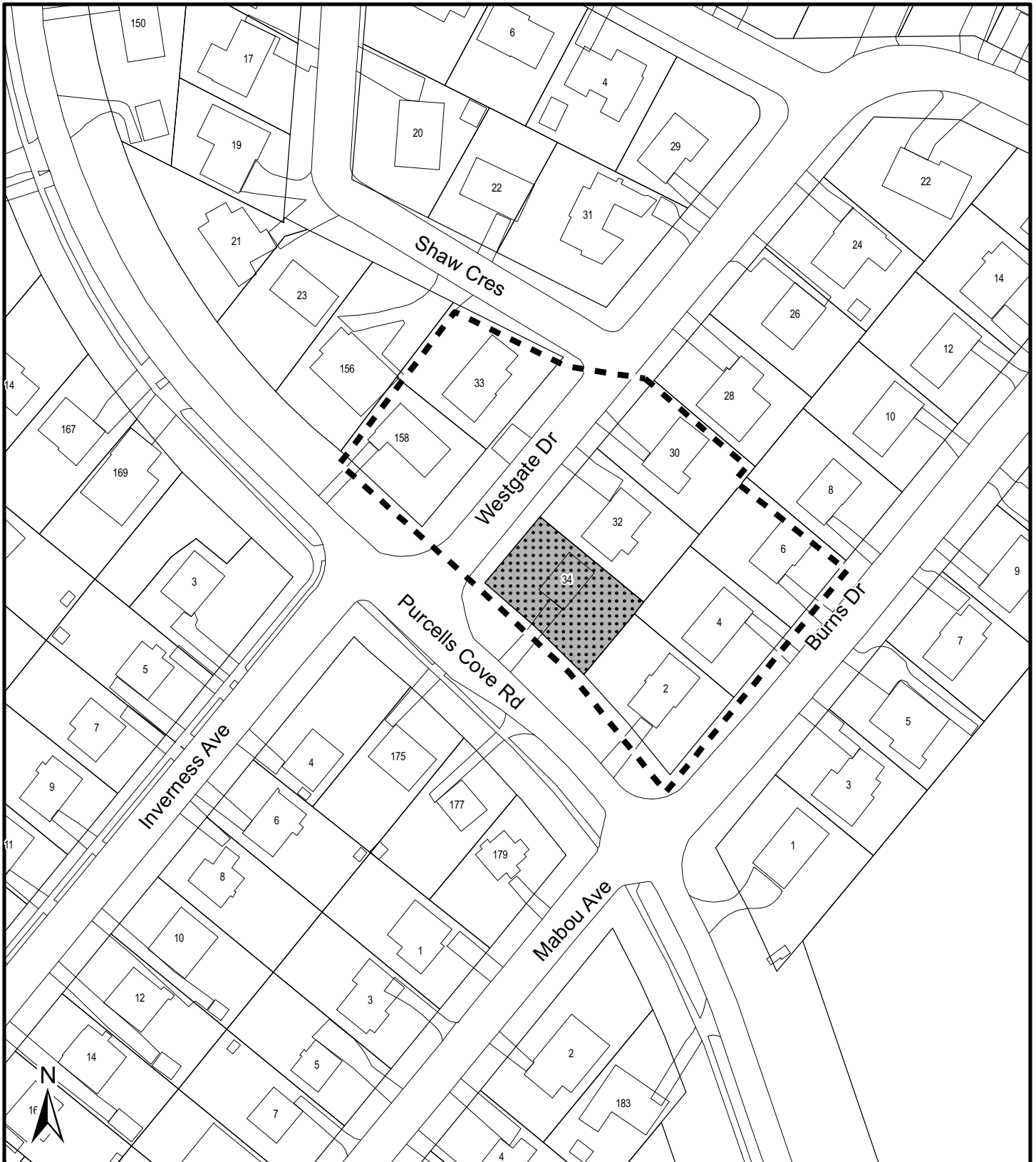
ATTACHMENTS

Map 1		Notification Area
Map 2		Site Plan
Attachment	A	Letter of Appeal from Applicant
Attachment	B	Variance Refusal 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: Graeme Buffett, Development Technician Intern and Sean Audas, Development Officer, 490-4402
Original Signed 

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



Map 1 - Notification Area

34 Westgate Drive
Halifax



Subject Property



Notification Area



HRM does not guarantee the accuracy of any representation on this plan.



Westgate Drive

Purcells Cove Road

Bus Lane

Sidewalk

Existing Driveway

Existing Dwelling

Existing Shed

Requested Variance 2'

2'

Map 2 - Site Plan

34 Westgate Drive
Halifax



Area of requested Variance



0 1 2 4 6 m



HRM does not guarantee the accuracy of any representation on this plan.

August 28, 2013

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services-Western Region
P.O. Box 1749
Halifax, N.S.
B3J 3A5

RECEIVED AUG 29 2013

Dear Mr. Audas:
Re. Appeal of my variance request

This letter is in response to your refusal to grant me a variance for a garden shed built on my property at 34 Westgate Drive in Halifax. I am writing at this time to state that I wish to appeal your decision on the grounds that your first reason, while true, kind of goes without saying; that your second reason doesn't apply to my situation (according to Graeme Buffet) and the third is simply untrue.

Please contact me if further information is required at this time.

Yours truly,

Original signed

Sarah Munro MacVicar

34 Westgate Drive
Halifax, N.S.
B3P 1T8





PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

August 20, 2013

Sarah MacVicar
34 Westgate Drive Halifax
Halifax, NS B3P 1T8

Dear Applicant:

Re: Case No. 18757 - Variance at 34 Westgate Drive, Halifax, NS, PID 00262626

This letter is to advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw as follows:

Location: 34 Westgate Drive, Halifax, NS, PID 00262626
Property Owner: Sarah MacVicar
Project Proposal: Vary flankage yard requirement for an existing shed
Variance Requested:

	Requirement	Proposed
Flanking yard (Accessory Building)	10 feet	2 feet

Section 253 (3) of the Halifax Regional Municipal Charter 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 is the opinion of the Development Officer that this variance application does not merit approval because the requested variance:

- (a) the proposed variance violates the intent of the Land Use Bylaw, and
- (c) the difficulty experienced results from the intentional disregard for the requirements of

the Land Use Bylaw.

Pursuant to Section 251 (4) of the Halifax Regional Municipal 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:

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

Your appeal must be filed on or before August 30, 2013.

If you have any questions or require additional information, please contact Graeme Buffett, Development Technician, at (902) 490-4653.

Sincerely,

Original signed

Sean Audas, Development Officer
Halifax Regional Municipality

cc. Cathy Mellett, Municipal Clerk
Councillor Linda Mosher, District 9

COMMUNITY AND RECREATION SERVICES- DEVELOPMENT APPROVALS

Tel: (902) 490-4653 Fax: (902) 490-4645
E-mail: buffetg@halifax.ca Web Site: www.halifax.ca