



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

**Item No. 10.2.2**  
**Halifax and West Community Council**  
**June 12, 2018**

**TO:** Chair and Members of Halifax and West Community Council

**SUBMITTED BY:** Original Signed  
\_\_\_\_\_  
Steve Higgins, Manager, Current Planning

**DATE:** May 29, 2018

**SUBJECT:** Case 21250: Appeal of Variance Approval – 1172 Rockcliffe Street, Halifax

**ORIGIN**

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

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality (HRM) Charter, Part VIII, Planning and Development:*

- s.250, a development officer may grant variances in specified land use bylaw or development agreement requirements but under 250(3) a variance may not be granted if:  
(a) the variance violates the intent of the development agreement or land use bylaw;  
(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 bylaw.
- s. 251, regarding variance requirements for notice, appeals and associated timeframes
- s. 252, regarding requirements for appeal decisions and provisions for variance notice cost recovery

**RECOMMENDATION**

In accordance with Administrative Order One, the following motion must be placed on the floor:

**That the appeal be allowed.**

Community Council approval of the appeal will result in refusal of the variance.

Community Council denial of the appeal will result in approval of the variance.

Staff recommend that Halifax and West Community Council deny the appeal.

## **BACKGROUND**

The owner of 1172 Rockcliffe Street in Halifax proposes to construct a single unit dwelling (Map 2). The proposed building design includes a garage that is connected to the dwelling with a passageway. The land use bylaw requires a 30-foot separation distance between main dwellings on adjacent properties but this requirement does not apply to accessory structures.

Section 4I of the general provisions of the Halifax Peninsula Land Use Bylaw states that:

“An accessory building may be connected to a main building by a breezeway, passageway, or other similar type of connection, where such a connection is not comprised of floor area that is used for human habitation. Such connections are part of an accessory building and are subject to the requirements herein. Garages or other features that are joined to main buildings, other than as described above, are part of a main building, and are subject to the requirements for main buildings.”

Based on Section 4I above, the proposed garage at 1172 Rockcliffe Street is an accessory structure and is subject to different siting requirements than the main dwelling provided the connecting passageway does not contain habitable space. Under these circumstances, a permit was issued for the subject property based on a 16-foot separation between the accessory building and the adjacent dwelling at 1170 Rockcliffe Street.

The owner now wishes to amend the permit application to alter the passageway in a manner that would create habitable space. This would make the accessory structure part of the main dwelling and the minimum 30-foot separation distance would be applicable.

The owner has proposed a variance to reduce the minimum required separation distance from the house on the adjacent property at 1170 Rockcliffe Street from 30 feet to 16 feet.

### **Site Details:**

#### **Zoning**

The property is located within the R-1 (Single Family) Zone of the Halifax Peninsula Land Use Bylaw (LUB) and is within the Northwest Arm Sub-Area of the Peninsula Centre Secondary Plan Area. The requirement of the LUB and the related variance request is as identified below:

	<b>Minimum Requirement</b>	<b>Variance Requested</b>
<b>Minimum Distance Between Main Buildings</b>	<b>30 feet</b>	<b>16 feet</b>

For the reasons detailed in the Discussion section of this report, the Development Officer has approved the requested variance (Attachment A). Four property owners within the 100-meter notification area have appealed the approval (Attachment B) and the matter is now before Halifax and West Community Council for 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, the Recommendation section of this report contains the required wording of the appeal motion as well as a staff recommendation.

For the reasons outlined in this report, staff recommend the Community Council deny the appeal and uphold the decision of the Development Officer to approve the variance.

## **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*. The *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use Bylaw:

*"250(3) A variance may not be granted if:*

- (a) the variance violates the intent of the development agreement or land use bylaw;*
- (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 bylaw."*

In order to be approved, any proposed variance should be consistent with good planning principles and 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 bylaw?**

Main buildings within the Northwest Arm Sub-Area are subject to a separation distance of 9 metres (30 feet). As noted above, the bylaw intends that this requirement would not apply to accessory buildings attached to the main building by a passageway provided the passageway is not used for human habitation.

The variance request is proposed due to the desire to alter the interior of the approved passageway connection in a manner that would create habitable space. The decision before the Development Officer, and now before Council, is to determine if those interior changes to the passageway in this instance represent a violation of the intent of the land use bylaw.

Given that the proposed interior conversion will not result in any exterior changes to the building that already meets the requirements of the land use bylaw, the Development Officer did not consider the proposed variance and the resulting construction to contravene the intent of the bylaw in any material way.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine if general application of the bylaw creates a specific difficulty or hardship that is not broadly present in the area. If these circumstances exist, then consideration can be given to the requested variance. If the difficulty is general to properties in the area, then the variance should be refused.

Development capacity on the subject lot is limited by a combination of factors including:

- Topography
- Setback and yard requirements in the land use bylaw
- The presence of a trunk sewer on the property
- Watercourse buffers
- The location of structures on adjacent properties

This combination of relatively unique circumstances impacts options for dwelling location on the property to the extent that the Development Officer did not feel the difficulty experienced was general to properties in the area.

**3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use bylaw?**

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

The applicant has applied for a Development Permit and requested the variance in good faith prior to commencing any work on the property. Intentional disregard of Bylaw 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 appellants have raised certain points in their letters of appeal (Attachment B) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<i>The house design could easily be a bit smaller, fit on the lot and be within existing rules</i>	If the passageway is not habitable space the project would proceed without a variance request. The exterior design and location of the dwelling will not materially change because of the decision on the proposed variance
<i>Notice of variance was an inaccurate representation. Granting the variance violates the intent of the land use bylaw, difficulty experienced is general to properties and the variance will have a deleterious effect on neighbouring properties.</i>	A second notice clarifying the passageway connection between the proposed dwelling and garage was distributed to the notification area. The placement of abutting house, watercourse buffer and the location of the trunk sewer are not considered to be general to the properties in the area.
<i>No justification for setting precedent in our neighbourhood by granting a variance. Lot area is 15,500sqft which provides more than adequate land for development.</i>	The lot, although 15,500 sq. ft. in area, has a trunk sewer located towards the rear of the property and a 9-meter watercourse buffer from the Northwest Arm. This, along with the 30-foot setback between main buildings impacts the buildable area of the lot.
<i>Not clear from diagram how the new structure impinges on the boundaries of the neighbouring houses. No detail as to what is being built and why the variance is necessary. Seems wrong to approve first then notify adjacent property owners.</i>	The notification area mapping shows the location of the abutting dwellings. The notice outlined the requested variance and this report has provided rationale regarding the decision of the Development Officer. Under the Halifax Regional Municipal Charter, the Development Officer must either approve or deny the request first before notification to adjacent property owners.

**Conclusion:**

Staff have reviewed all 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**

There are no significant risks associated with the recommendations contained in 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**

As noted throughout this report, Administrative Order One requires that Community Council consideration of this item must be in the context of a motion to allow the appeal. Council's options are limited to denial or approval of that appeal motion.

- 1) Denial of the appeal motion would result in the approval of the variance. This would uphold the Development Officer's decision and this is staff's recommended alternative;
- 2) Approval of the appeal motion would result in the refusal of the variance. This would overturn the Development Officer's decision.

### **ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Variance Approval Letter
Attachment B:	Letters of Appeal
Attachment C:	Elevation Drawing

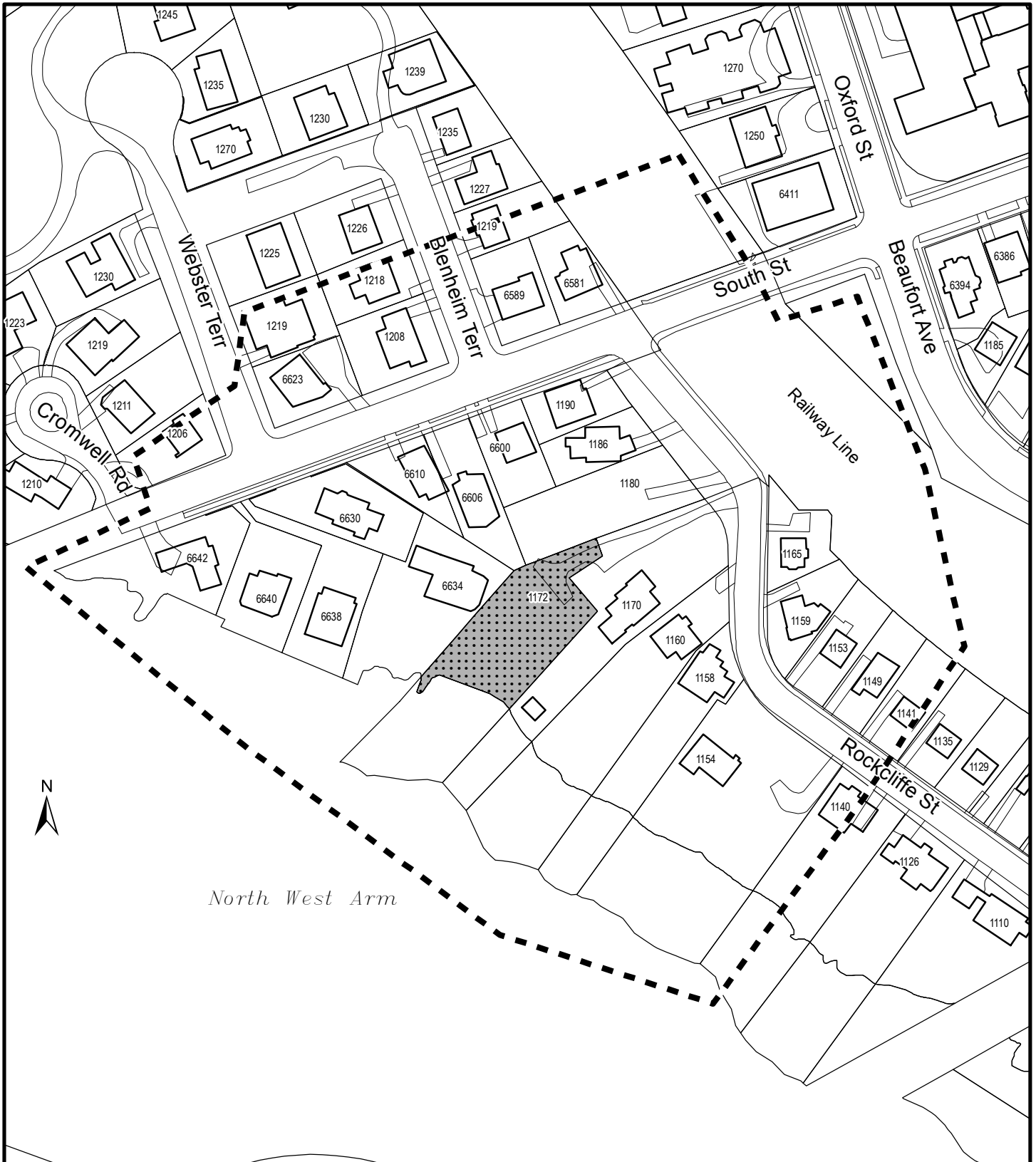
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Walsh, Planner 1, 902.490.4462  
Sean Audas, Principle Planner and Development Officer 902.490.4402

Original signed

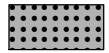
Report Approved by: Erin MacIntyre, Program Manager, Land Development & Subdivision  
902.490.1210



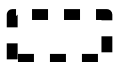
**Map 1 - Notification Area**

1172 Rockcliffe Street  
Halifax

Halifax Plan Area

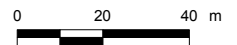


Subject Property

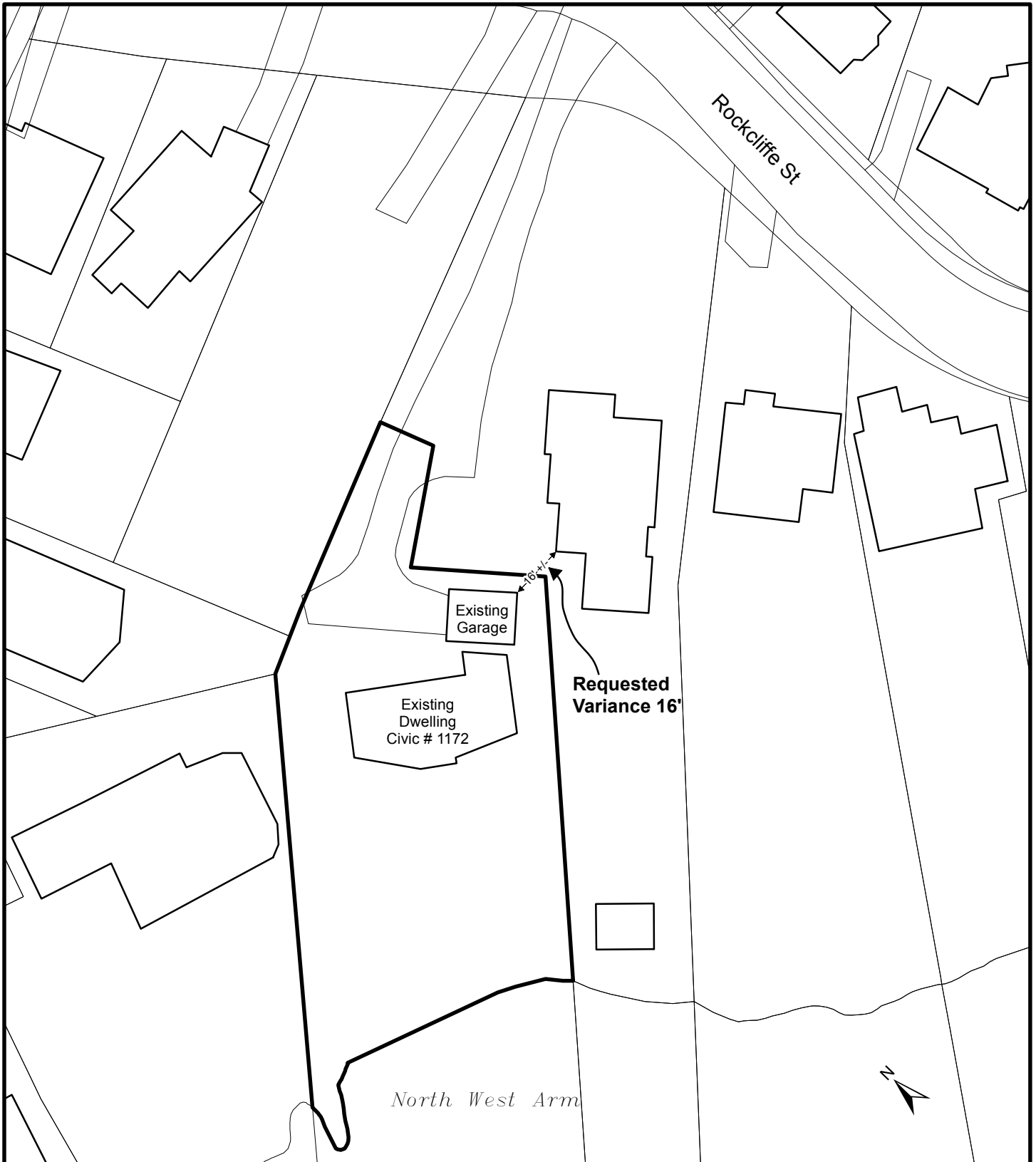


Notification Area

**HALIFAX**



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

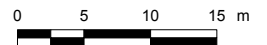


**Map 2 - Site Plan**

1172 Rockcliffe Street  
Halifax

Halifax Plan Area

**HALIFAX**



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

August 4, 2017

Joe Zareski  
[REDACTED]

Dear Mr. Zareski:

**RE: Variance Application #21250, 1172 Rockcliffe Street, Halifax, PID # 00078519**

This will advise you as the Development Officer for the Halifax Regional Municipality, I approved your request for a variance from the requirements of the **Halifax Peninsula Land Use Bylaw** as follows:

**Location:** 1172 Rockcliffe Street, Halifax, PID # 00078519  
**Project Proposal:** Reduced distance between main buildings on adjacent lots

LUB Regulation	Requirements	Proposal
Minimum distance between main buildings on adjacent lots	30 feet	16 feet

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before **August 21, 2017**

**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 Laura Walsh, Planner 1 at (902) 490-4462.

Sincerely,

**Original Signed**

Sean Audas, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councillor **Waye Mason**



August 4, 2017

Dear Sir or Madam:

**RE: Variance Application #21250, 1172 Rockcliffe Street, Halifax, PID #00078519**

As you have been identified as a property owner within 100 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipal Charter, Section 251.

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved a request for a variance from the requirements of the **Halifax Peninsula Land Use Bylaw** as follows:

**Location: 1172 Rockcliffe Street, Halifax, PID #00078519**  
**Project Proposal: Reduced distance between main buildings on adjacent lots**

LUB Regulation	Requirements	Proposal
Minimum distance between main buildings on adjacent lots	30 feet	16 feet

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **August 21, 2017**) and address your appeal to:

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

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance. If you have any questions or require clarification of any of the above, please call Laura Walsh, Planner 1 at (902) 490-4462.

Yours truly  
**Original Signed**

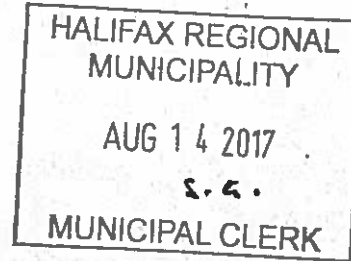
**Sean Audas, Principal Planner / Development Officer**  
**Halifax Regional Municipality**

cc. Kevin Arjoon, Municipal Clerk  
Councillor **Waye Mason**

Gary and Nancy Bliss

August 13, 2017

Municipal Clerk  
Halifax Regional Municipality  
P.O. Box 1749, Halifax, N.S.  
B3J 3A5



Dear Mr. Arjoon,

**Re: Variance Application #21250, 1172 Rockcliffe Street, Halifax, PID #00078519**  
**Letter and Maps sent to adjacent property owners dated August 4, 2017 by Sean Audas**

We are writing to appeal a decision (for the above mentioned property) to approve a request for variance under the requirements of the Halifax Peninsula Land Use Bylaws. There are several critical factors that individually support the case for refusal of the requested variance:

1. Error in Map 1 – Notification Area 1172 Rockcliffe St. dated July 25, 2017 that was attached to your letter of August 4, 2017. Map 1 incorrectly identified an existing garage on the property. We know personally that there has never been a garage on this property and what currently exists is a garden shed – see attached picture of the garden shed.
2. We see no justification for setting a precedent in our neighbourhood by granting a variance to Land Use Bylaw requirements, in this case to reduce the distance between main buildings on adjacent lots from a current requirement of 30 feet to a proposed 16 feet. The above mentioned property has a lot size of 15,500 sq. ft. which provides more than adequate land for development within the Halifax Peninsula Land Use Bylaws and should not require the requested variance.
3. It is our understanding that The Municipal Government Act sets out guidelines under which the development officer may not consider variances to Land Use Bylaw requirements. In order to be approved, the proposed variance must not conflict with any of the statutory guidelines listed below:
  - (a) Variance violates the intent of the land use bylaw;
  - (b) Difficulty experienced is general to the properties in the area;
  - (c) Difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.

We would submit that any difficulty experience in development of 1172 Rockcliffe St, is general to the properties in the area as identified in 3(b) above.

We expect that you will consider each of the reasons listed above which lead to this variance request being denied. Each of these reasons individually stand alone to support a refusal of this variance.

Yours truly,

Original Signed

Original Signed

Gary Bliss

Nancy Bliss

c.c. Laura Walsh, Planner HRM, walshla@halifax.ca  
Councillor Wayne Mason, waye.mason@halifax.ca



DELIVERY VIA:  
Email (clerks@halifax.ca); Courier

Andrew S. Wolfson, Q.C.

FILE REFERENCE:  
142861

August 18, 2017

Halifax Regional  
Municipality

Sean Audas, Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
PO Box 1749  
Halifax, NS B3J 3A5

99 Wyse Road, Suite 600  
Dartmouth  
NS Canada B3A 4S5

Dear Sir/Madam:

Correspondence:  
P.O. Box 876  
Dartmouth Main  
NS Canada B2Y 3Z5

**Re: Notice of Appeal - Variance Application #21250, 1172 Rockcliffe Street,  
Halifax, PID #00078519**

T 902.469.9500  
F 902.463.7500  
www.boyneclarke.ca

I wish to advise that I represent Dr. John W. Burke and Ms. Karalynn D. Burke, owners of the property located at 1170 Rockcliffe Street, Halifax.

Please accept this letter as a Notice of Appeal of the variance approved in respect of the above-noted Property for a reduced distance between main buildings on adjacent lots.



The grounds of appeal include, but are not limited to: the Notice of Variance dated August 4, 2017 is an inaccurate representation of the requested variance and a new Notice should be delivered to the affected property owners with a fresh Notice period; the decision to grant the variance violates the intent of the land use by-law; the difficulty experienced is general to properties in the area; and the variance will have a deleterious effect on neighbouring properties.

More comprehensive submissions will be provided in advance of the appeal hearing.

As the deadline to file a notice of appeal is on August 21, 2017, I would appreciate a reply email confirming that my client's appeal has been received.

Yours very truly,

BOYNECLARKE LLP

**Original Signed**

Andrew S. Wolfson, Q.C.  
ASW/rwb

cc. Client  
Councillor Waye Mason, by email

**Walsh, Laura**

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HALIFAX REGIONAL MUNICIPALITY
AUG 22 2017
S.G.
MUNICIPAL CLERK

**From:** Carol Camfield [REDACTED]  
**Sent:** August-19-17 10:39 AM  
**To:** 'walshla@halifax.ca'  
**Cc:** 'waye.mason@halifax.ca'  
**Subject:** Appeal letter Re: Variance Application #21250, 1172 Rockliffe Street, Halifax, PID # 00078519

We have discussed at length with Gary and Nancy Bliss their note to you regarding the above issue and heartily agree with them. As a resident of the neighborhood (1208 Blenheim Ter), we strongly object to the precedent that would be created by this variance. There is no need for this variance. The house design could easily be a bit smaller, fit on the lot and be within the existing rules. We live in an R1 zone and expect that the conditions of this community to be honored. Any change should be for very important reason - this proposal is not one of them.

Peter Camfield  
Carol Camfield

**Stewart, April**

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**From:** Nita Graham [REDACTED]  
**Sent:** August-10-17 12:34 PM  
**To:** clerks@halifax.ca.  
**Subject:** 1172 Rockcliffe Street, Halifax, PID #00078519

HALIFAX REGIONAL  
MUNICIPALITY  
AUG 10 2017  
S. G.  
MUNICIPAL CLERK

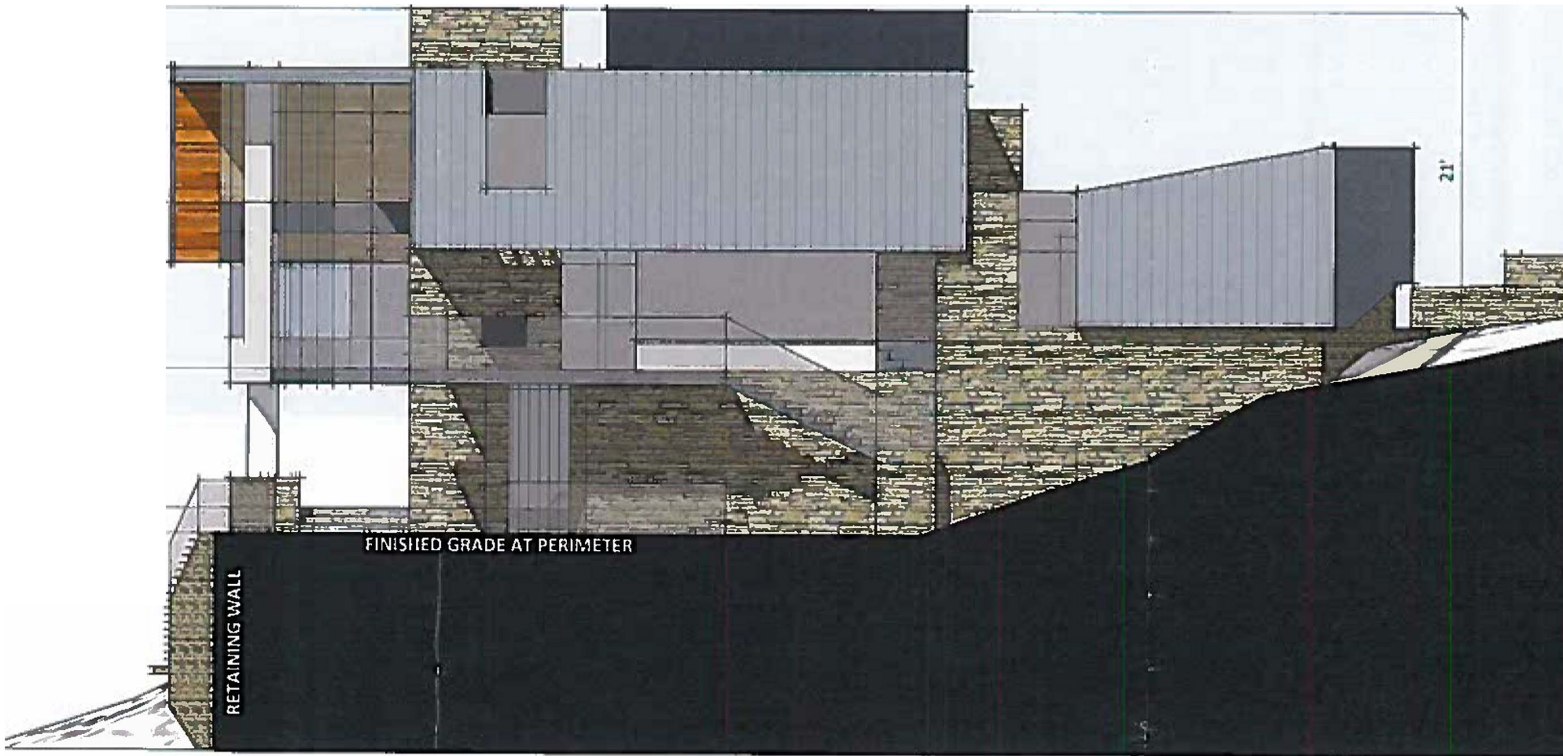
This is to express our objection to the approval given to reduced distance between main buildings on adjacent lots, from 30 feet to 16 feet. This approval can be used to support other people's applications for similar variances.

Surely the size of the new structure could be adjusted to fit in with existing regulations.

It is not clear from the diagrams how the new structure impinges on the boundaries of neighbouring houses.

In effect we have been presented with no details as to what is being built and why the variance is necessary. It seems in the wrong order first to approve a variance and then to inform adjacent property owners.

Nita Graham  
6606 South Street  
Halifax, Nova Scotia  
[REDACTED]



EAST ELEVATION  
1/8"=1'-0"

**Proposed Residence -1172 ROCKCLIFFE  
PID 00078519**

REVISED SEPTEMBER 29, 2016

**ARCHITECTURE | 49**

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