

**Marine Drive Valley and Canal Community Council
October 28, 2009**

TO: Members of Marine Drive Valley and Canal Community Council

SUBMITTED BY:


Trevor Creaser, Development Officer

DATE: October 20, 2009

SUBJECT: Appeal of the refusal of Variance # 15658 - 134 Tucker Lake Road

ORIGIN

This is an appeal of the Development Officer's decision to refuse an application for a variance from the side yard setback requirements of the Land Use Bylaw for Planning Districts 15, 18 and 19 for the construction of a deck on the right side of a dwelling which is under construction at 134 Tucker Lake Road.

RECOMMENDATION

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

BACKGROUND

The subject property is located on the south side of Tucker Lake, Beaver Bank. 134 Tucker Lake Road is zoned R-6 (Rural Residential) under the Land Use Bylaw for Planning Districts 15, 18 and 19 (refer to Attachment 1). The side yard setback requirements in the R-6 zone is eight (8) feet.

During the review of the building permit application, the proximity of the proposed deck to the right property boundary (4') was not addressed by staff. This was later brought to staffs attention during the framing stage of the house. As the deck had not yet been constructed, the applicant was advised to either redesign the deck to meet the minimum 8' setback or apply for a variance.

An application for variance was made on October 6, 2009 to allow the deck to be constructed on the right side of the dwelling, four (4) feet from the right side property line as per the original design (refer to Attachment 2).

The application was refused on October 13, 2009 (Attachment 3).

The refusal was subsequently appealed on October 15, 2009 (Attachment 4)

Community Council Report
Appeal of Refusal of Variance # 15658

The applicant has raised the following issues for the request, as listed below:

1. *The foundation has been poured, the framing of the upper level, including the door to the side deck and the footings for the deck, are all in place.*
2. *They would like to continue with the positioning of the side deck as per the plans submitted.*

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 development agreement or land-use by-law;*
- (b) the difficulty experienced is general to properties in the area;*
- (c) the difficulty experienced results from the intentional disregard for the requirements of the development agreement or land-use by-law.”*

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;

The bylaw sets standards for setbacks to provide adequate separation of structures from adjoining properties for privacy. It is the opinion of the Development Officer that this variance would *violate the intent of the land-use by-law* as there is another alternative to this proposal which would not require a variance and meet the intent.

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

It is the opinion of the Development Officer that the *difficulty experienced is general to properties in the area* as this property is similar in size and configuration of other properties in the area.

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

Intentional disregard was not a consideration in refusing this variance.

BUDGET IMPLICATIONS

None

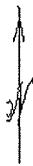
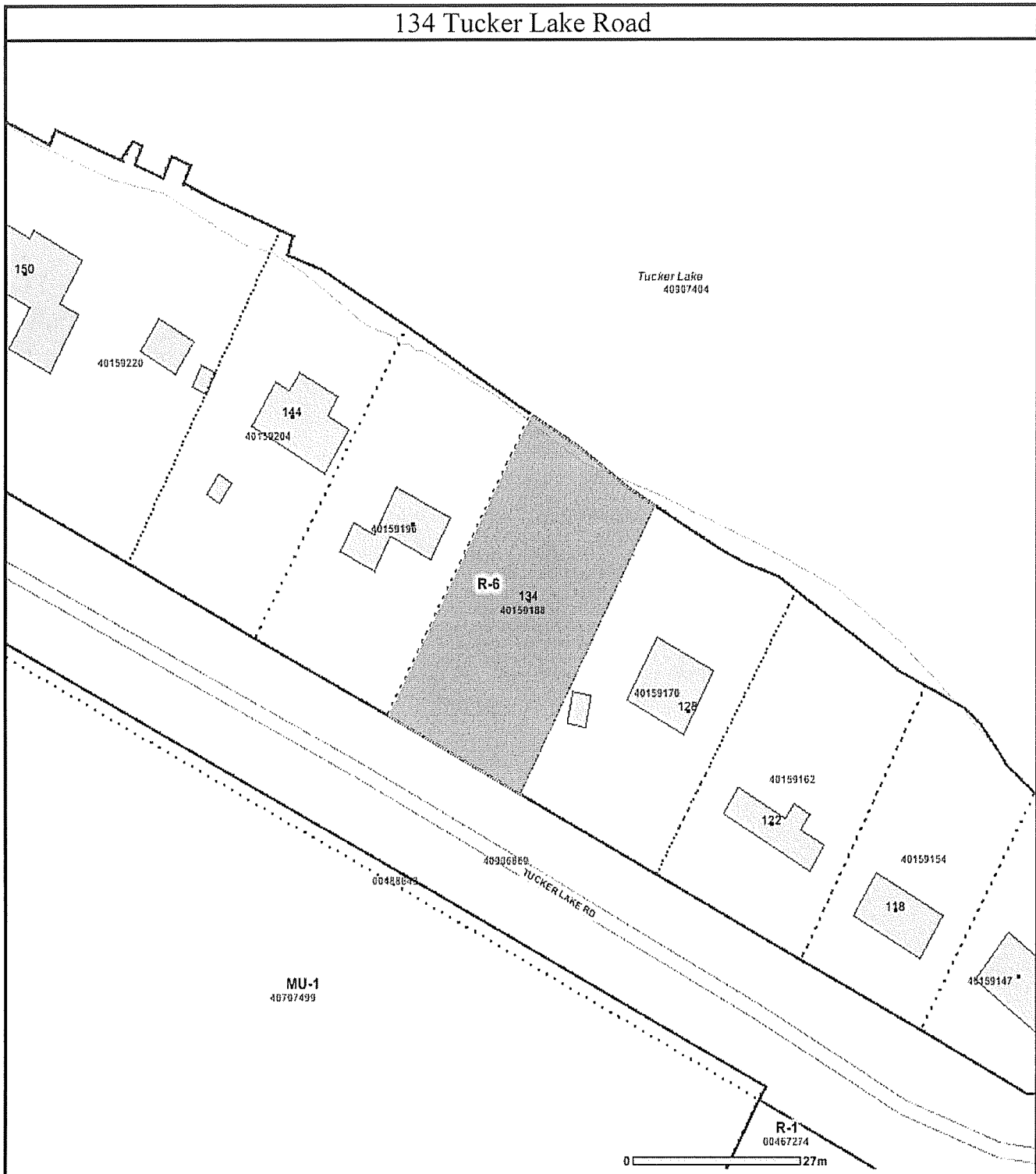
ALTERNATIVES

1. Uphold the decision of the Development Officer to refuse the application for variance. **This is the recommended alternative.**
2. Overturn the decision of the Development Officer, thereby approving the variance.

ATTACHMENTS

1. Zoning Map
2. Site Plan
3. Variance Refusal Letter
4. Appellant's Letter

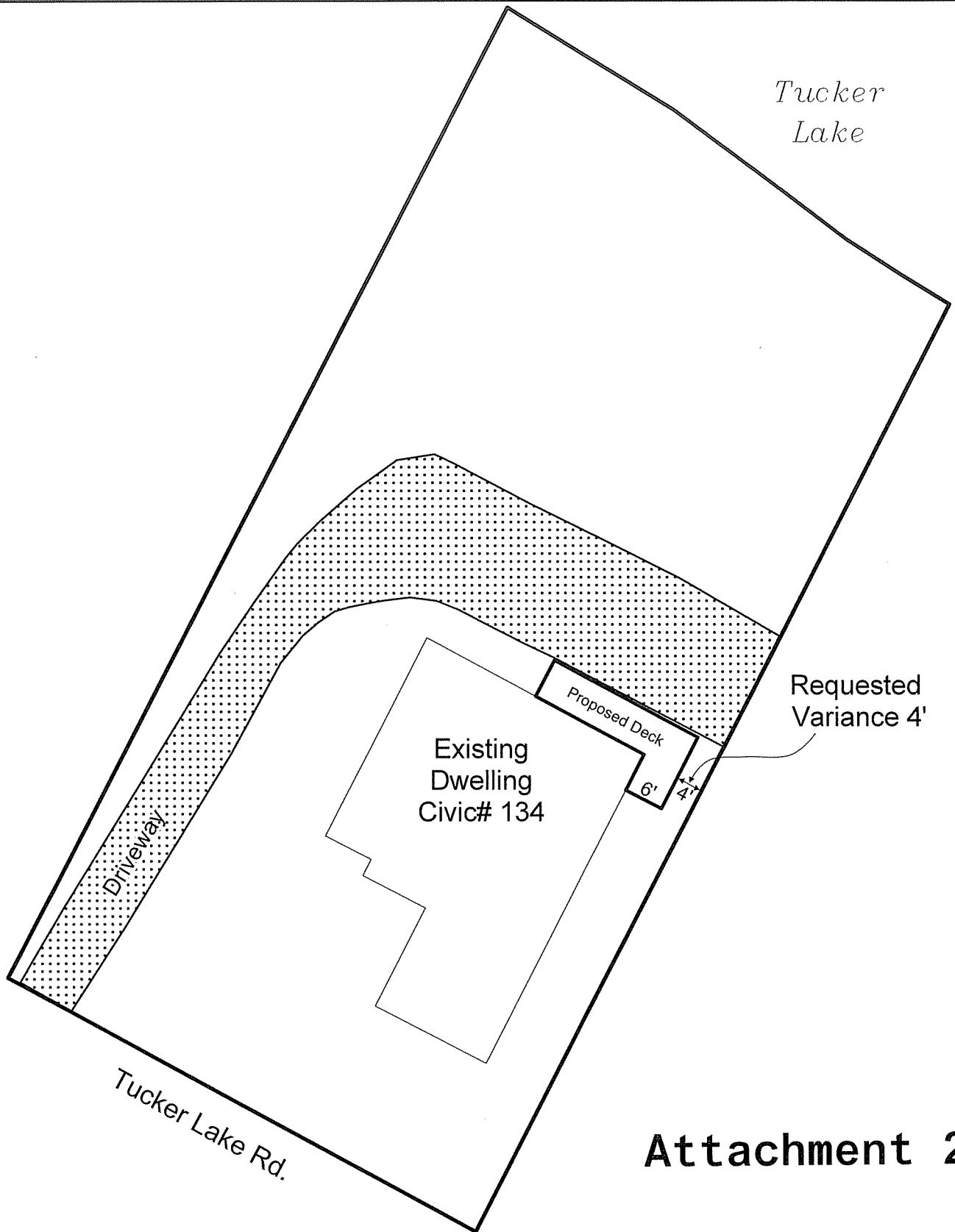
Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.
Report prepared by: Trevor Creaser, 869-4235.



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

Attachment 1

Tucker
Lake



Requested
Variance 4'

Existing
Dwelling
Civic# 134

Proposed Deck

6'

4'

Driveway

Tucker Lake Rd.

Attachment 2

Map 2
Site Plan



HALIFAX
REGIONAL MUNICIPALITY
Planning Services

COMMUNITY DEVELOPMENT

October 13, 2009

Christine Garber
80 Noria Crescent
Sackville, NS B4E 2L7

Dear Ms. Garber:

RE: Application for Variance # 15658 - 134 Tucker Lake Road, Beaver Bank

This will advise that I have refused your request for variance from the requirements of the Land Use Bylaw for Planning District 15, 18 and 19 as follows:

Location:	134 Tucker Lake Road, Beaver Bank
Project Proposal:	Construct a deck on the right side of dwelling under construction
Required Setback:	8' from the Right Side Property Line
Variance Requested:	4' from the Right Side Property Line

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

A variance may not be granted if

- (a) the variance violates the intent of the development agreement or land-use by-law;
- (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 development agreement or land-use by-law.

Since there is an alternate solution, it is the opinion of the Development Office that this variance would *violate the intent of the Land Use By-Law*. Also, this property is similar in size and configuration as other properties in the area, therefore, *the difficulty is general to properties in the area*.


Pursuant to Section 251 (4) of the **Halifax Regional Municipality Charter** 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:

Trevor Creaser
Development Officer
Halifax Regional Municipality
Development Services - Central Region
636 Sackville Drive
Sackville, NS B4C 2S3

Your appeal must be filed on or before **October 23, 2009**.

If you have any questions or require additional information, please contact this **Gail Bowen** at 869-4253.

Sincerely,


Trevor Creaser
Development Officer

cc. Cathy Mellett, Acting Municipal Clerk
Councillor Dalrymple

Attachment 3

October 15, 2009

Mr. Trevor Creaser
Development Officer, HRM
Development Services-Central Region
636 Sackville Drive
Sackville, N.S., B4C 2S3

Attention; Community Development Office

Dear Mr. Creaser:

RE: Application for Variance #15658-134 Tucker Lake Road

I hereby wish to appeal the Development Office's decision on the above application for variance and wish to go to the council for review.

I feel I have followed all requirements towards building and have provided The Development Office with all information as they required. I received a permit to build and wish to continue with the original plans as stated at the time of the Approved Application.

Sincerely,



Christine Garber
80 Noria Crescent
Sackville, NS B4E 2L7