

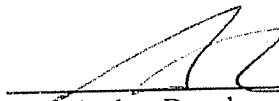


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8.2.1

Western Region Community Council
November 28th, 2011

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Sean Audas, Development Officer

DATE: November 18th, 2011

SUBJECT: Appeal of the Development Officer's decision to approve an application
for a Variance – 1574 John Brackett Drive, Herring Cove, Case #17277

ORIGIN

This report deals with an appeal of the Development Officers Decision to approve a variance of the front and side yard setback requirements of the Planning District 5 Land Use Bylaw to permit the construction of a single unit dwelling.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 1574 John Brackett Drive in Herring Cove (See Map 1). The subject property is zoned F-1 (Fishing Industry) Zone under the Planning District 5 Land Use Bylaw. Section 19.4 of the Land Use Bylaw allows for residential uses to be permitted through the requirements of Part 11 (Herring Cove Residential (HCR) Zone).

The applicant is proposing to construct a new single unit dwelling, and has requested a reduction in the required front and side yard setbacks (See Attachment 1).

Zone Requirements for a Single Unit Dwelling

	Requirements	Proposal
Front Yard Setback	20 feet	10 feet
Side Yard Setback	8 feet	4 feet

After reviewing the application the variance was approved on October 17th, 2011 by the Development Officer, and subsequently appealed by two property owners within the 30 metre buffer.

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 if:

- (a) the variance violates the intent of the land use bylaw;*
- (b) the difficulty experienced is general to the properties in the area;*
- (c) the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”*

Does the proposed variance violate the intent of the land use bylaw?

The applicant has proposed to reduce the front yard setback from 20 feet to 10 feet. If the proposed dwelling was set back at 20 feet it would be within the watercourse buffer. Some of the dwellings in the immediate neighbourhood do not appear to meet the 20 foot front yard setback and seem to be quite close to the front property line. The front yard setback requirements provide for future maintenance purposes, such as the expansion of roads, sidewalk construction, along with signage, drainage issues and snow removal. The front property line of the subject property is setback approximately 12 feet from the edge of asphalt. This appears to provide room for future improvements of the road.

The intent of the minimum side yard setback is to provide adequate separation of buildings from adjacent properties and to maintain access, safety and privacy. This is also to ensure compatibility of uses, and to minimize potential conflicts between neighbouring properties. Given the options for both of the two neighbouring properties, and the existing dwellings within

the immediate neighbourhood the intent of the land use bylaw would not be violated.

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

The subject property is significantly smaller (other than PID #40094971) than the rest of the lots in the immediate neighbourhood. The parcels to the left of the subject property are vacant (with the exception of a few 'fish sheds'), and to the right there is a vacant lot followed by two houses. The two houses to the right have a similar front yard setback as to what is being proposed, and the houses across the John Brackett Drive appear to be straddling the front property line. The difficulty experienced is not general to properties area.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

Construction has not occurred and the applicant has followed the development process. Intentional disregard was not a consideration for this application.

Appeals

As per the requirements outlined in the Halifax Charter, all property owners have been notified within 30 meters. Two appeals were received (Attachment 4). These appeal letters indicate that they have concerns for adhering to the *Herring Cove Area Settlement and Servicing Strategy*. Additional comments raise concerns about the views, size of property, impacts to the character of the community, property values and future improvements of the street.

The concerns raised (views, character of the community and property values) in the appeal letters are important to the appellants however, the considerations that the Development Officer must adhere to are outlined in the Halifax Regional Charter. *The Herring Cove Area Settlement and Servicing Strategy* is a policy document and not a by-law. However a review of the strategy indicates that the Land Use By-Law for a reduced watercourse setback is supported in sections 4.4.2.4 and 4.4.2.5. These sections of the strategy in fact support the position to reduce the watercourse buffer to 50 feet to allow for development on existing lots.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

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*. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 metres) to speak to staff's recommendation.

ALTERNATIVES

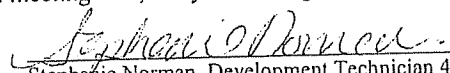
1. Council could uphold the decision of the Development Officer to approve the variance.
2. Council could overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

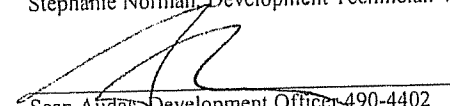
1. Map 1 - Location
2. Attachment 1 – Detailed Site Plan
3. Attachment 2 - Proposed Front Elevations
4. Appeal Letters – John-Ross Pelham & Heidi Ship

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:


Stephanie Norman, Development Technician 490-4046

Report Approved by:

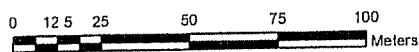

Sean Aidas, Development Officer 490-4402



Map 1 - Location
1574 John Brackett Drive



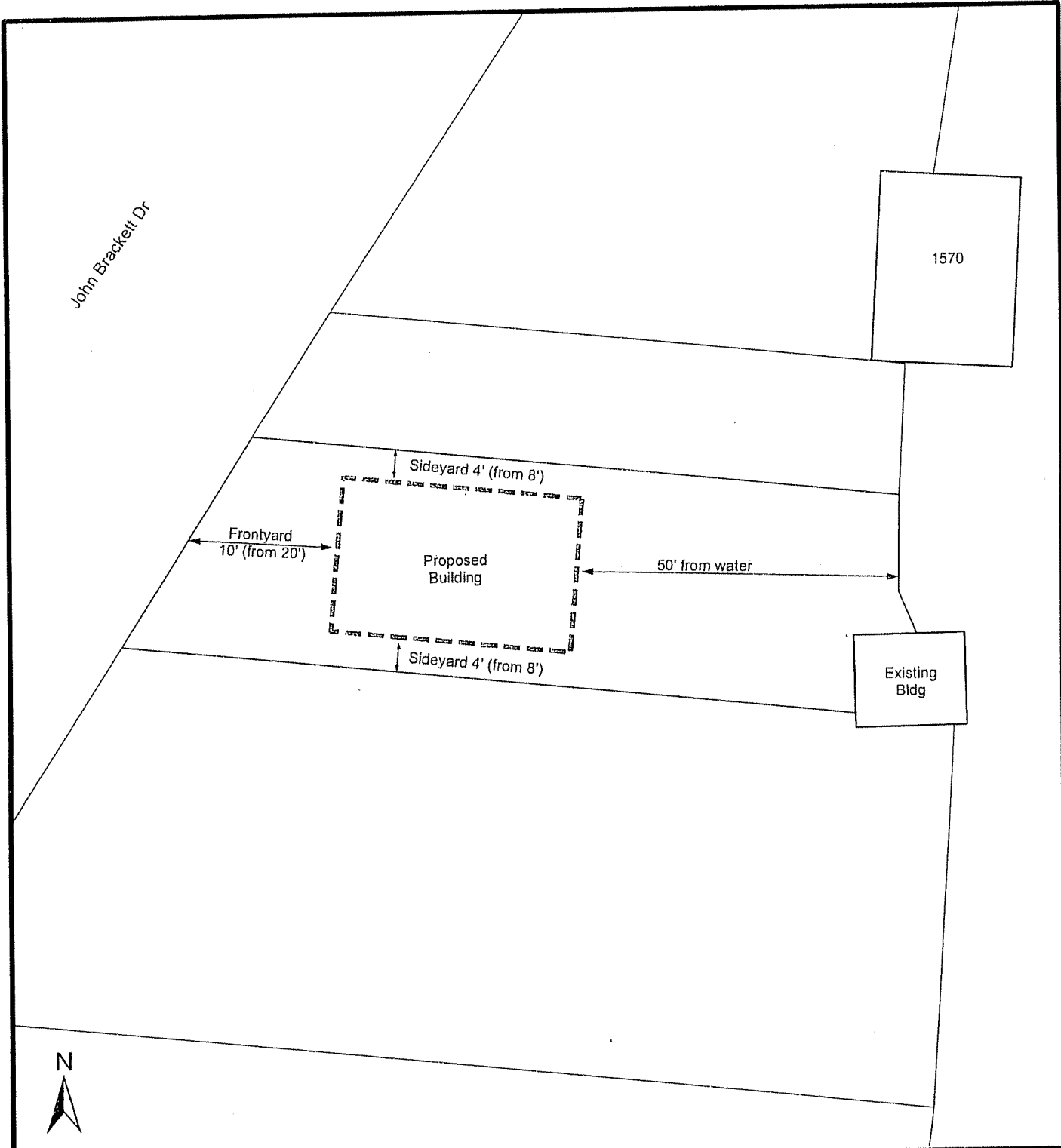
Subject Property



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DEVELOPMENT SERVICES

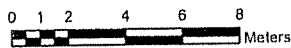
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Attachment 1 - Detailed Site Plan
 1574 John Brackett Drive

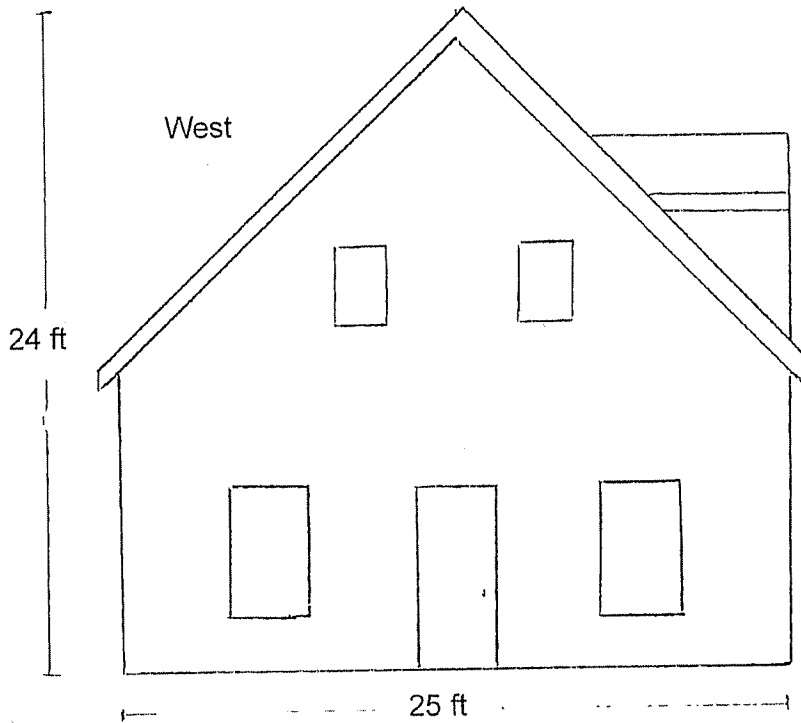


Subject Property



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Attachment 2 - Elevation Sketch
1574 John Brackett Drive

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COMMUNITY DEVELOPMENT
& RECREATION
DEVELOPMENT SERVICES

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accuracy of any base map
information on this map

Shelley Gene
Do. 27, 2011

Dear Sir

Subject Variance 17277

- I hereby appeal the variance issued for
the property on 1574 South Decatur Drive.

This variance does not comply with the
wishes of the community as stated in the Shelley
Gene Area Settlement and Zoning Strategy.

I just built a new home but am
wasn't allowed to build it on my water
lot.

Respectfully yours.
Shelley Gene

Re: Variance for 1574 John Brackett Drive

To Whom it may concern;

First I would like to say that I feel that this appeals process is flawed.

It should not be up to me; an individual with vested interests, to have to defend a community development plan.

I have spoken to the other property owners within the 30 meter boundary, and none of them are eager to loose their water views, or see the waterfront built upon, but living in a small community, nobody wants to start a fight, or have to defend their property rights against the wishes of another.

The waterfront at Herring Cove is a unique, historical, and beautiful place, worthy of protection.

Often I see people park their cars above the fish shacks and bring out their cameras, sketch pads and watercolours.

As a fishing village just minutes from the rotary, it has tremendous recreational and tourism potential.

The narrow lots along John Brackett have never been used for anything other than fish shacks, and the view over them enjoyed by everyone as they drove into the cove.

As all of these properties are too small and steep to support septic fields, they have only become potential building lots with the arrival of city water and sewage lines.

My understanding is that there has already been a process of consultation with the community as a whole, and that a document called the "Herring Cove Settlement and Service Strategy" exists. This guideline calls for no development within 100 feet of the high water mark, and for the preservation of the waterfront.

While infill housing maybe a valuable development

Strategy on the peninsula, building essentially row houses in this location makes no sense.

Allowing building 4' from the property line means narrow lanes 3' wide between houses. Wharves in someone's backyard are hardly accessible to future fishermen. If all the waterfront lots are granted variance exceptions one by one, there will be no Herring cove as we know it.

I have other specific concerns: If in the future we want to put in a bike lane, and a sidewalk on John Brackett this may require a widening of the street. As my house is 120 years old, with a foundation of solid granite that sits on the sidewalk, this would preclude widening the inland side of the street.

I went out and measured from the utility pole to the edge of the gravel. It is about $2\frac{1}{2}$ feet. (I think the surveyor may be counting the white line as the gravel edge) Building a house ten feet from this utility pole would not leave room for these future community needs.

Two years ago, when I purchased the property at John Brackett, ~~and~~ I invested in restoring a 120 year old house because it had inherent value, having a water view over the cove. At that time I was reassured to learn that the ocean lots in front of me could not be built on, as they were too small, and that there was a hundred feet setback requirement for waterfront construction.

I was also told that new construction required a minimal lot size of 10,000 sq. feet, and 75 feet of road frontage. If I had known that these rules were going to be over-ridden I would have not made the investment of time, work, and money in this property.

When it comes to resale, losing a water view has a dollar cost to it, and it seems unjust to me, that I should have to absorb that loss.

Like half of the cove, my house on John Brackett
is still waiting for sewer and water hook-ups.
The services stopped, just next door.

I would think that providing water services as promised
to existing houses should be the city's priority at
this time, not new development.

Thank-you for your consideration.

Sincerely,

Heidi Ship

I can be reached at

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P.S. I should also like to mention that I only had
a weekend to prepare this letter, not really long enough
to respond.