



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

Item No. 10 2.3
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: April 3, 2018

SUBJECT: **Case 21380: Appeal of Variance Refusal – 191 Greenwood Avenue,
Timberlea**

ORIGIN

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

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) 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 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 to permit the replacement of a rear deck at 191 Greenwood Avenue in Timberlea (Map 2). The existing deck was constructed by a previous property owner without municipal approval and it does not comply with the required side yard setback. The variance is required to reduce the minimum left side yard setback for the upper level of the two-tiered deck. The proposed deck meets all other requirements of the Timberlea / Lakeside / Beechville Land Use By-law (LUB).

Community Council should note a previous variance was granted on March 28, 1990 to permit a reduced left side yard setback from 8 feet to 5.5 feet to address the location of the dwelling.

Site Details:

Zoning

The subject property is zoned R-2 (Two Unit Dwelling) Zone under the Timberlea / Lakeside / Beechville Land Use By-Law. Setback requirements of the R-2 Zone are identified in the table below:

	Zone Requirements	Variance Approved, 1990	Variance Proposal
Minimum Left Side Yard Setback	8 Feet	5.5 Feet	1.5 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:

When considering a variance appeal, Council may make any decision the Development Officer could have made, within the context of the criteria provided in the *Halifax Regional Municipal Charter*.

The *Charter* sets out the following criteria under which the Development Officer may not grant variances to requirements of the Land Use By-law. In order to be approved, any proposed variance must not conflict with any of the criteria.

“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.”*

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?

The existing deck is situated 1.5 feet from the left property line and the minimum setback is 5.5 feet as per the approved variance from 1990. The general intent of this setback is to maintain adequate separation from adjacent properties for safety, aesthetics and protection of privacy between neighbouring lots. This setback also allows owners to maintain their property without trespassing on abutting lots.

Under these circumstances, staff advise that a reduction of this extent beyond the existing 5.5 foot requirement to 1.5 feet would violate the intent of the Land Use By-law.

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

In reviewing variance requests, staff consider the characteristics of the surrounding neighbourhood to determine if application of the Land Use By-law constitutes a hardship because of unique circumstances. If there are no unique circumstances present, and the proposed variance relates to conditions that are typical in the area, then the variance should not be considered.

The R-2 Zone requires a minimum lot area of 3,000 square feet per dwelling unit for semi-detached dwellings. While the subject property is not as large as many of the other semi-detached lots in the neighbourhood, the lot does meet the minimum lot area required in the bylaw.

The minimum frontage is 30 feet for each semi-detached dwelling unit. The subject lot has 2.5 feet less than the minimum (27.5 feet). Impacts of this slightly reduced frontage were accommodated through a variance in 1990 which reduced the required side yard setback from 8 feet to 5.5 feet.

When this subdivision was being developed in the early 1990's, several variances in this area were approved to reduce the side yard setbacks, including properties located at 189, 190, and 192 Greenwood Avenue (5.5' setback) and 202 Greenwood Avenue (7.1' setback). These variances were relatively minor and none were for a reduction as significant as the one being requested.

The lots in the area are of consistent rectangular shape and similar topographical characteristics. The subject lot is not subject to unique circumstances that would justify reduction of the side yard setback to accommodate a deck. Under these circumstances, staff advise that the difficulty is general to properties in 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 applicants had knowledge of the By-law and took deliberate action that was contrary to those requirements.

This is not the case in this request. The construction of the existing deck was completed by a previous owner and the current owner applied for a Development Permit to replace the deck in good faith. During the review of the application, it was determined the existing deck had been constructed without municipal approval and that it was located in contravention of the land use bylaw.

Under these circumstances, staff advise that the difficulty in meeting the By-law was not the result of an intentional disregard for the requirements of the Land Use By-law.

Conclusion:

Staff have 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 as noted in sections 1 and 2 above*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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 refusal 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.

ALTERNATIVE

Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer to refuse the variance, thereby approving the variance.

ATTACHMENTS

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

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.

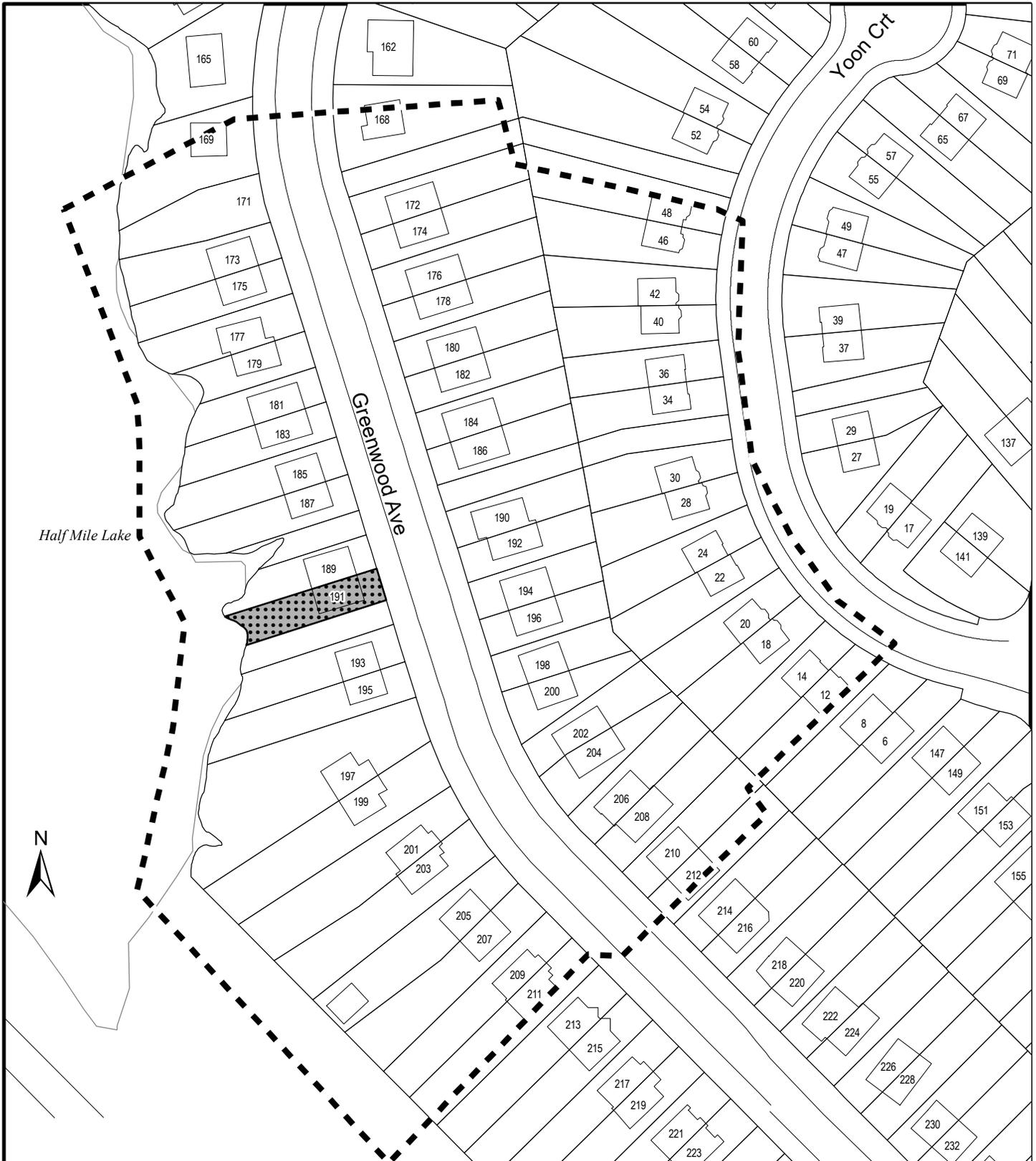
Report Prepared by: Meaghan Maund, Planner 1, 902.490.4843
Sean Audas, Development Officer, 902.490.4402

Original signed

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

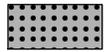
Original signed

Report Approved by: Steven Higgins, Manager of Current Planning, 902.490.4382



Map 1 - Notification Area

191 Greenwood Ave.,
Timberlea

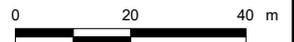


Subject Property



Notification Area

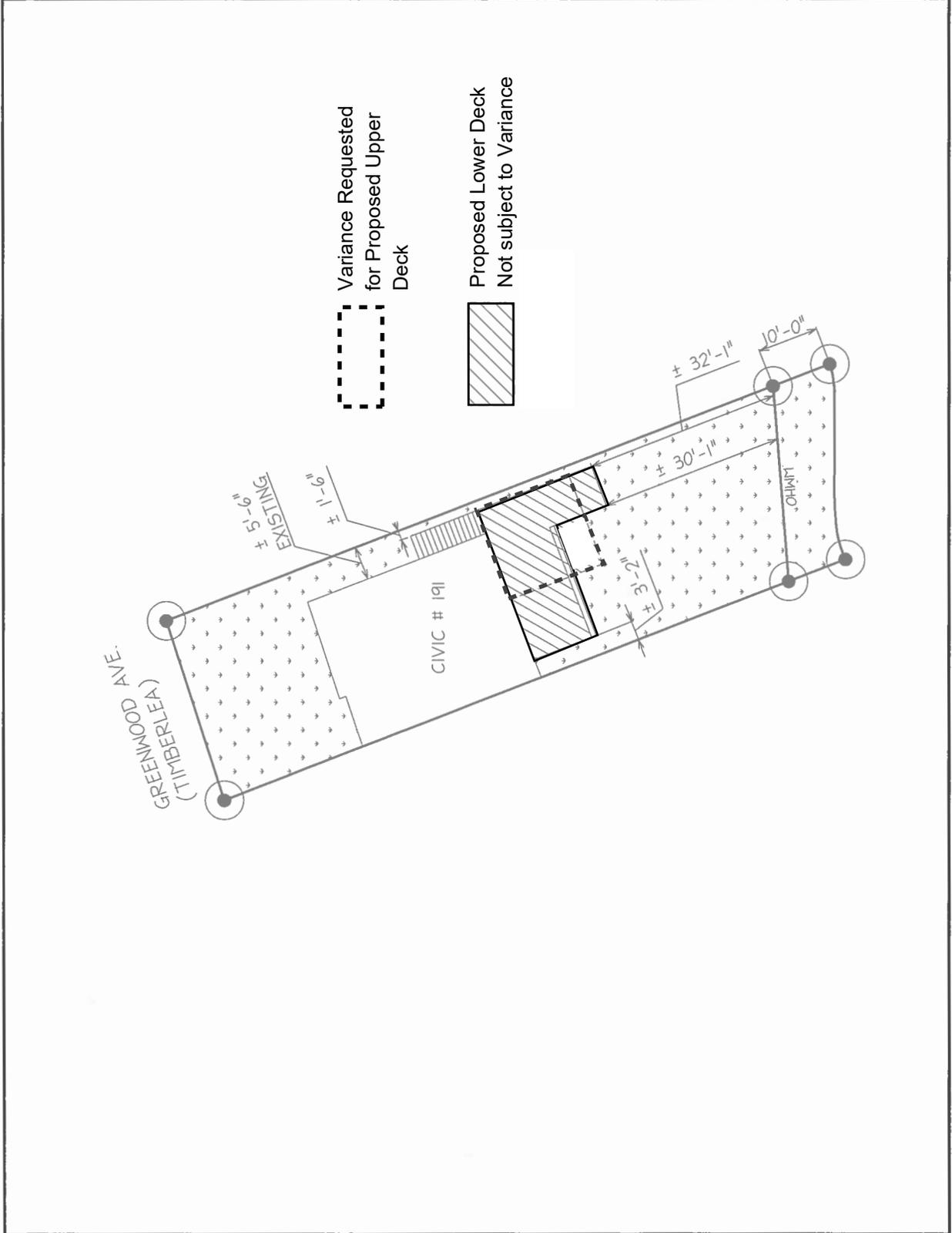
HALIFAX



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

Map 2 - Site Plan

	RENOVATOR OF THE YEAR 2017
	<small>MUNICIPALITY OF NOVA SCOTIA</small>
CLIENT:	
BUILDER:	
DATE:	
U.S.D.	08/15/2017
U.S.D.	07/28/2017
MONTH/DAY/YEAR	
DRAWN BY:	STAFF
SCALE:	1" = 15'-0"
DATE:	AUGUST 15 / 2017
PROJECT NO.	-
DRAWING NO.	A7



Attachment A - Variance Refusal Letter



October 31, 2016

Att: Brian Johnson
All-Craft Decks and Sunrooms
302 Bluewater Road
Bedford, Nova Scotia B4B 1J6

Dear Mr. Johnson,

RE: Variance Application 21380, 191 GREENWOOD AVENUE, TIMERBLEA, PID 40504573

This will advise that I have refused your request for a variance from the requirements of the Timberlea, Lakeside, Beechville Land Use Bylaw as follows:

Location: 191 Greenwood Avenue, Timberlea

Project Proposal: Construction of a rear deck. The construction of the deck will reduce the minimum setback for the required side yard.

LUB Regulation	Requirement	Variance Approved, 1990	Proposed
Minimum Left Side Setback	8 feet	5.5 feet	1.5 feet

Section 235(3) of the Municipal Government Act states that:

No variance shall be granted where:

- (a) the variance violates the intent of the land use bylaw;
- (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 land use bylaw.

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (a) the variance violates the intent of the land use bylaw; and
- (b) the difficulty experienced is general to properties in the area.

Pursuant to Section 251 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:

Page 1 of 2

**Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, NS B3J 3A5
clerks@halifax.ca**

Your appeal must be filed on or before **November 9, 2017**.

If you have any questions or require clarification of any of the above, please call Meaghan Maund, Planner 1 at 902-490-4843.

Sincerely,

Original Signed

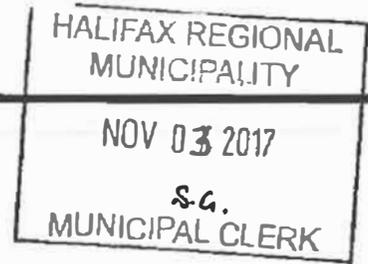
Sean Audas, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk
Councillor Richard Zurawski

Attachment B- Letter of Appeal

Stewart, April

From: Brian Johnston
Sent: November-03-17 3:56 PM
To: Office, Clerks
Cc: Laura Scarpone; Justin Johnston
Subject: Variance Application 21380, 191 Greenwood Avenue Timberlea, PID 40504573
Attachments: Madore - HRM Variance Application Reponse - October 31.pdf



Attn: Sean Audas, Principal Planner / Development Officer

As per Section 251 of the Halifax Regional Municipality Charter we wish to appeal the decision of the Development Council for Variance application 21380.

Thank you,
Brian Johnston



**RENOVATOR
OF THE YEAR 2017**

