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**Chebucto Community Council**  
**October 2, 2006**

**TO:** Chairman and Members of Chebucto Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** September 25, 2006

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a Variance - 18 Flamingo Drive, Halifax.

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**STAFF REPORT**

**ORIGIN**

Pursuant to Section 236(3) of the Municipal Government Act any person served notice of a variance may appeal the decision of the Development Officer to the Municipal Council.

This is an appeal of the Development Officer's decision to approve a variance for 18 Flamingo Drive, Halifax.

**RECOMMENDATION**

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

## **BACKGROUND**

The subject property is zoned R-1 (Single Family Dwelling Zone) under the Halifax Mainland Land-Use Bylaw. The property is currently vacant and the applicant has proposed to construct a single unit dwelling.

This application for variance proposes to reduce the right side yard setback to 7.7 feet (7 feet, 8 inches) for the proposed single unit dwelling. The required right yard setback in the R-1 zone is 8 feet.

The property owners agent applied for the required variance and the application was approved by the Development Officer. Notification in accordance with the Municipal Government Act was sent to the surrounding affected property owners. Subsequently, there were appeals from the owners at 20 Flamingo Drive and 6 Skylark Street. A Copy of the appeal letters are attached.

## **DISCUSSION**

The *Municipal Government Act* sets out the guidelines under which the Development Officer may not 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?**

The subject property is zoned R-1 under the Halifax Mainland Land Use Bylaw. This zone requires side yards of 8 feet. The proposed single unit dwelling is only 20 feet wide which does show an attempt by the applicant to meet the requirements of the Land Use By-law with respect to all yard requirements. With this in mind, this variance does not violate the intent of the by-law by decreasing this setback to 7.7 feet .

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

The subject property is one of the smallest in this general area. This lot is 5,981 square feet and the range in the neighbourhood is approximately 5,100 square feet to 13,000 square feet. The subject property is unique in this neighbourhood due to its shape. This particular lot is long and narrow. There is only one location on this property where the proposed dwelling could not meet the side yard setback. This lot narrows about halfway through the lot to a width of 37.7 feet. This portion of the lot makes it very difficult to construct a dwelling that meets the setback requirements of the Land Use By-law. Therefore, the difficulty experienced in this case is not general to properties in the area.

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

There has not been an intentional disregard for the requirements of the Land Use By-law.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was approved as it was seen to be reasonable and not contrary to the provisions of the MGA.

**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.

**ALTERNATIVES**

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

**ATTACHMENTS**

1. Site Plan
2. Location Plan
3. Right Side Yard Elevation
4. Approval letter
5. Appeal letters

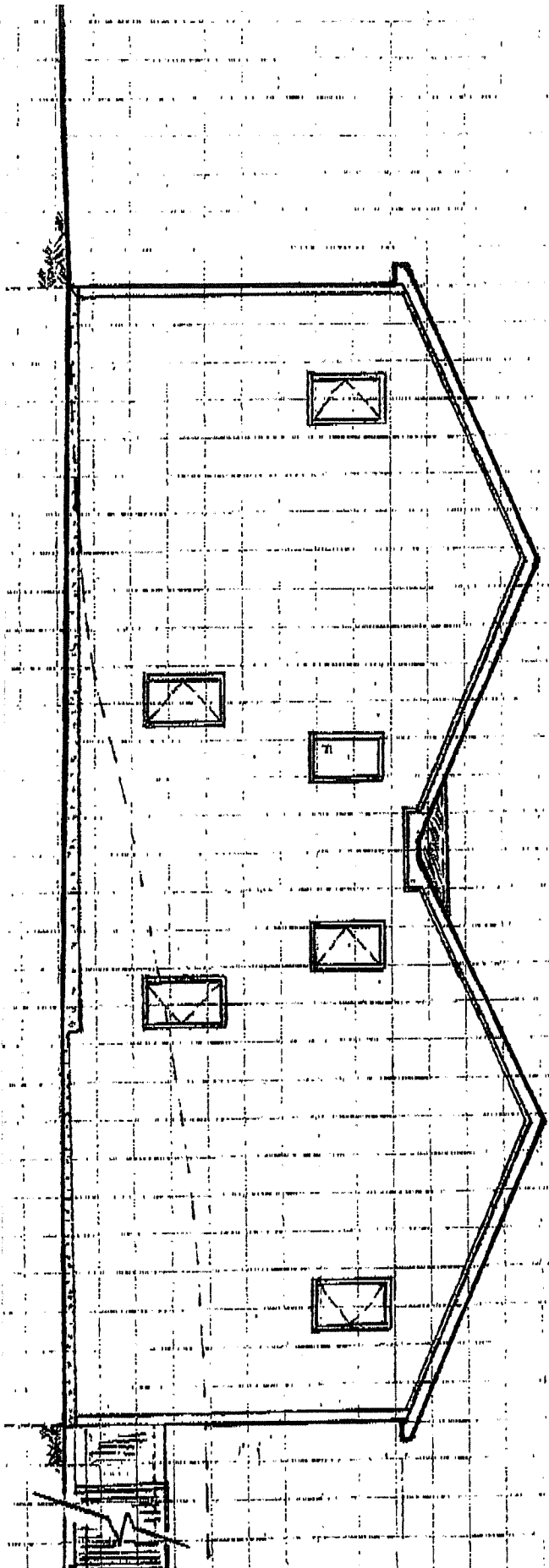
**INFORMATION BLOCK**

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: Steven Croft - Development Technician (490-4338)





Proposed Right Side Yard Elevation





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

September 6, 2006

Dear Assessed Owner:

**Re: Case No. 13235 - Variance at 18 Flamingo Drive, Halifax**

As the 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:

**Location:** 18 Flamingo Drive, Halifax  
**Project proposal:** Construct a Single Unit Dwelling  
**Required:** Minimum 8 feet side yard setback  
**Approved:** 7.7 feet right side yard setback

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **4:30 p.m. September 22th, 2006** and address your appeal to:

**Municipal Clerk,  
c/o Andrew Faulkner, Development Officer, Halifax Regional Municipality,  
Planning and Development - Western 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 contact Steven Croft at 490-4338.

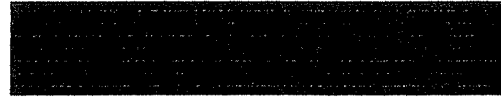
Yours truly,

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner, Development Officer  
Halifax Regional Municipality

copy to: Jan Gibson, Municipal Clerk  
Councillor Debbie Hum

Gregory C. Clarke  
20 Flamingo Drive  
Halifax, N.S., B3M 1S7



# Memo

**To:** Andrew Faulkner, Development Officer, HRM  
**From:** Gregory Clarke  
**CC:** Jan Gibson, Municipal Clerk  
**Date:** September 17, 2006  
**Re:** Case No. 13235

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Dear Mr. Faulkner,

In reference to case # 13235, I would like to take this opportunity **to appeal** the request you have approved for a variance for (a 7.7 feet right side yard setback) at 18 Flamingo Drive.

Due to the close proximity of the proposed new construction, to **my** place of residence at 20 Flamingo Drive, I believe it is in my best interest **not** to allow the degradation of the current setback bylaw for the Halifax Regional Municipality.

Sincerely,

  
Gregory C. Clarke

Ph: (902) 443-1330



6. Skylark St  
Fairfax, Va.  
B3m 2P3  
Sept 17, 2006

Andrew Faulkner  
Development Officer  
Fairfax Regional Municipality

RECEIVED

SEP 21 2006

RMV

Dear Sir,

In reference to your letter dated Sept. 16, 2006 regarding building of a dwelling at 18. Flamingo St. we are concerned about the water drainage from this property onto Skylark St. Also the sharp turn at the corner of this property from Flamingo St. onto Skylark St, it is too sharp and narrow. Also in the future maybe sidewalks on the west side of Skylark St.

We therefore appeal this proposal at this time.

Yours truly

Kolbert & Barbara Wright