

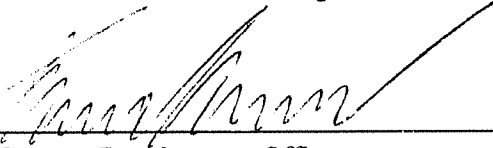
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
January 18, 2010

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Trevor Creaser, Development Officer

DATE: January 8, 2010

SUBJECT: Appeal of the Approval of Variance #15599 - 54 Colins Road,
Hammonds Plains

ORIGIN

This is an appeal of the Development Officer's decision to approve a variance application for the reduction of the side yard setback requirements of the Land Use Bylaw for Hammonds Plains for the construction of a Single Unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 54 Colins Road, Hammonds Plains (Attachment 1). 54 Colins Road is zoned MR-1 (Mixed Resource) under the Land Use Bylaw for Hammonds Plains.

On September 11, 2009, a Variance request was submitted for the reduction of both the left and right side yard setbacks for the construction of a single unit dwelling. The setback requirements in the MR-1 zone are 25 feet. The proposed reduced setback are 18 feet from the left side and 16 feet from the right side property lines (Attachment 2).

The 25 foot setback in the MR-1 zone is intended to provide greater separation from property lines for uses such as intensive agriculture, forestry, kennels etc. Typically, setbacks for single unit dwellings are 8 feet. The neighbourhood is developed with larger scale single unit homes.

The original subdivision in 2002 designed the placement of all the buildings near the lake to accommodate the placement of the septic fields on the upper portion of the lots.

The placement of the home on this property is at the narrowest part of the lot which is 95' wide. This will only leave a building envelope of 45 feet.

Variances have also been granted on the adjacent property at 16 Paladin Lane from the side and rear yards in 2002 and 2004.

The Development Officer approved the variance (Attachment 3) on December 9th, 2009 which was appealed by the owner of 16 Paladin Lane on December 22nd, 2009 (Attachment 4).

DISCUSSION

The *Municipal Government Act* 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;

As mentioned above, the MR-1 zone permits more intensive uses which requires greater separation from lot line. Given, most residential zones require a minimum of 8 feet, it is the opinion of the Development Officer that approved setbacks of 16 and 18 feet would *no violate the intent of the land use bylaw*.

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

Given the unique characteristics of the lot with regards to septic placement, topography and configuration, placement of the building presents a challenge in meeting the minimum 25 foot setback requirements and is therefore not considered not general to the properties in the area.

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

As no construction has occurred at this site *intentional disregard* was not a consideration in approving this variance.

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

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

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 and Approved by : Trevor Creaser, Development Officer - 869-4235



Map 1
Location Map



HALIFAX
REGIONAL MUNICIPALITY
Planning Services

Kearney Lake

Colins Rd.

Requested
Variance 18'

Requested
Variance 16'

23.5'

Proposed
Dwelling

11.2'

Map 2
Site Plan



HALIFAX
REGIONAL MUNICIPALITY
Planning Services

Attachment 3

November 30, 2009

Amer Ahmad
PO Box 2408
Windsor, NS
B0N 2T0

Dear Mr. Ahmad:

RE: Variance #15599 - 54 Colins Road, Hammonds Plains

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved your request for a variance from the requirements of the Land Use Bylaw for Hammonds Plains as follows:

Location: 54 Colins Road

Project Proposal: To allow a dwelling to be built closer to the required side yards than permitted under the Land Use By-Law

Required Setback from Side Yards: 25 Feet

**Approved Variance: 18 Feet Left Side Yard
16 Feet Right Side Yard**

In accordance with Section 251 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 **14 December, 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 David Hanna at 869-4386.

Sincerely,

Trevor Creaser
Development Officer

cc. Julia Horncastle, Municipal Clerk
Councillor Peter Lund

RECEIVED

DEC 22 2009

DEPARTMENT OF PLANNING
AND DEVELOPMENT


To Municipal Clerk
c/o Trevor Creaser, Development Officer
Halifax Regional Municipality,
Planning and Development - Central Region
636 Sackville Drive
PO Box 1749, Halifax NS B3J 3A5

Regarding Variance #15599 - 54 Colins Road, Hammonds Plains

Thank you for your note.

Without further information regarding the plans for 54 Colins and given the ongoing negative impact from the lot on our other side we wish to appeal the variance.

Cheers,



Jonathan & Lynn Dean