

521




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
September 10, 2008

TO: Chairman and Members of Harbour East Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: September 2, 2008

SUBJECT: Variance appeal - 265 Caldwell Road, Cole Harbour

ORIGIN

This report deals with the appeal of the Development Officer's decision to approve a variance application which would reduce the front yard setback of an accessory building at 265 Caldwell Road, Cole Harbour, NS

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned R-2 (Two Unit Dwelling) Zone under the Land Use By-Law for Cole Harbour/Westphal

Existing Use:

The subject property is approximately 15,000square feet. The dwelling is situated approximately 46 feet from the front property line. A variance was requested to locate an accessory building (maintenance shed) slightly in front of the existing dwelling at 36 feet from the front property line. The shed is quite small in size and measures 6.5' X 8'. The shed is used to store a snow blower.

The Cole Harbour/Westphal Land Use By-law requires that buildings in the R-2 Zone must be placed at least 20-30 feet from the front property line. In addition to the front yard setback requirement the Land Use By-law also requires that any accessory building shall not be located closer to the front lot line than the dwelling on the property in any residential zone.

DISCUSSION

The *Municipal Government Act* sets out criteria in part 235(3)under which the Development Officer may consider variances to Land Use By-law requirements. The criteria are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use by-law;*
- (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 by-law."*

In order to be approved, the proposed variance must not conflict with any of the above statutory criteria. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use by-law?

- The Land Use By-law sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The setback from the street line required for the R-2 zone is 20-30 feet. The shed is located at 36 feet.
- The existing dwelling is located at 46 feet. The accessory building is only located 10-12 feet closer to the front property line than the dwelling.
- Where the shed is only slightly closer to the street than the dwelling and the shed is very small in size this request was not felt to violate the intent of the land use by-law.

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

- The driveway was modified which results in a 3.5 foot high retaining wall at the back end of the driveway near the dwelling.
- Because of the grades, moving a snow blower to and from the driveway would be difficult.
- The Development Officer feels that the difficulty experienced is not general to the properties in the area.

Is the difficulty experienced the result of intentional disregard for the requirements of the land use by-law?

- Ideally, a permit request should be requested before the shed is placed.
- The Land Use By-law does not require a Development Permit for sheds less than 300 sqft.
- The shed is only slightly in front of the existing dwelling and is not felt to show 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 and letters were sent to all property owners within 30 meters in accordance with the provisions of the Municipal Government Act.

Appeals

There were six appeals filed against the Variance. The appeal letters have been attached to the report in Attachment 4. In summary the appellants stated that:

- The shed is unsightly
- It will impact the future value and desirability of homes on the road
- There is enough space on the property to place within current requirements
- Could set a precedent for other properties on the road

Some of the concerns noted are not considered within the Land Use By-Law requirements. In particular, unsightly property and future marketability of dwellings. If approved, the shed will not set a precedent as this by-law requirement is specific to the existing separation distance of a dwelling to the front lot line which may vary from property to property.

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

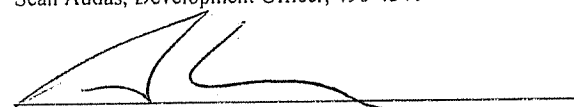
1. Council could uphold the decision of the Development Officer to allow the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance request.

ATTACHMENTS

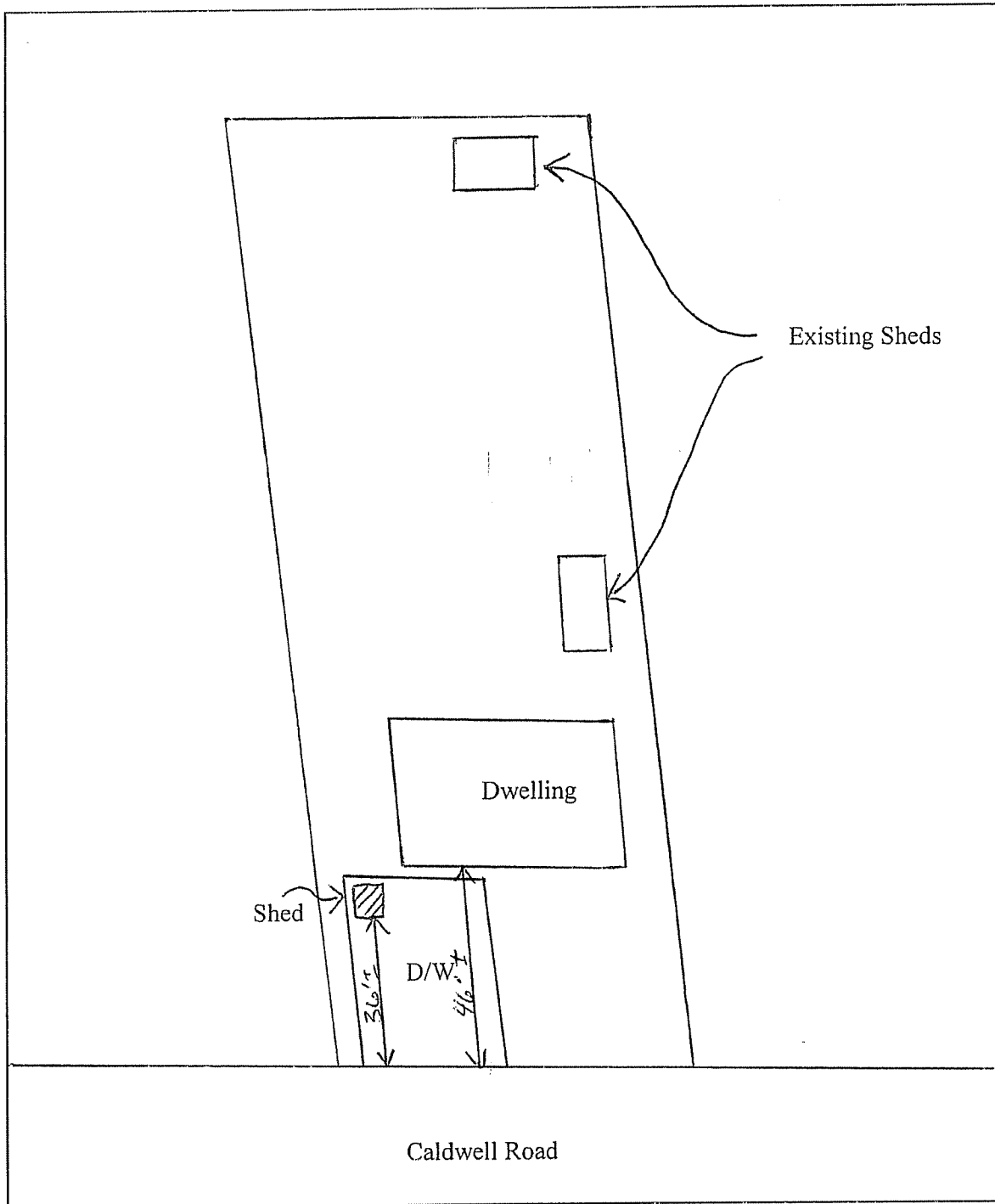
1. Site plan
2. Location Map
3. Approval Letter
4. Appeal Letters

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Sean Audas, Development Officer, 490-4341

Report Approved by: 
Sean Audas, Development Officer, 490-4341

ATTACHMENT 1
SITE PLAN - 265 CALDWELL ROAD





This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

July 22, 2008

Dear Sir or Madame:

RE: HRM File # 14759
Application for variance at 265 Caldwell Road, Dartmouth, NS

As you have been identified as a property owner within 30 metres of the above noted address, you are being notified of the following variance as per requirements of the *Municipal Government Act*.

This will advise you that, as the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirements of the *Land Use Bylaw for Cole Harbour / Westphal* as follows:

Location:	265 Caldwell Road, Dartmouth, NS
Owner:	Edwin Banks
Project proposal:	Construct accessory building
Required setback:	No accessory building shall be located closer to the front lot line than the dwelling on the property
Approved variance:	Accessory building may be placed 12 feet closer to the front lot line than the dwelling on the property

In accordance with Section 236 of the *Municipal Government Act*, all assessed owners of property within 30 metres (100 feet) of 265 Caldwell Road have been notified of this variance. As one of these property owners you have the right to appeal the decision of the Development Officer to Community Council. An appeal must be in writing, stating the grounds of the appeal, and be directed to:

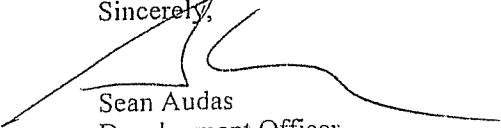
Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
PO Box 1749
Halifax, NS B3J 3A5

Notice of the appeal must be filed on or before August 7, 2008.

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance.

If you have any questions or require clarification of any of the above, please call the Development Technician, Mackenzie Stonehocker, at (902) 490-6257.

Sincerely,



Sean Audas
Development Officer

cc: J. Horncastle, Municipal Clerk's Office
Bill Karsten, Councillor, District 7

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AUG - 6 2008

Planning & Development Services
Halifax Regional Municipality

1st August 2008

Dear Mr Audas

Re: HRM File # 14759
Application for variance at 265 Caldwell Road, Dartmouth, NS

We are writing with regard to the above file number. We would like it noted that we do not agree with the approved variance for several reasons, as detailed below.

Allowing such a structure to the front of a dwelling is unsightly and could well set a precedent for future applications along the road which would make the road look incredibly untidy and could, eventually, impact the future value and desirability of homes in the road.

There are no reasons why such a structure is necessary at the front of the dwelling. Mr Banks has more than enough space elsewhere on his property to add a fourth shed if that is his desire – without needing to apply for a variance of current restrictions.

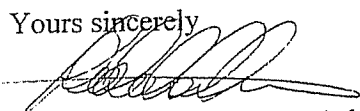
Whilst we understand that hauling a snow blower from one end of a property to another may well be a nuisance, this in itself does not warrant an approved variance. As for needing this building as storage for garbage cans – this is both unnecessary and a case of personal choice. Again, not something that warrants a variance of restrictions.

By his own admission, Mr Banks spends a good deal of time at another residence and it is doubtful that the effect on the aesthetics of the area would have much bearing on him.

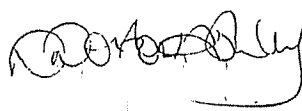
Ultimately, we do not wish to aggravate or have a dispute with our neighbors, but at the same time, we feel that if Mr Banks needs to have yet another building on his dwelling, then there are many alternative sites that are available to him, without using the front of his property.

If you require any further information, please do not hesitate to contact us.

Yours sincerely



Steven & Nicola Norton-Ashley



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AUG - 5 2008

Planning & Development Services
Halifax Regional Municipality

August 5, 2008

Dear Mr Andas:

RE: HRM File #14759

Application for variance at 265
Caldwell Road, Dartmouth, N.S.

My wife and I have lived at 259
Caldwell Road for 31 years and we
have made a conscientious effort
to maintain our residence so that
it does not detract from our
neighbors properties. We care about
our property and it is our priority
to keep it looking proper.

We do not see the need for an
accessory building to be placed in
front of the dwelling at 265 Caldwell
Road as there are several accessory
buildings already existing on the
property.

The Land Use By-Law referring
to accessory buildings, section
4.11(a)(vi) states that - No accessory
building shall be located closer to
the front lot line than the dwelling
on the property in any Residential
Zone. (HECC - July 12, 2001, Effective
- August 5, 2001)

We feel that if this varian

is permitted, the value of not only our property but the value of others around us will also be affected.

Therefore, we ask you to disallow this request for a variance.

Respectfully

Garrett L. Hannan

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August 5, 2008

Planning & Development Services
Halifax Regional Municipality

Dear Mr Audas:

RE: HRM File # 14759

Application for variance at
265 Caldwell Road, Dartmouth,
N.S.

We, property owners within 30 metres of the above noted address, appeal the decision for a variance on the grounds that such a structure is not required and there are no other such structures in front of residential homes for a kilometre in either direction and approval of this application will set a precedent which will devalue our properties.

Name

KEAN LEE ^{NR}

1-29-08/HRM/14759 - 3

Robert/Sheelyn Francis

Richard/Isabel Hesk

