

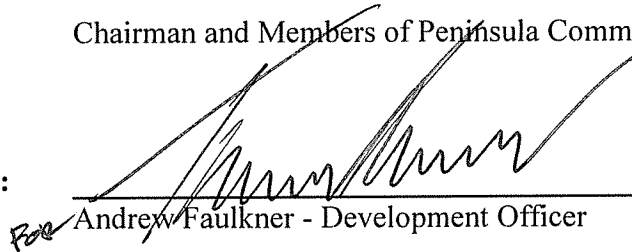


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
September 10, 2007

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:


Andrew Faulkner - Development Officer

DATE: August 30, 2007

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance, File No. 13906 , 6 & 12 (Lot R14, R15) Dunniker Rd, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance for the front yard setback requirements of the Halifax Mainland Land Use Bylaw to construct two single unit dwellings on two recently created lots.

RECOMMENDATION

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

BACKGROUND

The subject properties are located at Lots R14, R15 Dunniker Rd, Halifax. The properties are zoned R-1 under the Halifax Mainland Plan Area. The properties are currently vacant, as they have been recently created and the applicant has proposed to construct two single unit dwellings. The applicant is requesting a variance of the front yard setbacks of lots R14 & R15 from 20 ft to 14 ft. Subdivision approval was given on April 24, 2007 for lots R14 and R15 as part of a 83 lot development.

A variance application was received June 12, 2007 and was refused by the Development Officer on July 3, 2007. In response to the Development Officer's refusal, the applicant has filed an appeal.

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.

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

Staff has determined that this application violates the intent of the land use bylaw as these lots were approved under the current Regional Subdivision Bylaw and Land Use Bylaw for Halifax Mainland. Furthermore, these lots can accommodate a building which can meet the applicable zoning requirements.

When lots are approved under the Subdivision Bylaws they must meet certain criteria such as lot area and frontage requirements of the land use bylaws. Subsequently, they would be capable of development and meeting the zoning setback requirements

The applicant (Polycorp) submitted plans to construct 35 ft x 40 ft (approx) single unit dwellings. The rear and side yard under the Halifax Mainland Land Use Bylaw for the R-1 Zone are 8 ft. The proposed rear yard setbacks range from 19 ft to 32 ft, therefore, there is an option of moving the dwelling further back to allow the structure to meet the front yard setback and also conform to the rear yard setback.

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

As the surrounding lots were created at the same time as the lots in question, any proposed development on these lots are expected to meet setback requirements of the land use bylaw.

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

Intentional disregard is not a consideration.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to deny the variance. This is the recommended alternative.

2. Council could overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

1. Site Plan
2. Notification Letter
3. Appeal Letter

INFORMATION BLOCK

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.

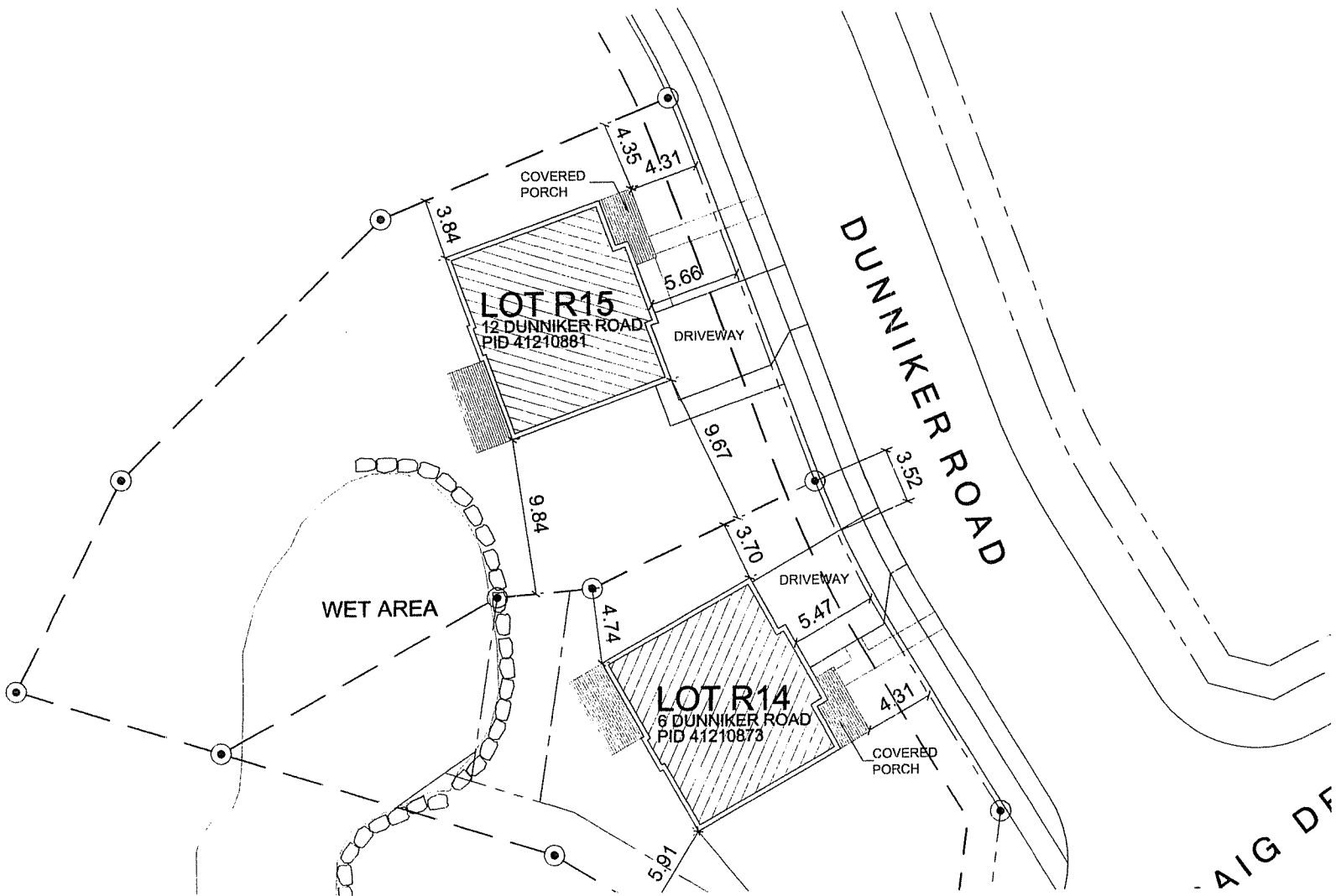
Report Prepared by: Brenda Seymour - Development Technician (490-4046)

DATE: August 17, 2007

SUBJECT: Appeal of the Development Officer's decision to Deny an application for a Variance #13906 at Lot R14, R15 Dunniker Rd, Halifax

SITE PLAN

To vary front yard requirements



COPY



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

July 3, 2007

Polycorp Flemming Park Inc
P.O. Box 31369
Halifax, Nova Scotia B3K 5Z1

Dear Sir:

Re: Application for Variance, File No. 13906 , 6 & 12 (Lot R14, R15) Dunniker Rd, Halifax

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

Location:	6 & 12 (Lot R14, R15) Dunniker Rd
Project Proposal:	Construct single unit dwellings
Variance Requested:	Vary Front Yard setback from 20 ft to 14 ft.

Section 235(3) of the **Municipal Government Act** 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 the variance (a) violates the intent of the Land Use Bylaw and (b) the difficulty experienced is general to properties in the are, therefore your request for a variance has been refused.

Pursuant to Section 236(4) of the **Municipal Government Act** 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 Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5

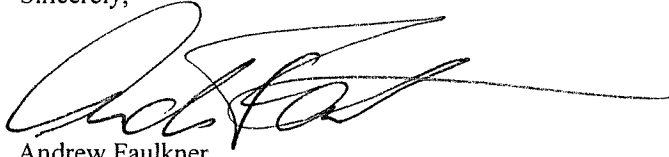
Your appeal must be filed on or before July 13, 2007.

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Polycorp Fleming Park Inc.

If you have any questions or require additional information, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Faulkner', with a long horizontal flourish extending to the right.

Andrew Faulkner
Development Officer

cc

Jan Gibson, Municipal Clerk
Councillor Stephen Adams (District 18)

P O L Y C O R P

July 12, 2007

Via Fax: 490-4645

Municipal Clerk
C/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services – Western Region
PO Box 1749
Halifax, N.S. B3J 3A5

Re: Application for Variance, File # 13905, Lot R6, R5, R4, R3 Ravenscraig Drive and File # 13906, Lot R14, R15 Dunniker Rd. Halifax.

Dear Andrew,

As per our telephone conversation I am submitting an appeal to your decision regarding the above mentioned Variance Applications. The appeal is based upon the following information;

1. these six lots back upon a designated watercourse and we would like to maximize the buffer between the houses and the watercourse, in keeping with the goals established by HRM's new Regional Plan which introduced watercourse setbacks. These homes are actually within the area of the watercourse setback, as it is impossible to construct on these lots without infringing on the new watercourse setback. This variance will allow these homes to be built to maximize the watercourse setback.
2. the only people affected by this variance will be people living in a new subdivision. No existing or long standing home owners will be affected.
3. by allowing the houses to be located approximately 6 feet closer to the road we will be able to provide a more pleasing design to these six homes so that the front porch vernacular will be the main feature of the homes, versus the typical suburban model where the garage is the dominant element of the streetscape.
4. the front yard reduction will not cause any engineering, maintenance, public works or safety issues with respect to the adjacent street.

Please advise when our attendance to municipal Council will be required.

Yours very truly,



Louis Lemoine