

WESTERN REGION COMMUNITY COUNCIL  
MINUTES

August 27, 2007

PRESENT: Councillor Stephen D. Adams, Chair  
Councillor Reg Rankin  
Councillor Gary Meade

STAFF: Mr. Trevor Creasor, Development Officer  
Mr. Martin Ward, Solicitor  
Ms. Chris Newson, Legislative Assistant

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**1. CALL TO ORDER**

The Chair called the meeting to order at 7:00 p.m. in the Thomas Raddall Room of the Keshen Goodman Library, 330 Lacewood Drive, Halifax.

**2. APPROVAL OF MINUTES - June 25, 2007**

**MOVED by Councillor Rankin, seconded by Councillor Meade, that the minutes of June 25, 2007 be approved as presented. MOTION PUT AND PASSED UNANIMOUSLY.**

**3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS**

- Additions:**
- 12.1 Village Road (Herring Cove) Speed Limits - Councillor Adams
  - 12.2 Internet Service for East Dover and Surrounding Communities - Councillor Rankin

**MOVED BY Councillor Rankin, seconded by Councillor Meade that the agenda, as amended, be approved. MOTION PUT AND PASSED UNANIMOUSLY.**

**4. BUSINESS ARISING OUT OF THE MINUTES/STATUS SHEET**

**4.1 Status Sheet Items - No updates available.**

**5. MOTIONS OF RECONSIDERATION - NONE**

**6. MOTIONS OF RESCISSION - NONE**

**7. CONSIDERATION OF DEFERRED BUSINESS - NONE**

**8. HEARINGS**

**8.1 Public Hearings: None**

**8.2 Variance Appeal**

**8.2.1 File No. 13942, 1594 John Brackett Drive, Herring Cove**

- A staff report dated August 13, 2007 was before Community Council.
- An e-mail from Mr. Hal Whitehead and Ms. Lindy Weilgart, dated August 24, 2007, was before the Community Council.

Councillor Adams reviewed the guidelines for public hearings. He advised that those persons within 30 metres of the subject property may offer comment during the variance appeal hearing.

Mr. Trevor Creasor, Development Officer, Central Region, presented the variance report on behalf of Mr. Andrew Faulkner, Development Officer, Western Region.

Mr. Creasor advised that the appeal is in regard to the Development Officer's decision to approve a variance to the right side yard setback requirements of the Chebucto Peninsula Plan Area (District 5) Land Use By-Law from 6'5" (six feet five inches) to 4'6" (four feet six inches); a difference of 1'11" (one foot eleven inches). The applicant's proposal is for the existing dwelling to be demolished and reconstructed further back on the property increasing the front yard setback to 67' (sixty-seven feet) and the left side yard setback from 2'4" (two feet four inches) to 4'6" (four feet six inches). The property is a waterfront lot in the Harbour Designation area, therefore; the watercourse setbacks are waived.

Questions of Community Council:

In response to Councillor Rankin's request for clarification in regard to the highwater mark and the existing / proposed dwelling, Mr. Creasor advised that the property is within the Harbour Designation area and therefore there is no specific setback designation. He added that he did not believe there were any federal or provincial regulations stipulating setbacks from the watercourse.

Mr. Creasor responded to Councillor Adams that he was not familiar with the Herring Cove Services Settlement Strategy. Upon request of Councillor Adams, Mr. Creasor agreed to confirm the minimum square footage for new lots and whether or not new construction would be by development agreement.

Councillor Adams opened the variance appeal hearing calling for any persons wishing to speak in regard to the variance to come forward at this time.

Public Speakers:

Dr. Lindy Weilgart, John Brackett Drive (neighbour abutting property in question)

- Distributed pictures of the existing shed including a drawing of the proposed three storey building.
- Attracted to Herring Cove by its picturesque nature and the wide spacing between houses.
- Saw that the shed, and other buildings, was on the adjacent property but never

- assumed the whole shed could be replaced and moved anywhere on the lot.
- HRM By-laws are unclear. Her understanding of re-construction means using some part of the existing footprint and not moving the building somewhere entirely different.
- Another family rebuilt their house with the clear understanding that they had to use part of the existing footprint.
- She is fine with the issue of non-conformity but it seems to be in regard to whatever works for the builder and is a very arbitrary and capricious interpretation of the By-law. Using the sideyard of the existing building and moving those sideyards anywhere on the property is an unusual interpretation of the By-Law.
- There would have been more community support this evening but she was informed within hours of this meeting that others could come forward; also, everyone is away for holidays. The rules seem to be fluid and ever changing. She was told she could not get the meeting date changed and was not able to adequately prepare for this meeting. Then she learned, from Mr. Andrew Faulkner, that if the neighbour on the other side wanted to appeal the variance that the meeting date would have been changed for him. She felt that due process has been somewhat violated.
- She commented that Mr. Faulkner, in an e-mail to Mr. Leif Sigurdson, advised that Mr. Dempsey could build at the existing vestibule setback abutting the property. She questioned whether this was a proforma meeting and whether the decision has already been granted.
- She noted that she has a concern with the retaining wall.
- She was also told that people who did not appeal the variance could not speak at this hearing and now that has changed. This does not represent equal opposition of the community due to the problems we have been experiencing.

Councillor Adams requested clarification from Mr. Creasor in regard to comments from the previous speaker on moving the building elsewhere on the property, and; having the date of the meeting changed. Mr. Creasor confirmed that the regulations do not stipulate the structure would have to be replaced where it currently exists; only that you cannot make the setbacks any worse. In regard to changing the date of the appeal hearing, Mr. Creasor advised that he was not party to the conversation with Mr. Faulkner so could not comment specifically. He added that typically the applicants are facilitated in the variance process. In regard to any appellants, letters would be accepted and included as part of the record.

Mr. Creasor confirmed for Councillor Rankin that staff's opinion is that the proposed setbacks are no worse than the current setbacks. He further responded that even without an existing building on the property, construction would still have been considered.

In response to Councillor Meade, Mr. Creasor advised that the square footage for this property is approximately 8,000 square feet.

Corrine Dempsey, Ketch Harbour Road

- Confirmed that the existing building is actually a three bedroom, one bathroom dwelling (house); not a shed. The home has been in the Dempsey family for over 100 years and was inhabited until approximately eight years ago. She and her husband now wish to demolish the existing house and build a new home.
- She added that she understands her neighbours concerns. If the variances do not work, they are willing to adjust the variances. The rules of the By-law indicate they can build the house as proposed.
- The new house will not be a monstrous house that will block her neighbours view.
- They are currently in the process of building a retaining wall on the property for which they have received permission from the City.
- They are trying to ensure they follow the rules exactly.

Dr. Leif Sigurdson, John Brackett Drive, Abutting property owner (left-side).

- He commented that he would rather the side yard setback be enlarged beyond 2'4" but is not opposing the variance as it is in his benefit to have the side yard setback increased.
- There are hard feelings in the neighbourhood in regard to this issue and it would be nice to see a compromise that would make all parties happier with the situation and have all neighbours get along.
- He suggested that the house be moved a nominal amount (approximately five feet) closer to the road (to the point where Mr. Whitehead's house begins) in order to ease the tension. He added that he renovated that side of his house and installed a number of large windows that look out onto the ocean. Moving the proposed house four to five feet would benefit him as well.

Audrey Barnett: Hebridean Drive (neighbour across the street from subject property)

- Moved to Herring Cove for the (geographic) distance between neighbours.
- Hope the issue of whether or not the proposed building needs to comply with the existing building's footprint can be resolved as there seems to be some confusion on that matter.
- Herring Cove is a beautiful place and with the sewer and water services coming there will be more people wanting to live there.
- Maintain the atmosphere that Herring Cove is not a town, it is a fishing village/cove.
- Hope that there can be a compromise that will make everyone happy.

Tom Dempsjey, Ketch Harbour Road, Owner of subject property

- He advised that he is a fifth generation Dempsey; a family that have been residents of Herring Cove for over 200 years. The property has been in the Dempsey family for over 100 years. He has always dreamed of building a home on this lot. It is a narrow lot and instead of installing a \$30,000 - \$40,000 peat moss (services) system four years ago, which had been engineered and then approved by the Department of Environment, he decided to wait for municipal water and sewer services before constructing his home.

- The existing building is a dwelling, not a shed.
- He came to an agreement with his neighbour that they would share the cost of a preblast along the property for the stored services at that location. There was an enclosed porch on the dwelling that had to be removed (by ACL) during the blasting/construction required.
- He referenced the footprint for the proposed dwelling as outlined in the staff report explaining that his intention was/is to be fair to both neighbours by centring the proposed building between both homes.
- He indicated that he would like to have a side entry door facing the left neighbour but if the building is not placed where indicated, he will not be able to do that. Due to the grade of the hill, the house had to be designed as proposed. If the house is placed further back (toward the road) the house will have to be completely re-designed as the land in that area is flat. Out of consideration for both neighbours he has purposely kept the house back.
- He added that he will not get a great view from this plan but does deserve something.

Hal Whitehead, John Bracket Drive (neighbour abutting subject property)

- Resident for twenty-one years at this location.
- Chose his house to have the view and distance from neighbours. To have a very large, very high house so close is disturbing; it is obnoxious and he is very upset.
- He was aware that the Dempsey family had plans to renovate the shed (lobster pot factory) and assumed it would be done, at least partially, on the current footprint. It was a shock to find out that would not happen. The current location would have a better view.
- He explained that he has issues with some comments from staff in regard to the Harbour Designation and there being no water setback as there is reference in Section 4.201(a) which specifically states that "notwithstanding clause (a) the required buffer zone shall be 30.5 metres of the rim of any watercourse within the Herring Cove".
- Staff also commented that the By-Law allows the building to be rebuilt anywhere but in 4.8 it does not specifically say that. It says that the sidelots can be continued from the current structure only in cases of enlargement, reconstruction, repair or or renovation not rebuilding. Based on this information, he feels staff have recommended something that goes against the By-laws.

Councillor Rankin confirmed with staff that the document the previous speaker referenced was the Land Use By-Law for Chebucto. He requested clarification on the setbacks as it appears there is a setback for that village as per the sections referenced by the previous speaker. Mr. Creasor responded that Section 2.20(a) deals with coastal areas and mentions that no development permit shall be issued for any dwelling on a lot abutting the Atlantic Ocean. Subsection 2 indicates that subsection 1 does not apply to any residential, accessory building or independent uses and lands within the area designated on the future land use map in the planning strategy as harbour. Within this area, the land is designated as harbour on that map, therefore the coastal area setback

is actually an elevation above the highwater mark.

Councillor Rankin requested further clarification on section 4.20(a) and (e) as referenced by the public speaker. Mr. Creasor advised that staff will clarify the issue of watercourse setbacks and buffers but it does not affect the sideyard setbacks.

Councillor Rankin requested clarification from staff on section 4.8 in regard to how to define the application in regard to whether it is a renovation or new construction as clearly this is new construction. Mr. Creasor responded that the regulation is not specific in that you have to build in the same location as the previous building. There is no restriction to building elsewhere on the lot, there is only mention of the setbacks. Councillor Rankin questioned why the uses would be listed, and inquired if the list was exhaustive or discretionary. Mr. Creasor responded that in regard to replacing an existing building the regulation says that "where a building has been erected on or before the effective date of the by-law, a lot having less than minimum frontage area or depth or having less than the minimum setbacks, the building may be enlarged, reconstructed, repaired, replaced, rebuilt or renovated".

Upon the third and final call being given by Councillor Adams for any further speakers, and hearing none, it was **MOVED BY Councillor Meade, seconded by Councillor Rankin that the variance appeal hearing be closed. MOTION PUT AND PASSED.**

Councillor Adams commented that this is not an easy decision. Upon conferring with the Legislative Assistant on the ability to hold a special Community Council meeting on Tuesday, September 4<sup>th</sup> to render a decision on this matter pending clarification from staff on the issues of land use and placement, it was **MOVED BY Councillor Rankin, seconded by Councillor Meade that the matter be deferred to a special meeting of the Western Region Community Council to be held on Tuesday, September 4, 2007 at 5:45 p.m. in City Hall.**

In response to Councillor Meade, Mr. Creasor confirmed that if the proposed building were moved another 50' (toward the water) where the land widens, the setback on all sides would be met but the building may block the views of the neighbours.

Councillor Adams requested that any persons in attendance who are unable to attend the special meeting on September 4<sup>th</sup>, and who wish to be notified of the decision of Community Council, provide their name and address to the Legislative Assistant.

**MOTION TO DEFER PUT AND PASSED.**

**9. CORRESPONDENCE, PETITIONS AND DELEGATIONS - NONE**

**10. REPORTS**

**10.1 STAFF REPORTS**



**10.1.1 Case 01020: Rezoning of 1268 St. Margaret's Bay Road, Beechville**

- A staff report dated August 7, 2007 was before the Community Council.

**MOVED BY Councillor Meade, seconded by Councillor Rankin that the Western Region Community Council give first reading of the proposed rezoning and set a public hearing date for Monday, September 24, 2007. MOTION PUT AND PASSED.**

**10.2 MEMBERS OF COUNCIL**

**10.2.1 Eisenhauer Ballfield Netting**

**MOVED BY Councillor Meade, seconded by Councillor Rankin that the Western Region Community Council approve an increase in the allocation from the Hammonds Plains Common Area Rate from \$15,000.00 to \$26,100.00 (a total increase of \$11,100.00) for the Eisenhauer Ballfield Netting. MOTION PUT AND PASSED.**

**10.2.2 Hammonds Plains Baseball**

**MOVED BY Councillor Meade, seconded by Councillor Rankin that the Western Region Community Council approve the allocation of \$3,500.00 from the Hammonds Plains Common Area Rate for the cost of two sheds and miscellaneous supplies for Hammonds Plains Baseball. MOTION PUT AND PASSED.**

**11. MOTIONS - NONE**

**12. ADDED ITEMS**

**12.1 Village Road (Herring Cove) Speed Limits**

Councillor Adams advised that residents of Herring Cove have expressed concern with the potential for increased speed along Village Road, Herring Cove now that the road has been resurfaced and paved. Members of the community fear the area may become a "racetrack".

On behalf of Councillor Adams, it was **MOVED BY Councillor Rankin, seconded by Councillor Meade that a letter be sent to the provincial Department of Transportation and Public Works requesting a permanent reduction in the speed limit for Village Road, Herring Cove to 30 km per hour. MOTION PUT AND PASSED.**

**12.2 Internet Service for East Dover and Surrounding Communities**

**MOVED BY Councillor Rankin, seconded by Councillor Meade that the Western Region Community Council request a letter be sent to MLA Judy Streach encouraging the province to advance implementation of Rural Broadband service (High Speed Internet)**

**to East Dover and Surrounding Communities (McGrath's Cove) as it is the last remaining gap for service in the western region. Preference is that these areas receive internet service sooner rather than the provincial deadline of 2009. MOTION PUT AND PASSED.**

**13. NOTICES OF MOTIONS - NONE**

**14. PUBLIC PARTICIPATION**

No members of the public came forward at this time.

**15. NEXT MEETING**

1. Special Meeting - Tuesday, September 4, 2007 at 5:45 p.m. in City Hall.
2. Next regularly scheduled meeting will be on Monday, September 24, 2007 at 7:00 p.m. in the Keshen Goodman Library.

**16. ADJOURNMENT**

The meeting adjourned at 7.51 p.m.

Chris Newson  
Legislative Assistant