



# HALIFAX

P.O. Box 1749  
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**Item No. 14.1.9**  
**Halifax Regional Council**  
**May 24, 2016**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
\_\_\_\_\_  
John Traves, Q.C. Acting Chief Administrative Officer  
Original Signed by   
\_\_\_\_\_  
Jane Fraser, Acting Deputy Chief Administrative Officer

**DATE:** April 15, 2016

**SUBJECT:** Increased Notification Distance for Variance Appeals

## **ORIGIN**

On January 13, 2015, Halifax Regional Council passed the following motion:

*“MOVED by Councillor Mosher, seconded by Councillor Walker that Halifax Regional Council request a staff report regarding the implications of increasing the notification distances for variance appeals from the current thirty (30) meter radius to fifty (50) and up to one hundred (100) metres, including potential amendments to the Halifax Municipal Charter. MOTION PUT AND PASSED UNANIMOUSLY. “*

On April 12, 2016, Halifax Regional Council passed a further motion that the report be provided directly to Regional Council without review by the Community Planning and Economic Development Standing Committee.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (“HRM Charter”), Sections 250 – 252 (see Attachment A)*

## **RECOMMENDATION**

It is recommended that Regional Council not increase the notification distance for variance appeals beyond 30 metres of the applicant’s property for variance requests.

**BACKGROUND**

Each year, staff processes approximately 118 variance applications, of which approximately 21 or 18% are appealed to the various Community Councils for decision. On January 13, 2015, Regional Council requested a staff report to discuss the implications of increasing the notification distance for variance appeals. Regional Council's motion was partly in response to some specific applications for larger projects, such as multi-unit dwellings, which requested significant relaxations of the land use by-law. It is a concern that such applications have the potential for greater impact on a neighbourhood and in some cases; the potential impact exceeds the statutory notification distance of 30 metres. Therefore, Council has requested that staff investigate the impact of extending the notification distance. Council has also requested that this report contain information concerning who is permitted to speak at variance appeals as well as consideration of extending the variance notification to include tenants in addition to property owners.

Variances and the HRM Charter

The consideration of variances to relax the requirements of a land use by-law are enabled and regulated under the provisions (see Attachment A) of the *HRM Charter*. Variance requests are made to a development officer who has the statutory authority to approve or refuse them. Both approval and refusal decisions can be appealed to the Community Council having jurisdiction. The Community Council's decision on these matters is final and not subject to further appeal. The *HRM Charter* provides that the development officer may grant variances in one or more of the following matters:

- the percentage of land that may be built upon (lot coverage);
- the size or other requirements relating to yards (setbacks); and
- lot frontage or area, or both.

The *HRM Charter* is specific concerning circumstances where variances may not be granted and provides that a variance may not be granted by a development officer if

- the variance violates the intent of the land use by-law;
- the difficulty experienced is general to the properties in the area; or
- the difficulty experienced results from an intentional disregard for the requirements of the land use by-law.

Notification Procedures & Appeals

The *HRM Charter* contains specific requirements for variance notification and appeal. For ease of reference, please refer to the attached table:

D.O. Decision	Who Notified	Who May Appeal	Who Notified of Appeal Hearing
Approval	<ul style="list-style-type: none"> <li>• applicant</li> <li>• all assessed owners within 30m of the variance</li> </ul>	<ul style="list-style-type: none"> <li>• all assessed owners within 30m of the variance</li> </ul>	<ul style="list-style-type: none"> <li>• applicant</li> <li>• the appellant(s)</li> </ul>
Refusal	<ul style="list-style-type: none"> <li>• applicant</li> </ul>	<ul style="list-style-type: none"> <li>• applicant</li> </ul>	<ul style="list-style-type: none"> <li>• applicant</li> <li>• all assessed owners within 30m of the variance</li> </ul>

Where the development officer **approves** a variance, all assessed property owners within 30 metres of the variance are required to be notified. Variance notices must describe the variance granted, identify the property, and set out the right to appeal. Any assessed owner within the notification area may file an appeal. The *HRM Charter* does not permit consideration of extending the variance notification to include tenants in addition to assessed owners. If no appeals are received, subsection (2) of section 252 of the

*HRM Charter* requires the development officer to issue a development permit as per the approved variance.

Where the development officer **refuses to approve** a variance, the applicant may file an appeal. In this case, the applicant and all assessed property owners within 30 metres of the subject property are notified of the appeal. The notice identifies the address of the subject property, the details of the requested variance and the reason for its refusal, and the date, time and location when Community Council will hear the appeal.

The *HRM Charter* is specific in that it directs only assessed owners to be notified on appeals. These rights do not extend to those who may be living in a residence within the notification area but who are renting and are not the assessed owner.

Where a variance is **granted**, an assessed owner served a notice may appeal the decision. Where a variance is **refused**, the applicant may appeal the refusal to Community Council. The *HRM Charter* is silent on who may speak at an appeal. However, the process is an appeal process and not a public hearing so, the process that has been applied is the same as would apply to any matter under appeal. The parties to an appeal are the appellant and the respondent. If the decision under appeal is:

- the **approval** of a variance, then the appellant(s) would be anyone who has appealed the decision (anyone within the notification distance).
- the **refusal** to grant a variance, then the appellant would be the applicant property owner and the respondent would be anyone within the notification area.

In either case, Council may choose to hear from anyone who can demonstrate to it that they have interest in the matter that is different from that of the public generally, that is that they are specially affected by the decision.

#### Increasing the Notification Area

Subsection (1) of section 251 of the *HRM Charter* allows Council to consider increasing the notification distance beyond 30 metres if Council adopts a policy, or where a municipal planning strategy provides for such an increase, in the land use by-law. If Council increases the notification radius, the development officer must notify all assessed property owners within the expanded area or place an ad within a newspaper circulating in the Municipality as notice that the variance was granted. A decision to increase the notification area may be achieved through the adoption by Regional Council of a policy in the form of an administrative order. An amendment to the *HRM Charter* is not required.

### **DISCUSSION**

#### Overall Impacts

As noted in the Background section of this report, in HRM, variances may be considered for such matters as lot coverage, building setbacks, and lot frontage and area. Variances, however, may not be considered for land uses permitted by a property's zoning. Of particular concern to Halifax and West Community Council have been variance appeals in the Halifax peninsula for relaxations to enable multi-unit dwellings to be developed in some established neighborhoods. Arguably, the impact of such a development could extend beyond property owners within a 30 metre radius. However, the underlying zone permits the proposed use and the use itself is not the subject of the variance. To understand the impacts an increased notification distance may have in the variance process, it is important to first understand the intent of the process itself.

A key distinction between variance and other planning processes is that the former uses a notification procedure while the latter uses more broad-based community consultation. In the case of the variance

process, the purpose of notification is to advise a property owner of their right to appeal and to be heard before a decision to relax by-law standards is made. It is different from the community consultation process that is used for discretionary planning process which is much more of a two-way communication exercise that actively seeks the opinions of interested and affected groups to gather information to facilitate the drafting of policies and by-laws.

Through the adoption of its 22 comprehensive municipal planning strategies and 21 land use by-laws, the Municipality has set out land use regulations which are to be observed by all landowners for the overall benefit of their community. In some cases, a particular property may be unfairly burdened by the land use regulations. The variance process provides a mechanism to allow certain zoning standards to be relaxed and enable a landowner to develop a property in a manner that would not otherwise be allowed. Important to the appeal aspect of the process is that an approved variance excuses a landowner from having to comply with regulations that all other landowners whose property is within the same zoning must observe. Hence, the right of appeal has been traditionally afforded to nearby property owners who may object to the relaxation of the particular standard which was intended to be applied for the benefit of the overall community.

While an increase to the notification area will increase the number of assessed owners that receive notification, it is uncertain whether doing so would generate more appeals. The nature of most variance requests typically impacts the immediate neighbours of the affected property. An assessed owner three or four homes away or on another block is less likely to have an interest in a request for a reduced setback or increased lot coverage, especially if the structure cannot be viewed from their property. Thus, it could be reasonably assumed that interest and impact diminishes as the distance from the affected property increases as typically, most appellants are adjacent assessed owners.

In most appeal hearings, Community Council hears from one or two appellants. The general discussion at Community Council is often focussed on three items: why the request was either approved or refused, why the property owner is requesting the variance and what impact the variance request has on the adjacent property owners. Council, as with any appeal, is tasked with weighing the appeal and the concerns brought forward versus the statutory criteria of the *HRM Charter*. In hearing an appeal, Council is limited to the same criteria set out in subsection 250(3) of the *HRM Charter* as the development officer is in considering the variance in the first instance. The number of appellants should be immaterial to the decision. The key consideration should be whether a broader notification area affords a more representative area of interest for the variance in question.

#### Different Notification Area Scenarios

To understand the difference in the number of properties captured by the increased notification distances noted in Council's motion, staff ran simulated notifications in typical urban, suburban and rural development patterned neighbourhoods. The following table provides an estimate of the average number of properties which could receive direct notification of variance requests under these scenarios:

Development Pattern	Notification Radius (Number of Properties)		
	30 metres*	50 metres	100 metres
Urban	17	29	75
Suburban	15	26	64
Rural	7	8	13

\* *Current Notification Radius*

*Urban*

The greatest impact of a change in the notification radius distance is within the urban area due to the compactness of the development form. The increase in the number of properties within the notification area in both the 50 and 100 metre radii scenarios, while similar to the number captured in suburban areas, is almost double the current notification in the 50 metre scenario (12 additional notices) and 4.5 times larger in the 100 metre scenario (58 additional notices). It should also be noted that the number of semi-detached and townhouse lots within urban areas is much higher and if the notification includes a property owned by a condominium corporation, the number of assessed owners captured would significantly increase.

*Suburban*

An increased notification radius of 50 metres within a typical suburban development would result in an increase of 11 additional properties - almost double the number captured by the current notification radius. Despite increasing the number of notices to property owners by almost double, the overall increase is moderate due to the low density character of such areas. However, the same cannot be said for the 100 metre scenario. A 100 metre notification radius would result in 49 additional property owners being notified which is significant as it represents an increase of 4 times the current notification area. This number would increase even further if there are semi-detached or town house unit properties located within the notification area.

*Rural*

The analysis indicates that an increase in the notification radius to 50 metres in rural areas will generally add 1 additional property owner while an increase of 100 metres would result in an additional 6 properties owners being notified. This modest increase is due to the fact that many rural lots are larger in size which results in less property owners being notified as compared to an urban setting. Rural areas generate fewer variance requests and fewer appeals, so it is unlikely there would be any significant increase in appeals should the notification radius be increased from 30 metres.

Notification Costs

The costs associated with providing the notice to all affected property owners is recouped through the variance application fee. The fee for a variance application is \$500.00. If there is no appeal of a decision then \$300.00 is refunded to the applicant. The non-refundable \$200.00 portion of the fee is used to offset costs for staff resources, office supplies and the postal fees for the initial notices. Each notification letter costs approximately \$1.00.

Should the notification radius be increased to 50 or 100 metres, application costs should increase proportionately due to the number of properties within the notification area increasing, particularly within urban and suburban areas. If Council chooses to provide notification in the form of a newspaper advertisement, those costs should also be recovered from the applicant. Therefore, new fees would need to be established based upon the increase in the notification area and the location of the variance (urban, suburban, or rural). Independent of changes to the notification distance, adjusted fees to offset service delivery costs will be considered through a review of fees and charges that is being undertaken as a component of the Planning and Development business unit Renewal program.

Analysis and Conclusion

A review of variance applications between 2009 and 2014 identified the majority of requests were in the Halifax peninsula in the R-1 and R-2 zones for relaxations to setbacks, lot area and gross floor area requirements. Most of these applications involved the expansion of residential buildings to accommodate additional units. The majority of these requests were appealed to Community Council for decision. In cases where the development officer approved a variance that was appealed, Community Council upheld

the decision of the development officer 80% of the time. The degree of variance activity suggests that R-1 and R-2 zone standards may no longer be in keeping with current community expectations.

Rather than gauging community support by increasing the variance notification area, a more effective and appropriate response to consider the suitability of new development in established neighbourhoods would be to undertake a review of the applicable planning policies and regulations. The Centre Plan process now underway will do just this for the Regional Centre area and produce a new, comprehensive plan and land use by-law that will replace the existing regulations and be more representative of the current community's and Council's goals and objectives. Similar processes will also be undertaken in suburban and rural communities to update planning documents for those areas and focus on ensuring contextually sensitive redevelopment of existing communities.

In an effort to modernize and streamline current practices, the Planning and Development Department is currently undertaking a comprehensive renewal of its policies, processes, and organization alignment. An integral component of this renewal will be the methods used in communicating and engaging with the numerous stakeholders that are impacted by the decisions and recommendations made by the department. A staff report<sup>1</sup> outlining a number of recommended changes to the overall approach to public consultation for planning applications submitted to HRM was discussed by Regional Council on February 23, 2016. The changes being recommended are to ensure HRM policies and practices reflect the modern engagement best practices implemented by municipalities across Canada while ensuring fairness and transparency within the processes. One of the current issues with HRM community engagement practices identified in this report is the disparate standards for notification that apply across the various processes, and communities within the Municipality. In the interest of ensuring our engagement practices and standards are consistent and fair, it would be beneficial to re-assess any changes to the variance notification distance alongside notification processes required for other types of planning applications.

Accordingly, staff advises that it would be premature for Council to alter the notification distance for variance requests given the on-going Centre Plan process and public consultation update excise that is being recommended.

### **FINANCIAL IMPLICATIONS**

There are no budget implications. Should Regional Council so chose, the costs associated with increasing the notification distance for variance appeals can be accommodated within the approved 2016/17 operating budget for C420 Land Development and Subdivision.

### **RISK CONSIDERATIONS**

There are no significant risks associated with the recommendations in this report. The risks considered rate low. To reach this conclusion, consideration was given to legal and compliance, reputation and service delivery risks.

### **COMMUNITY ENGAGEMENT**

There was no community engagement required for the preparation of this report. Subsection 251(1) of the *HRM Charter* enables Council to implement an increase in notification distance and an increase in fees by policy which does not require a community engagement process but would require Notice of Motion at the meeting prior to Council consideration of the Administrative Order. Council may also implement those changes by amendments to all Municipal Planning Strategies and Land Use By-laws. Should Council implement changes in that manner then community engagement, consistent with the intent of the HRM Community Engagement Strategy, is required.

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<sup>1</sup> See report at: <http://www.halifax.ca/council/agendasc/documents/160223ca911.pdf>

**ENVIRONMENTAL IMPLICATIONS**

None associated with this report.

**ALTERNATIVES**

1. Council could choose to increase the notification distance for variance appeals in all areas of the Municipality or in specific areas (urban, suburban or rural). In doing so, Council should specify the notification distance to be applied in each area and direct staff to prepare a new Administrative Order to this effect.
2. Council could choose to increase the notification distance for variance appeals for certain plan areas by amending individual municipal planning strategies and land use by-laws. This will require specific direction from Council on the notification distance to be applied and for which plan areas.

**ATTACHMENT**

Attachment A Sections 250 – 252 of the *HRM Charter*

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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**Attachment A**  
**Sections 250-252 of the *Halifax Regional Municipality Charter***

**Variance**

250 (1) A development officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use by-law requirements:

- (a) percentage of land that may be built upon;
- (b) size or other requirements relating to yards;
- (c) lot frontage or lot area, or both, if
  - (i) the lot existed on the effective date of the bylaw, or
  - (ii) a variance was granted for the lot at the time of subdivision approval.

(2) Where a municipal planning strategy and land-use by-law so provide, a development officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use by-law requirements:

- (a) number of parking spaces and loading spaces required;
- (b) ground area and height of a structure;
- (c) floor area occupied by a home-based business;
- (d) external appearances of structures in the HRM by Design Downtown Plan Area and the Centre Plan Area;
- (e) height and area of a sign.

(3) 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.

**Variance procedures**

251 (1) Within seven days after granting a variance, the development officer shall give notice in writing of the variance granted to every assessed owner whose property is within thirty metres of the applicant's property, or such greater distance as determined by the Council by policy or, where the municipal planning strategy so provides, in the land-use by-law.

(1A) Where the Council has increased the distance for notice under subsection (1), the development officer shall, within fourteen days after granting a variance,

- (a) give notice in writing of the variance granted to every assessed owner whose property is within the distance specified in the policy of the applicant's property; or
- (b) advertise the granting of the variance in a newspaper circulating in the Municipality.



- (2) The notice must
  - (a) describe the variance granted;
  - (b) identify the property where the variance is granted; and
  - (c) set out the right to appeal the decision of the development officer.

(3) Where a variance is granted, a property owner served a notice may appeal the decision to the Council within fourteen days after receiving the notice.

(4) Where a variance is refused, the applicant may appeal the refusal to the Council within seven days after receiving notice of the refusal, by giving written notice to the Clerk who shall notify the development officer.

(5) Where an applicant appeals the refusal to grant a variance, the Clerk or development officer shall give seven days written notice of the hearing to every assessed owner whose property is within thirty metres of the applicant's property, or such greater distance as determined by the Council by policy.

(5A) Where the Council has increased the distance for notice under subsection (5), the Clerk or development officer shall

- (a) give seven days written notice of the hearing to every assessed owner whose property is within the distance specified in the policy of the applicant's property; or
- (b) advertise seven days' notice of the hearing in a newspaper circulating in the Municipality.

- (6) The notice must
  - (a) describe the variance applied for and the reasons for its refusal;
  - (b) identify the property where the variance is applied for; and
  - (c) state the date, time and place when the Council will hear the appeal.

**Variance appeals and costs**

252 (1) Where the Council hears an appeal from the granting or refusal of a variance, the Council may make any decision that the development officer could have made.

(2) A development officer shall issue a development permit for any development for which a variance has been granted and that otherwise complies with the terms of the development agreement or a land-use by-law, whichever is applicable, if

- (a) the appeal period has elapsed and no appeal has been commenced; or
- (b) all appeals have been abandoned or disposed of or the variance has been affirmed by the Council.

(3) The Council may by resolution provide that any person applying for a variance shall pay the Municipality the cost of

- (a) notifying affected land owners;
- (b) posting a sign.