

8.2.1



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Marine Drive, Valley & Canal Community Council**  
**May 19, 2010**

**TO:** Chairman and Members of Marine Drive, Valley & Canal Community Council

**SUBMITTED BY:**

  
Sean Audas - Development Officer

**DATE:** May 11, 2010

**SUBJECT:** Appeal of the Development Officer's decision to refuse a Variance at 84 Gammon Lake Road, Lawrencetown

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a Variance of the flankage yard for an accessory building (garage) at 84 Gammon Lake Road, Lawrencetown.

**RECOMMENDATION**

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

**BACKGROUND**

**Zoning:**

The property is zoned RR-1 (Rural Residential) Zone under the Land Use By-Law for Lawrencetown.

**Existing Use:**

The subject property contains a single unit dwelling.

**Application:**

A Variance was requested to reduce the required flankage yard setback from 20 feet to 8 feet. The subject property is a corner lot and has road frontage on Gammon Lake Road and Lillian Drive. The variance request is to reduce the required setback of 20 feet from Lillian Drive to 8 feet. The applicant has indicated that the existing septic field and driveway requires a Variance from the required setback.

**DISCUSSION**

The *Halifax Regional Municipal Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria are as follows:

*“A variance may not be granted if:*

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

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 uses.

- The required flankage yard setback for the RR-1 Zone is 20 feet. The accessory building is proposed to be located 8 (eight) feet from the flankage lot line.
- All zones in the Plan Area typically have either a 20 or 30 foot front and flankage yard setback.
- The setback requirement of 20 feet is indicative of a suburban and rural setting which have larger lots and greater setbacks.
- Reasons for a required setback are for maintenance purposes, such as future expansion of

- roads, sidewalk construction, signage, drainage issues and snow removal.
- This type of request is generally considered when there are extenuating circumstances or difficulty with the property, such as a wider road right of way, steep slope, rock outcrop or other physical constraints with the property. While the existing driveway and septic field do restrict the placement of a garage, the lot is approximately 36, 000 sqft with other areas of the lot that will meet the requirements.
- A reduction to 8 feet from the required 20 feet is a substantial request. This is not supported by the Development Officer, because the required setbacks can be met on the property which violates *the intent of the land use by-law*.

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

- Many of the dwellings on Lillian Drive are set back greater than the minimum requirements of the RR-1 Zone. To approve a new garage closer than the minimum requirement would not be consistent with the other properties in the area.
- Approving the garage at this location could set a new standard for the subdivision for a road right of way setback. If approved other property owners may request the same variance for the same reasons.

**Is the difficulty experienced the result of intentional disregard for the requirements of the Land Use By-law?**

- Intentional disregard for the requirements of the Land Use By-law was not a consideration.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined to be contrary to the provisions of the Halifax Regional Municipal Charter.

**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 refuse the Variance. This is the recommended alternative.
2. Council could approve the Variance request and overturn the decision of the Development Officer.

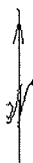
**ATTACHMENTS**

1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal 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.

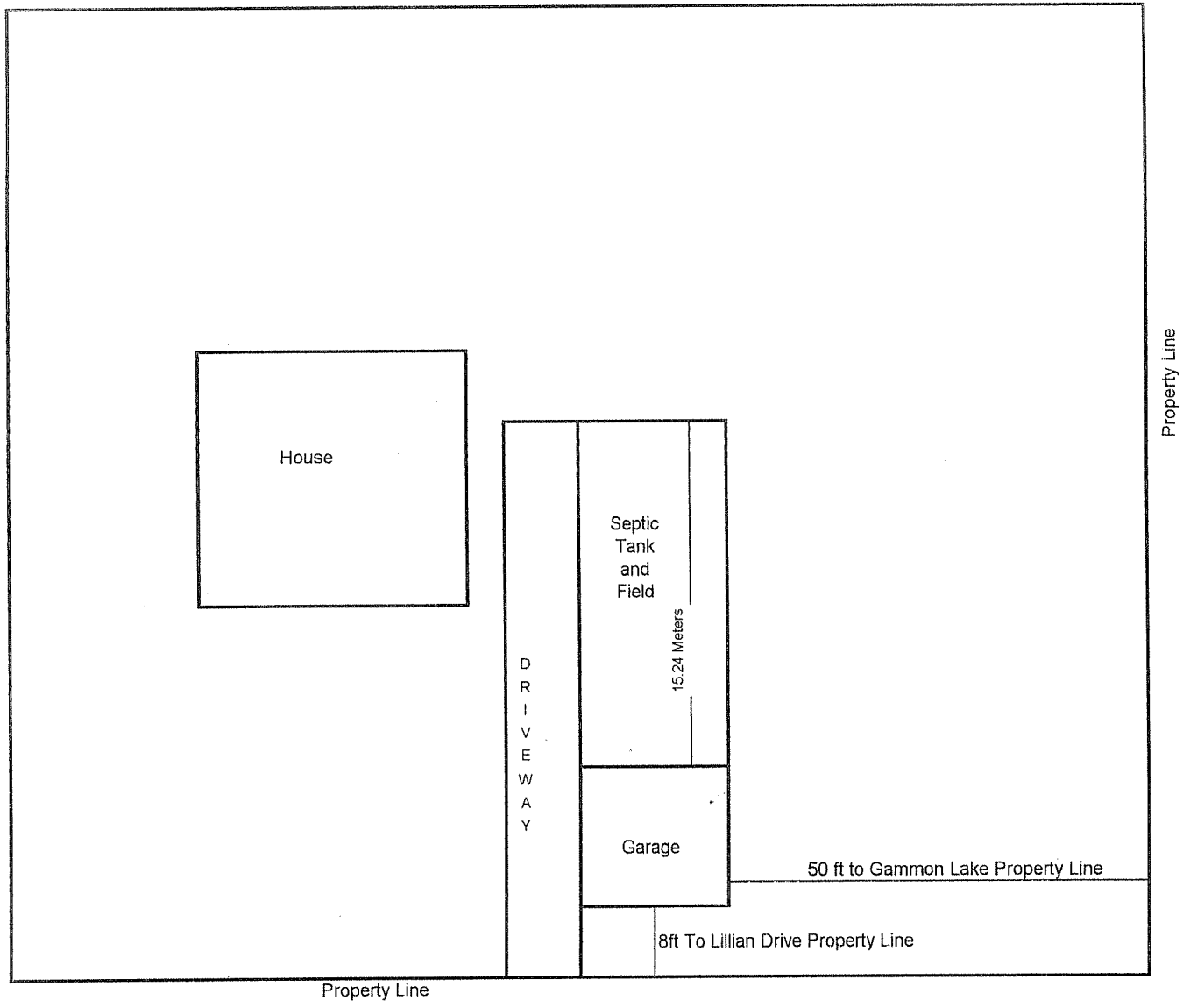
Report Prepared and Approved by: Sean Audas, Development Officer (490-4341)

# ATTACHMENT 1



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](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation.

# ATTACHMENT 2



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

April 13, 2010

Brendon Aaron Mercer  
84 Gammon Lake Drive  
Lawrencetown, NS  
B2Z 1T9

Dear Mr. Mercer:

**RE: Application for Variance, File No. 15981 - 84 Gammon Lake Drive, Lawrencetown, NS**

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 *Lawrencetown* as follows:

**Location:** 84 Gammon Lake Drive, Lawrencetown  
**Project Proposal:** To construct detached garage 8 feet from flankage property line  
**Variance Requested:** Vary flankage yard setback from 20 feet to 8 feet

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 an intentional disregard for the requirements of the development agreement or land use by-law.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, and (b) the difficulty experienced is general to properties in the area. Therefore your request for a variance has been refused.

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:

**Municipal Clerk**  
*c/o Sean Andas, Development Officer*  
**Halifax Regional Municipality**  
**Development Services - Eastern Region**

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PAGE 2

Brendon Aaron Mercer, FILE 15981

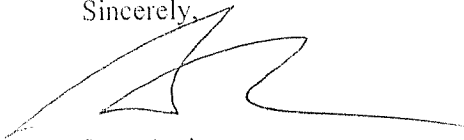
April 13, 2010

P.O. Box 1749  
Halifax, NS B3J 3A5

**Your appeal must be filed on or before *April 23, 2010*.**

If you have any questions or require additional information, please contact Marc Ouellet at at *490-5985*.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Audas', written over a horizontal line.

Sean Audas  
Development Officer

cc. Cathy Mellett - Acting Municipal Clerk  
Councillor David Hendsbee



## ATTACHMENT 4

Hi Shawn,

- > I would like to appeal the denial of my variance application to reduce the
- > flanking requirement on my lot for two reasons.
- > First I do not feel that my proposal violates the intent of the flanking
- > requirement which is to prevent reduced visibility to motorists around the
- > intersection of the two streets. My proposal is to construct the garage
- > more
- > than 60 ft from the intersection and will present no obstruction to a
- > driver's view.
- > Second I feel that your recommendation to build the garage in an alternate
- > location that is away from my driveway is unreasonable and creates
- > unnecessary financial burdens that make this project cost prohibitive.
- >
- > I look forward to discussing with you and the Councilors, please let me
- > know
- > as soon as a date has been set.
- > Brendon
- >
- > Brendon Mercer MBA