



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.2.1
Halifax and West Community Council
April 17, 2018

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original signed

Kelly Denty, Acting Director, Planning and Development

DATE: February 26, 2018

SUBJECT: **Case 20596: Appeal of Variance Refusal – 1090 Ketch Harbour Road, Ketch Harbour**

ORIGIN

Appeal of the Development Officer's decision to refuse a request for variance.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter; Part VIII, Planning and Development

RECOMMENDATION

It is recommended that Halifax and West Community Council deny the appeal, and in so doing, uphold the decision of the Development Officer to refuse the request for variance.

In accordance with Administrative Order One, the following motion shall be placed on the floor: That the appeal be allowed.

BACKGROUND

A variance request has been submitted for 1090 Ketch Harbour Road, Ketch Harbour to construct an addition to an existing accessory building. The addition is for boat storage and an extension to an existing deck. (Maps 1 and 2). To facilitate this project, a variance has been requested to relax the minimum front yard setback requirements.

Site Details:

Zoning: V-3 (Ketch Harbour Village Centre) Zone
Planning District 5 Land Use By-law

	Zone Requirement	Variance Requested
Min. Front yard Setback	20 feet	4 feet

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment A). The applicant has appealed the refusal and the matter is now before Halifax and West Community Council for a decision.

Process for Hearing an appeal

Administrative Order Number One, the *Procedures of the Council Administrative Order* requires that Council, in hearing any appeal, must place a motion to “allow the appeal” on the floor, even if such motion is in opposition to the recommendation contained in the staff report. As such, this report contains within the Recommendation section, the wording of the appeal motion for consideration as well as a staff recommendation. For the reasons outlined in this report, staff recommends that Community Council deny the appeal and uphold the decision of the Development Officer to refuse the variance request.

DISCUSSION

Development Officer’s Assessment of Variance Request:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

“250(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;
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.”

To be approved, any proposed variance must not conflict with any of the criteria. The Development Officer’s assessment of the proposal relative to each criterion is as follows:

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

It is the Development Officer’s opinion that the proposal violates the intent of the Land Use By-law. The By-law intends that front yard setbacks are in place for both aesthetic purpose and practical reasons. An increased setback in suburban and rural settings provide for visual aesthetics and increased separation

distances from abutting properties and the road network. Lots in these areas are typically larger than serviced lots because of onsite septic system requirements. Road networks can also change over time and an increased setback provides an opportunity for the re-alignment or expansion of the roadway, the location of signage or modifications because of drainage concerns. Also, from a safety standpoint, an increased setback from the road network provides greater visibility as cars approach a driveway before it enters the road network.

The Land Use By-law re-enforces this through the application of zones containing provisions respecting land use, building setbacks, lot size, lot area, height, and building mass relative to lot area. To achieve this, there is a minimum setback of 20 feet for main buildings and accessory buildings in the V-3 Zone. A reduction to 4 feet from the required 20 feet is substantial and violates the intent of the Land Use By-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighborhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

Of the eight properties within the immediate neighborhood within the same V-3 zoning as the subject property, the lots vary in lot size from 1,500 to 283,159 square feet, and the lot frontages range from 82 feet to 213 feet. There is not a definitive lot fabric for this area with many lots being of varied lot sizes. As such, the difficulty experienced is not general to the area.

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

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

The addition for which the variance is being requested was constructed without a permit. A complaint was received, which resulted in the Building Official issuing an order to obtain a permit. Through the permit application process, it was determined that the required front setback could not be achieved. The applicant requested a variance to address the reduced setback once they realized it did not meet by-law requirements. It appears that the owner overlooked the front yard requirement and as a result, intentional disregard of the requirements of the Land Use By-law is not the cause of the difficulty experienced.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of application and appeal (Attachments B and C) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
<i>Applicant thought a permit was not required as per section 4.1 where uses are permitted as fishery support uses in a V-3 zone, no development permit shall be required.</i>	Through discussions with the owner their understanding was that a permit was not required for the intended use (fishery support use). During a recent site inspection, it was confirmed that while a portion of the building is used for fishery support purposes, there are other aspects of the building which are used for personal storage purposes. Therefore, the 20 foot front yard setback is required.

Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this request for variances.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a variance **approval is appealed**, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 metres of the variance and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance.
2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

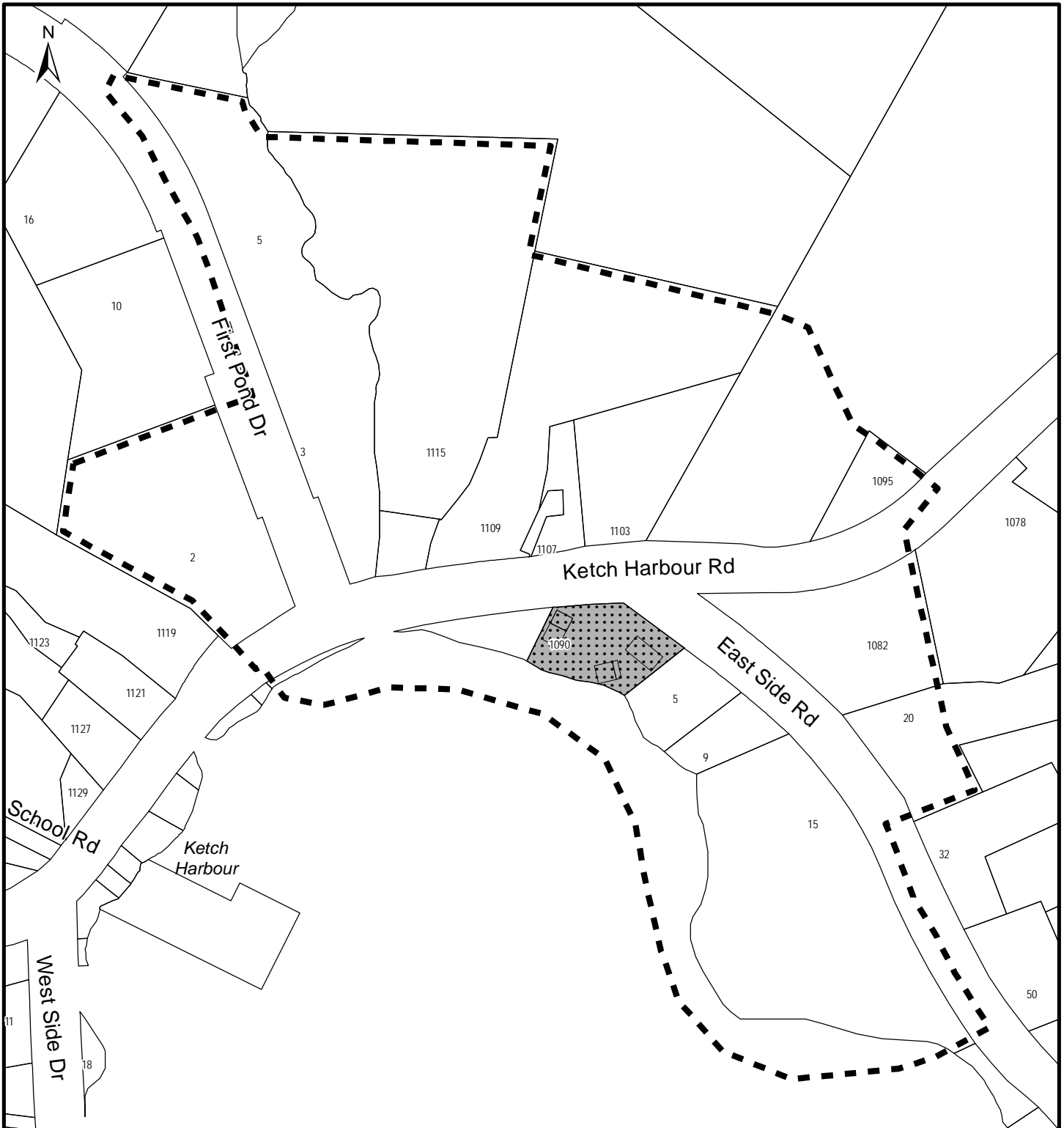
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Refusal Letter
Attachment B	Letter of Appeal from Applicant

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Walsh, Planner I, 902 490-4462
Sean Audas, Principal Planner and Development Officer, 902 490-4402



Original signed

Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.490.1210



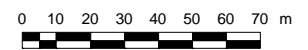
Map 1 - Notification Area

1090 Ketch Harbour Road
Ketch Harbour

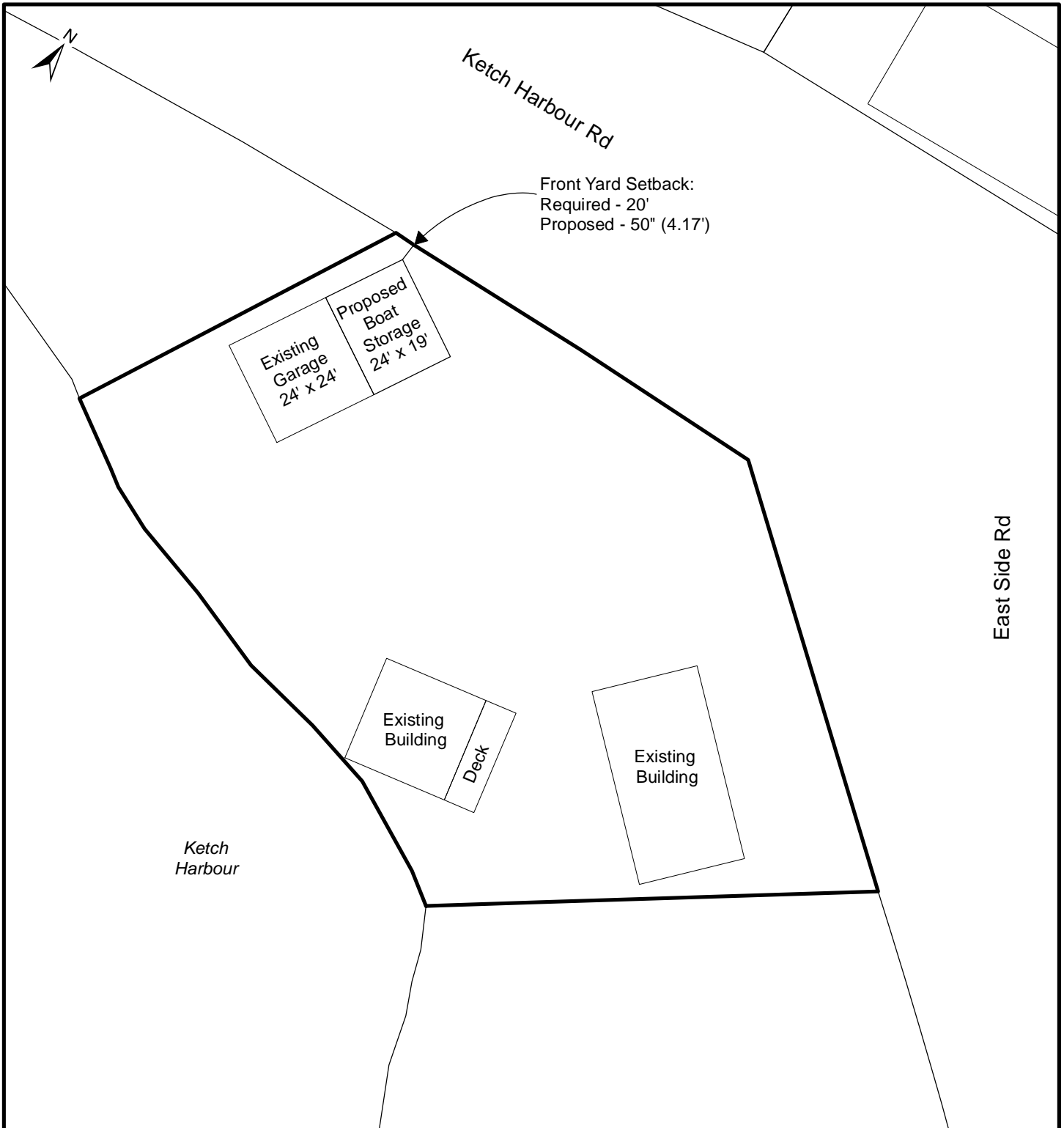
-  Subject Property
-  Notification Area

Planning District 5
(Chebucto Peninsula) Plan Area

HALIFAX



The accuracy of any representation on this plan is not guaranteed.

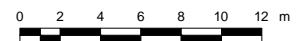


Map 2 - Site Plan

1090 Ketch Harbour Road
Ketch Harbour



Planning District 5
(Chebucto Peninsula) Plan Area



The accuracy of any representation on this plan is not guaranteed.

**ATTACHMENT A
Variance Refusal Letter**

June 30, 2016

Christopher Flemming
1090 Ketch Harbour Road
Ketch Harbour, NS
B3V 1K6

Dear Mr. Flemming:

RE: Application for Variance No.20596 – 1090 Ketch Harbour, Ketch Harbour, 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 Planning District 5 (Chebucto Peninsula) as follows:

Location: 1090 Ketch Harbour, Ketch Harbour
Project Proposal: Renovation to an accessory building
Variance Requested: To reduce the Front yard setback

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.

HALIFAX

Halifax Regional Municipality
PO Box 1749, Halifax, Nova Scotia
Canada B3J 3A5

halifax.ca

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use By-law, 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 Audas
Halifax Regional Municipality
Current Planning – Land Development & Subdivision
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before July 4, 2016.

If you have any questions or require additional information, please contact Laura Walsh at 490-4462.

Sincerely, [REDACTED]

ORIGINAL SIGNED

Sean Audas
Principle Planner

cc. Kevin Arjoon - Municipal Clerk
Councillor Stephen Adams

ATTACHMENT B
Letter of Appeal from Applicant

July 6, 2016

Municipal Clerk C/O Sean Audas
Halifax Regional Municipality
Current Planning- Land Development & Subdivision
P.O. Box 1749
Halifax, NS B3J 3A5

RE: Application for Variance NO. 20595-1090 Ketch Harbour Rd

Mr. Audas,

This is our formal notice that we will be appealing your decision. The Development Officer did not take into account that the addition was for Fisheries Support Use, in the Land Bylaws Planning District 5.

14.7 OTHER REQUIREMENTS: FISHERIES SUPPORT USES

(A) Where Fishery support uses are permitted in any V-3 zone, the following shall apply:

Minimum Side Yard 8 feet

(B) Notwithstanding the provisions of Section 4.1, where uses are permitted as Fishery support uses in an V-3 zone, no development permit shall be required.

Therefore, this is the reason we did not apply for a development permit.

Thanks, Chris Flemming and Norma Scarfe