



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**July 10, 2018**

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

**-Original Signed-**

**SUBMITTED BY:** \_\_\_\_\_  
Steven Higgins, Manager, Current Planning

**DATE:** June 11, 2018

**SUBJECT:** Case 21057: Appeal of Variance Approval – 3310 Micmac St., Halifax

**ORIGIN**

Appeal of the Development Officer's decision to approve a request for 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 by-law 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 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.
- 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**

A permit was issued for the construction of a garage attached to the front of an existing single unit dwelling at 3310 Micmac Street in Halifax (Map 2). The permit was issued based on information supplied by the applicant that indicated the garage was to be sited outside of the minimum 10-foot setback from the front property line.

It was identified by staff during a site inspection that the constructed garage appeared to be much closer to the front lot line than the minimum required 10 feet. A surveyor's location certificate confirmed that the structure is 2.2 feet from the front lot line. This represented construction that was inconsistent with the existing permit and in contravention of the minimum setback requirement in the land use bylaw.

In cases such as these, there are only two alternatives to achieve compliance:

1. Change the structure to comply with the land use bylaw; or
2. Change the bylaw to accommodate the existing structure.

The owners of the property have chosen option 2 above and have applied for a variance to relax the required front yard setback from the required 10 feet to 2.2 feet to accommodate the structure. For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment A). Two neighbours have exercised their right to appeal that approval (Attachment B). The matter is now before Halifax and West Community Council for a decision relative to that appeal.

### **Site Details:**

#### **Zoning**

The subject property is zoned R-2 (General Residential) Zone under the Halifax Peninsula Land Use By-Law. Properties fronting on this portion of Micmac Street are subject to the front yard requirements of the Building Line Plan (Plan TT-18-20486) which shows a required 10-foot front yard. Setback requirements for this property are as identified below:

	<b>Minimum Requirement</b>	<b>Variance Requested</b>
<b>Minimum Front Yard</b>	<b>10 feet</b>	<b>2.2 feet</b>

#### **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 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 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 By-law?**

Front yard setbacks are a tool within the land use bylaw that generally intend to keep structures at a specified distance from front property lines to provide private open space, landscaped areas, parking space and allow a general sense of separation between buildings and the public travelled way. Typical setbacks in low density areas in Halifax are 15 feet. The subject property is in an area where that typical requirement is reduced to 10 feet which is generally reflective of the existing housing stock which is already relatively close to the street.

The portion of the building that encroaches on the front setback is limited to the garage front only and the remainder of the building is set back 17 feet from the front property line. This configuration adequately satisfies the intent of the bylaw in this instance.

It is the Development Officer's opinion that the proposal does not violate the intent of the LUB.

**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 whether the subject property is unique in its challenges in meeting the requirements of the LUB.

Most of properties in the area have driveways or detached garages at grade to the side or rear of the main dwelling. Only the subject property and one other dwelling in the area have a below-grade garage attached to the main dwelling resulting in a relatively steeply descending driveway leading to a garage substantially or fully below the street. While this garage configuration is not unusual in the broader community, it is unique in this area.

The owner has indicated they are experiencing significant difficulties and suffering some hardship related to snow removal from the below grade driveway. Potential solutions to this unique situation are limited to:

- Infilling the driveway to raise the grade to match the surrounding land and abandoning the attached garage; or
- Enclosing the driveway with an addition to the house to provide an enclosed parking area in the front yard

The difficulty was found to be the result of unique circumstances that are 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 had applied for a Development Permit in good faith and provided information they understood to be correct. They requested the variance once it was brought to their attention that there was a problem. 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 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 attached garage with such a setback has a negative impact on our property values</i>	The application is for a reduced front yard setback. Design and property values are not part of the review criteria.

**Conclusion:**

Staff has reviewed 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**

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: Pictures of Attached Garage

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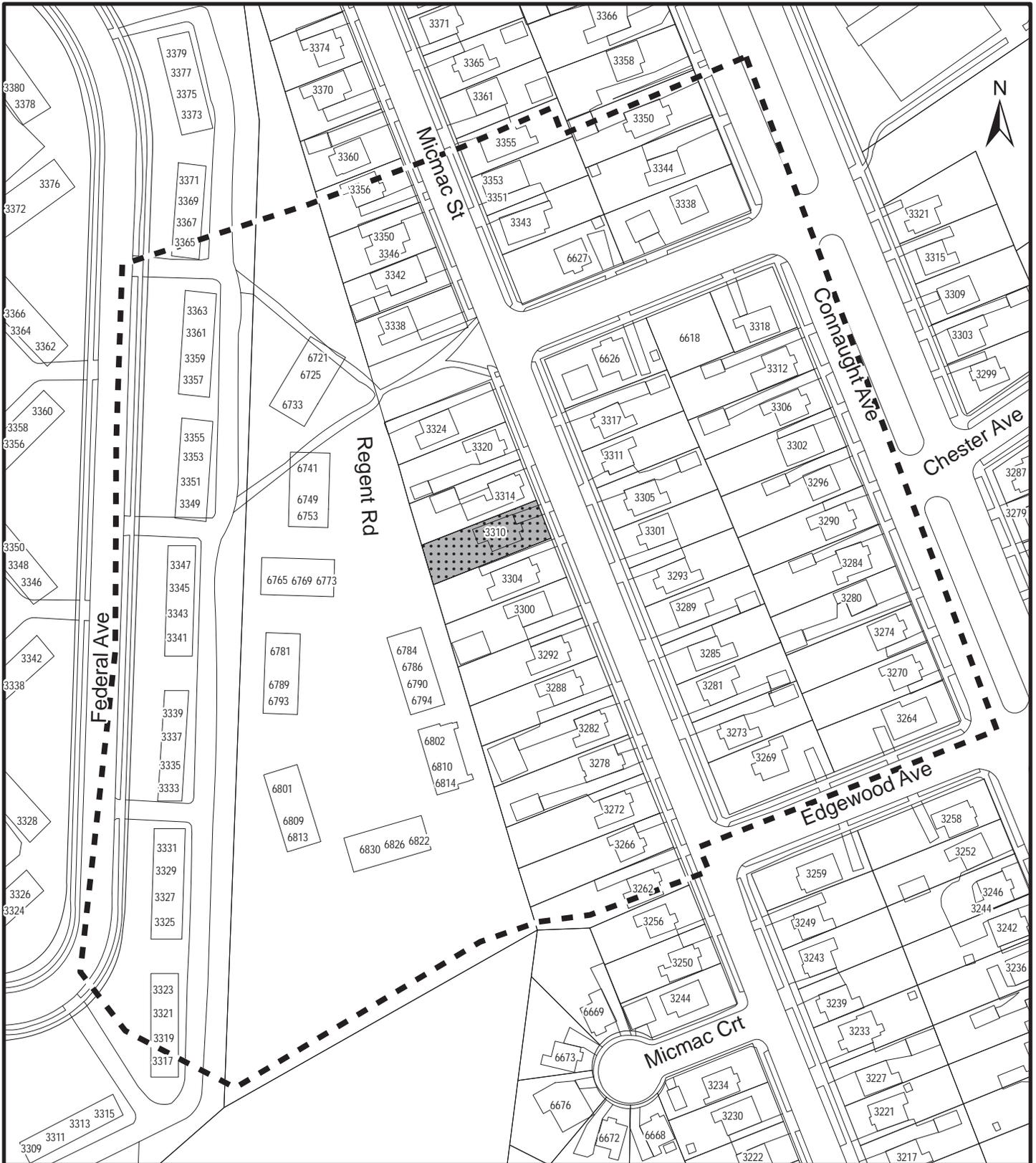
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Brenda Seymour, Planner 1, 902.490.3244  
Sean Audas, Principal Planner and Development Officer, 902.490.4402

***-Original Signed-***

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

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**Map 1 - Notification Area**

3310 Micmac Street  
Halifax



Subject Property



Notification Area

**HALIFAX**



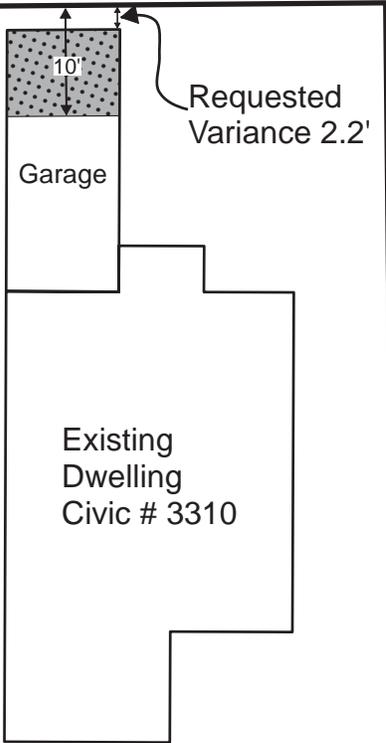
The accuracy of any representation on this plan is not guaranteed.

Halifax Plan Area

Micmac Street

Curb

Sidewalk



**Map 2 - Site Plan**

3310 Micmac Street  
Halifax



Area of Proposed Variance

**HALIFAX**

Halifax Plan Area

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

May 5, 2017

Dear Sir or Madam:

**RE: Variance Application # 21057**

**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**                    3310 Micmac St., Halifax  
**Project Proposal:** Construct attached garage

	Requirements	Proposal
Minimum front yard setback	10 feet	2.2 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 **May 22<sup>nd</sup>, 2017**

**Sean Audas, Principal Planner/Development Officer**  
**c/o Municipal Clerk**  
**Halifax Regional Municipality**  
**Planning and Development - Western Region,**  
**P.O. Box 1749, Halifax, N.S. B3J 3A5**  
**Clerks@halifax.ca**

If you have any questions or require clarification of any of the above, please call Brenda Seymour, 902-490-3244

Yours truly,

**Original Signed**

Sean Audas,  
 Principal Planner/Development Officer  
 Halifax Regional Municipality

cc     Kevin Arjoon, Municipal Clerk  
        Councilor Shawn Cleary - District 9



May 5, 2017

David Nauss  
3310 Micmac St  
Halifax, N.S. B3L 3W5

Dear Sir:

**RE: Variance Application # 21057**

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**                    **3310 Micmac St., Halifax**  
**Project Proposal: Construct attached garage**

	<b>Requirements</b>	<b>Proposal</b>
<b>Minimum front yard setback</b>	<b>10 feet</b>	<b>2.2 feet</b>

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 **May 22<sup>nd</sup>, 2017**

If you have any questions or require additional information, please contact Brenda Seymour, 902-490-3244.

**Original Signed**

Sean Audas  
Principal Planner/Development Officer

cc.     Kevin Arjoon, Municipal Clerk  
        Councilor Shawn Cleary - District 9

19/05/2017

Sean Audas, Principal Planner/Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
Planning and Development - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5

Mr. S. Audas,

I, [REDACTED], wish to appeal this variance application No. 21057 for 3310 Micmac. St., Halifax.

It makes me very disappointed that you have approved this without any thought on the repercussions it could have on the rest of the said area, as anyone else would have the right to do the same.

Yours truly,  
[REDACTED]

P.S. My neighbour has scanned this for me as I was out of town. at the time of the appeal.

May 17, 2017

Sean Audas, Principal Planner/Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
Planning and Development - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5

Dear Mr. Audas,

Subject: Variance Application no. 21057 - 3310 Micmac St. Halifax

My spouse and I wish to appeal the above-mentioned variance application.

Having invested significantly to improve our two properties ( through the municipal permit application process, we find that the attached garage at 3310 Micmac St., with its existing front yard setback, does not have its place on our street.

The minimum front yard setback bylaw was established for a reason. We have attached photos in support of it.

In our view, the attached garage with such a setback is an eyesore and has a negative impact on our property values. If this variance application is approved, it could then open the floodgate for other such constructions and rather than beautify our neighbourhood, could detract from homeowners' efforts to make our neighbourhood other than one on the "wrong side of Connaught".

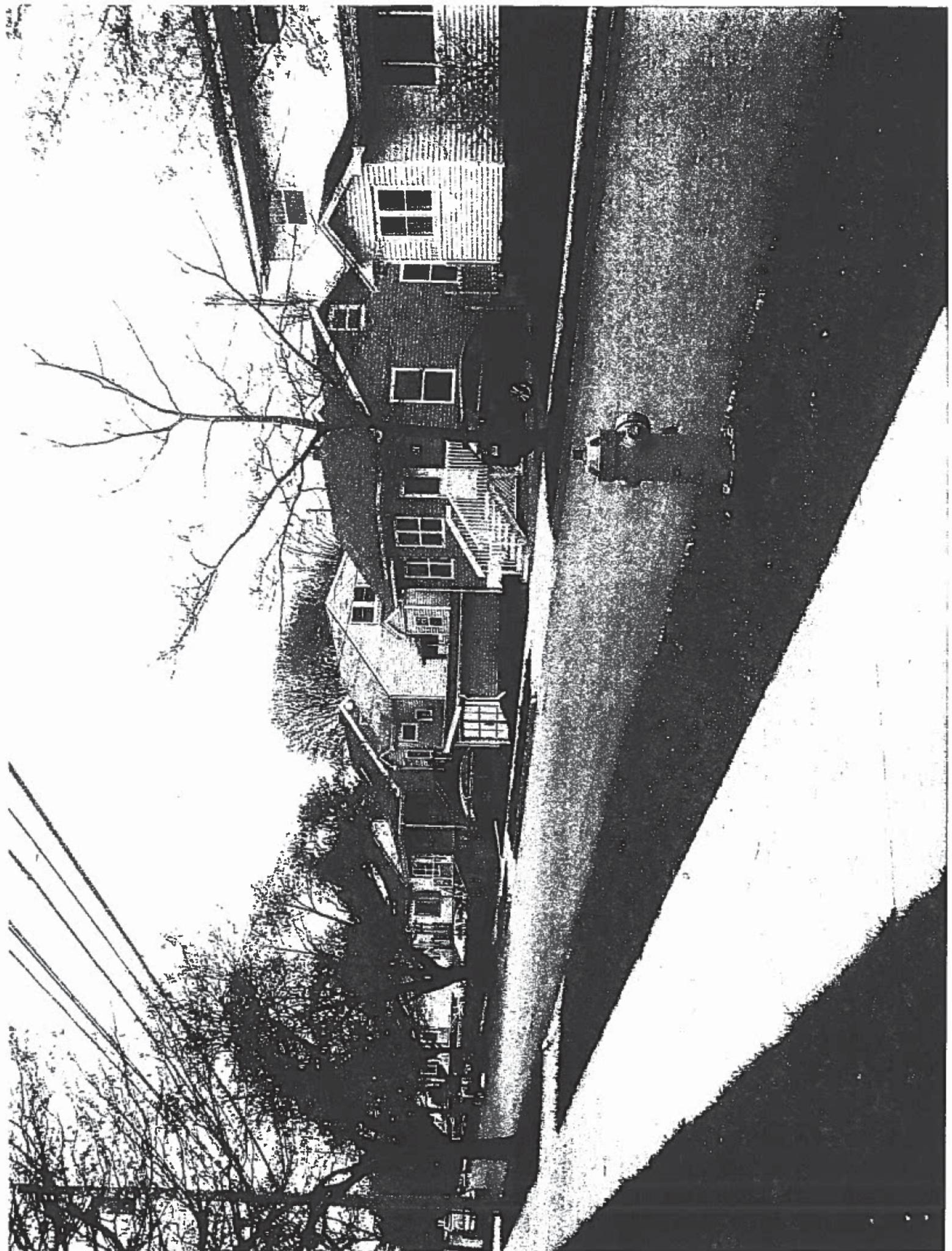
In all due respect, if individuals wish to have a garage of x' in length on their property, then logic would dictate the purchase of a house whose lot either allows for the construction of such a garage within regulatory requirements, or has a legal existing one.

Thank you for your consideration of our viewpoints.

Yours truly,

Encl. photos





Attachment C: Pictures of Attached Garage

