



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

Item No. 10.2.2
Halifax and West Community Council
June 28, 2016

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: June 15, 2016

SUBJECT: Case 20161: Appeal of Variance Approval - 1 Alderwood Drive, Halifax

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development

RECOMMENDATION

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

BACKGROUND

A variance request has been submitted for 1 Alderwood Drive to permit the site to be developed with a new, single unit dwelling (Maps 1 and 2). In order to facilitate this project, a variance has been requested to relax the required flankage yard setback of the proposed dwelling from 10 feet to 2.6 feet. The remainder of the building is proposed to meet all other requirements of the Land Use By-law.

Site Details:

Zoning: R-1 (Single Family Dwelling) Zone, Halifax Mainland Land Use By-law

	Zone Requirements	Variance Requested
Minimum Flankage Yard	10 feet	2.6 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer approved the requested variance (Attachment A). Subsequently, a property owner within the 30m notification area filed an appeal of the decision (Attachment B) and the matter is now before the Halifax and West Community Council for decision.

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."*

In order 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 does not violate the intent of the Land Use By-law. Flankage yard setbacks for buildings are in place for both aesthetic purposes and practical reasons. Some of these reasons are to provide visual separation from the road, to provide area for future road expansion, to ensure that there is no visual barrier for vehicular traffic at street corners, and to ensure that structures can be maintained without impacting the public right of way. The proposed building will be located far enough back from the front and side property lines and situated on the lot in such a way that it will leave adequate space for maintenance, traffic, and visual separation.

The proposed 2.6 foot flankage yard setback for this dwelling will not interfere with visual separation. The public street right-of-way along St. Margaret's Bay Road is fairly wide at this location resulting in a distance of 16 feet between the edge of the side walk and the property line thereby providing extra space

between the proposed dwelling and the sidewalk. A line of trees in the right-of-way along St. Margaret's Bay Road also serves as a visual barrier separating the site from the street. As well, the dwelling is being placed towards the rear of the lot, therefore, the corner vision triangle at the intersection of St. Margaret's Bay Road and Alderwood Drive will not be affected by the building's presence. The dwelling will be situated a distance of 18.6 feet from the edge of the sidewalk, providing ample area for property maintenance to be conducted without interfering with the operation of the sidewalk.

It is the opinion of the Development Officer that the requested variance to relax the flankage yard setback does not violate the intent of the Land Use By-law.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood 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.

The proposed dwelling is to be constructed on a lot that is 3,800 square feet in area. While the required lot area in the R-1 Zone is 5,000 square feet, the Land Use By-law allows smaller lots to be developed (no less than 3,000 sq. ft.) if the lot was created prior to the effective date of the Land Use By-law. The subject lot was created on June 1, 1940. There are thirteen properties within the 30m notification radius of the subject property. Two properties are less than 3,800 square feet in area while eleven properties over 4,100 square feet in area. Therefore, the subject property is not similar in size to the majority of properties within the notification area. As well, the configuration of the lot is irregular as it becomes narrower at the rear of the property where the variance is being requested (see Map 2 – Site Plan). This lot is unique in area and configuration when compared to other lots within the immediate area. For these reasons, the it is the opinion of the Development Officer that the difficulty experienced is not 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 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. That is not the case in this request.

The applicant has applied for a variance in good faith and prior to commencing any work on the property. Intentional disregard of by-law requirements was not a consideration in this variance request.

Appellant's Appeal:

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

Appellant's Appeal Comments	Staff Response
The proposed dwelling does not meet the flankage yard and the lot size.	The flankage yard is not being met and therefore the variance has been requested. The lot size is not undersized as Section 14C of the Halifax Mainland Land Use By-law permits lots with a minimum area of 3,000 square feet to be developed. This lot is 3,800 square feet in area.
It will block the view and access to Chocolate Lake.	The land use by-law does not regulate any protected views in this area and this property is not adjacent to Chocolate Lake.
The dwelling will negatively affect the value of the appellant's property.	There is no evidence that this will occur, nonetheless, property valuation is not a consideration in variance requests.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict 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 variance.

RISK CONSIDERATION

The risks considered rate Low. There are no significant risks associated with the recommendations in this report. To reach this conclusion, consideration was given to the location of the proposed development on the property and whether relaxation of the land use by-law would result in a hazard to abutting properties or present an operational difficulty, such as access for snow removal or maintenance on a public right-of-way.

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, appellants and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications related to this variance request.

ALTERNATIVES

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

ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

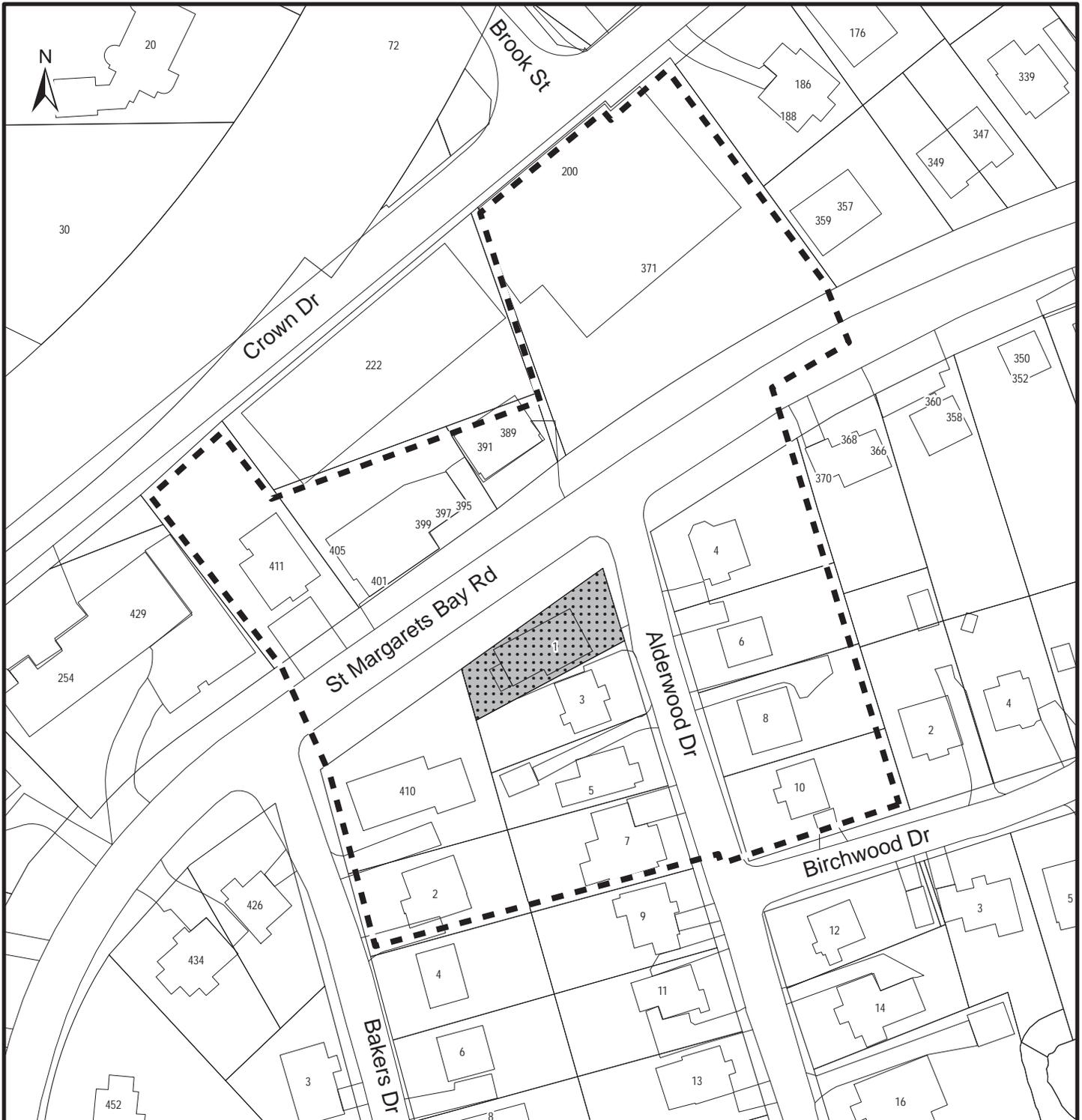
Attachment A: Variance Approval letter
Attachment B: Letter of Appeal

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Connie Sexton, Planner I, (902) 490-2168 and
Andrew Faulkner, Principal Planner and Development Officer, (902) 490-4341

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Current Planning, 902-490-4800



Map 1 - Notification Area

HALIFAX

1 Alderwood Drive
Halifax

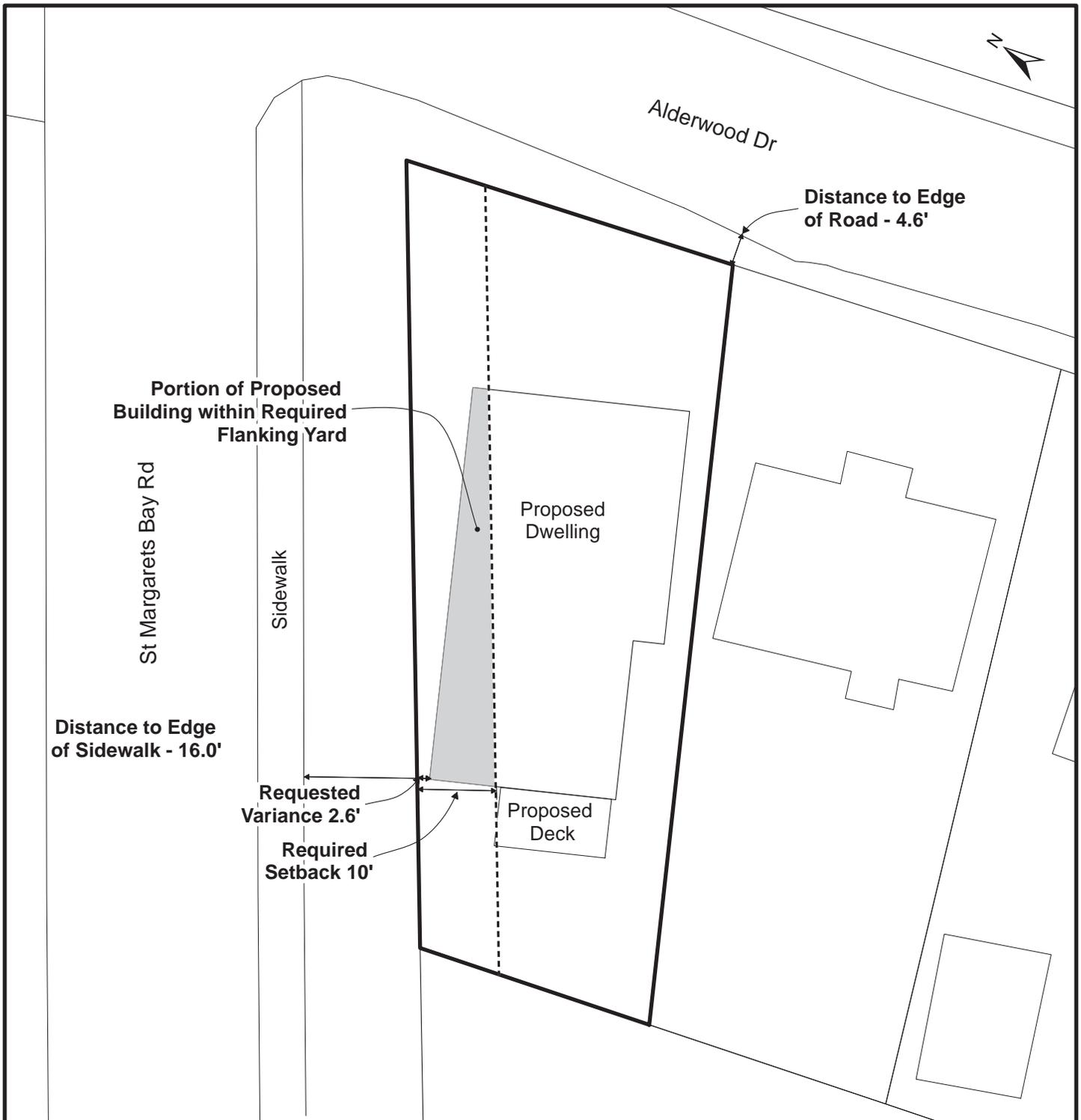
 Subject Property

 Area of notification

Halifax
Plan Area



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



Map 2 - Site Plan

1 Alderwood Drive
Halifax

HALIFAX

-  Portion of Proposed Building within Required Flanking Yard
-  Required 10' Flanking Yard



Halifax
Plan Area

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

Attachment A - Variance Approval Letter

November 14, 2015

Mr. Vassilios Tsimiklis
3 Alderwood Drive
Halifax, NS
B3N 1S6

Re: 1 Alderwood Drive, Halifax – Variance No. 20161

This will advise that I have approved your request for a variance from the requirements of the Land Use By-law for the Halifax Mainland as follows:

Location:	1 Alderwood Drive
Project Proposal:	To place a single unit dwelling on an undersized parcel
Required Flankage Yard:	10 feet
Requested Flankage Yard:	2.6 feet

In accordance with Section 251 of the Halifax Regional Municipality Charter, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **November 30, 2015**.

No permits will be issued until the appeal period has expired and any appeals disposed of.

If you have any questions or require additional information, please contact Connie Sexton at 490-1208.

Sincerely,


Andrew Faulkner
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Linda Mosher

HALIFAX

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

halifax.ca

Attachment B -Letter of Appeal

2015-11-26 13:58

Clinic 03 6487098 >> 1-902-490-3976

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November 24, 2015

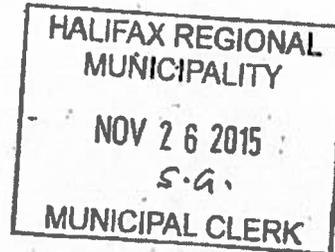
To:

Andrew Faulkner

Development Officer

Halifax Regional Municipality

Development Approvals



Dear Mr Faulkner,

Thank you for letting me know about the proposal.

As the owner of [redacted] Halifax I would like to reject the proposal of building a single unit dwelling on an undersized parcel on 1 Alderwood Drive, Variance No 20161. First of all it doesn't meet the required criteria of flankage yard and size of the land. Secondly, it will be blocking the view and access to Chocolate Lake. Finally, it will affect negatively the value of my property. Please accept this notice as the Notice of the appeal.

Sincerely,

Original Signed

Sania Dorey

Halifax, NS