



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**December 12, 2018**

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

**-Original Signed-**

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

**DATE:** November 2, 2018

**SUBJECT:** **Case 21703: Appeal of Variance Approval – 12 Alderwood Drive, Halifax**

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**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 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 shall 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 variance request has been submitted for 12 Alderwood Drive in Halifax to allow an addition to a single unit dwelling (Map 2 and Attachment A). The purpose of the addition is to accommodate additional living space consisting of an enclosed porch, expanded kitchen and additional bedroom (for a total of three bedrooms). No change in land use or alteration to the number of dwelling units is proposed.

To enable this project, a variance has been requested to relax the required front yard setback and side yard setback. The proposed addition meets all other requirements of the Land Use By-law, including height, flankage yard setback and lot coverage.

### **Site Details:**

#### **Zoning**

The property is located in the R-1 (Single Family Dwelling) Zone of the Halifax Mainland Land Use By-Law (LUB) and is in the Mainland South Secondary Plan Area. The relevant requirements of the LUB and the related variance request is as identified below:

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Front Yard</b>	20 feet	7 feet, 5 inches
<b>Minimum Side Yard</b>	8 feet	4 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). Two property owners within the notification area have appealed the approval (Attachment C) 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 the motion is in opposition to the staff recommendation. 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 that Community Council deny the appeal(s) 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 *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?**

In establishing minimum front and side yards, the land use bylaw intends to provide separation from adjacent structures, streets and property lines for convenience of access to rear yards, building/property maintenance and aesthetics (neighbourhood character).

There are a range of front yard and side yard setbacks in this area, including several existing structures that are closer to the front and side property lines than the proposed addition. Neither the proposed reduction in front yard or side yard results in a building that is out of context with the existing neighbourhood character or streetscape. Additionally, the subject property is a corner lot with ample convenient access to the rear yard from Birchwood Drive so the reduced side yard does not materially impact property or building maintenance capacity.

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

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

In evaluating variance requests, staff must determine if general application of the by-law 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.

The subject property is marginally smaller than typical lots in this area and it is a corner lot which results in greater setback from the flanking streetline (flankage yard). These conditions result in building envelope that is more restrictive than what is general to the area

In addition, there are mature trees that the owner prefers to retain and an existing detached garage in the rear yard which further limits options for building additions that comply with the general application of the bylaw

Given the corner location, relatively reduced lot area, mature trees and garage, it is the opinion of the Development Officer that the subject property has sufficient constraints that are not general to the area to warrant approval of the proposed variance.

**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 property owners applied for a variance in good faith prior to commencing any work on the property. Intentional disregard of LUB requirements was not a consideration in this variance request.

**Appellant's Submission(s):**

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 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
<p><i>The project doesn't meet the required criteria of flankage yard and size of land.</i></p>	<p>The proposal does not include a request a relaxation of the flankage yard. The proposed addition is on the opposite side of the property from the flanking street. The proposal is consistent with the bylaw requirements for flankage yard and lot size.</p> <p>The variance did not request a relaxation of the lot size. The lot size of 4,800 square feet meets the minimum 3,000 square feet required for single unit dwellings under section 14C of the Halifax Mainland Land Use Bylaw.</p>
<p><i>The proposed building will block my view.</i></p>	<p>Relaxation of the front and sideyards as proposed will have no impact on view from the appellant's property. With the exception of the front steps and a portion of the proposed porch, the proposed addition will be behind the existing building and will not be visible from the appellant's property.</p> <p>Views from private property are not protected by municipal regulation. Any existing view across undeveloped potential in another owner's land cannot be guaranteed and should not be expected to continue in perpetuity.</p>
<p><i>The variance shows blatant favouritism on behalf of our city.</i></p>	<p>The variance was evaluated solely against the criteria of section 250(3) of the Halifax Charter without consideration of the identity of the applicant.</p>

**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**

There are no significant risks associated with the recommendation 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, appellants 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 context of a motion to allow the appeal. Council's options are limited to denial or approval of that 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: Building Elevations  
Attachment B: Variance Approval Letter  
Attachment C: Letter of Appeal

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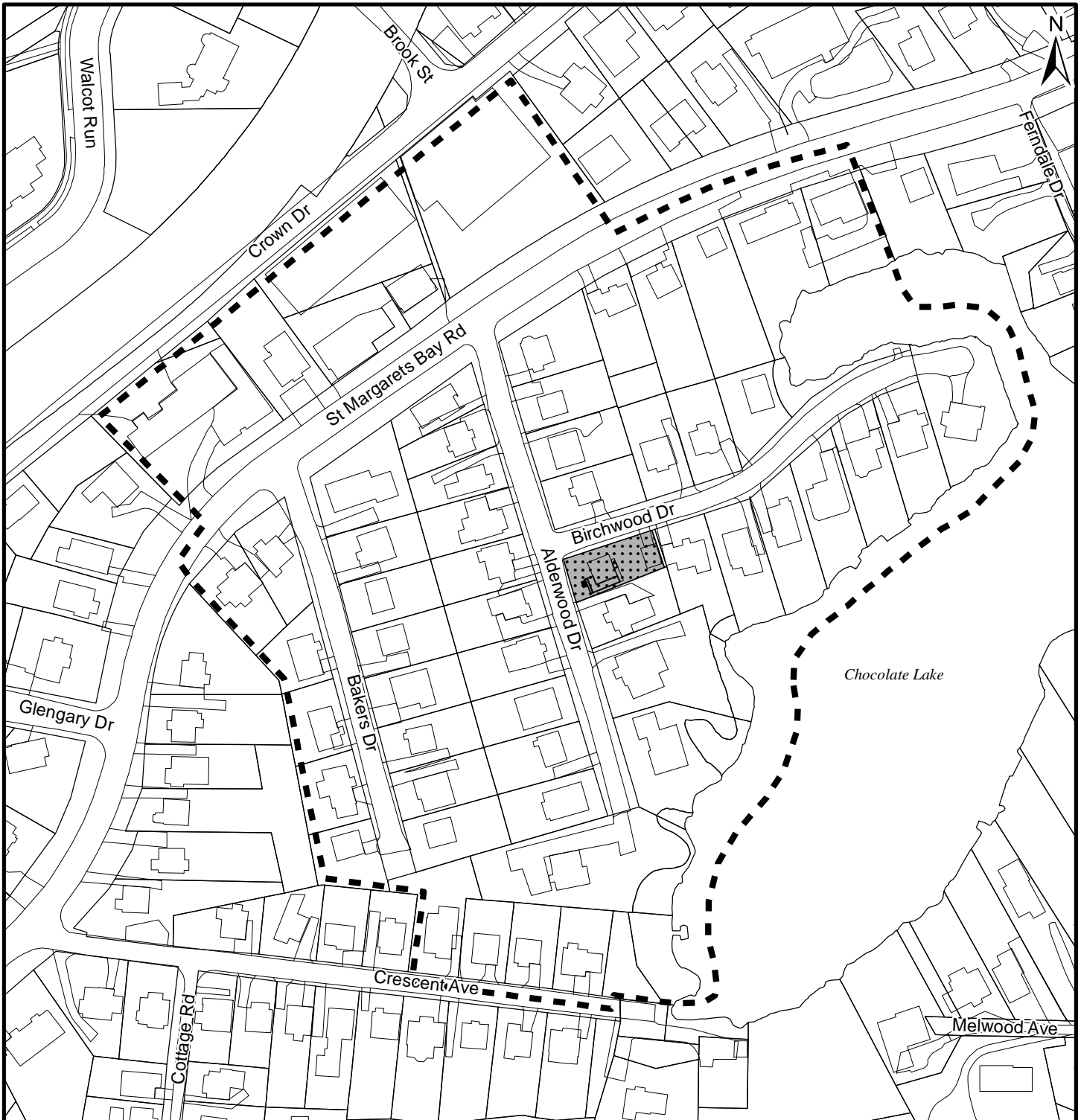
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Tessa Williams, Planner I, 902.490.4413  
Trevor Creaser, Development Officer / Principal Planner, 902.490.4416

***-Original Signed-***

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

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**Map 1 - Notification Area**

12 Alderwood Drive  
Halifax



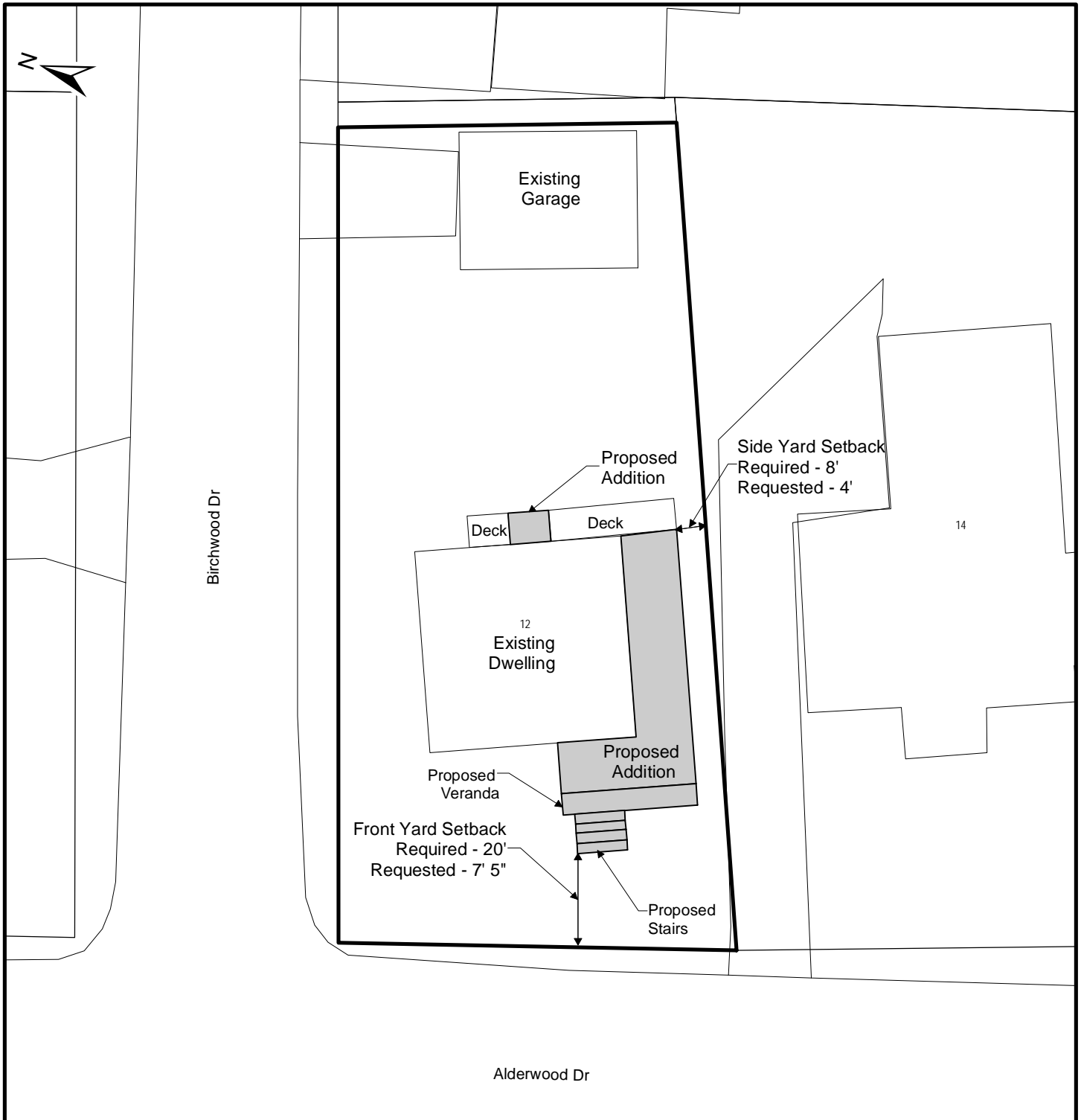
Subject Property  
Notification Area

**HALIFAX**

Halifax  
Plan Area



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

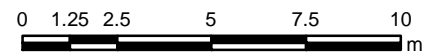


**Map 2 - Site Plan**

12 Alderwood Drive  
Halifax

**HALIFAX**

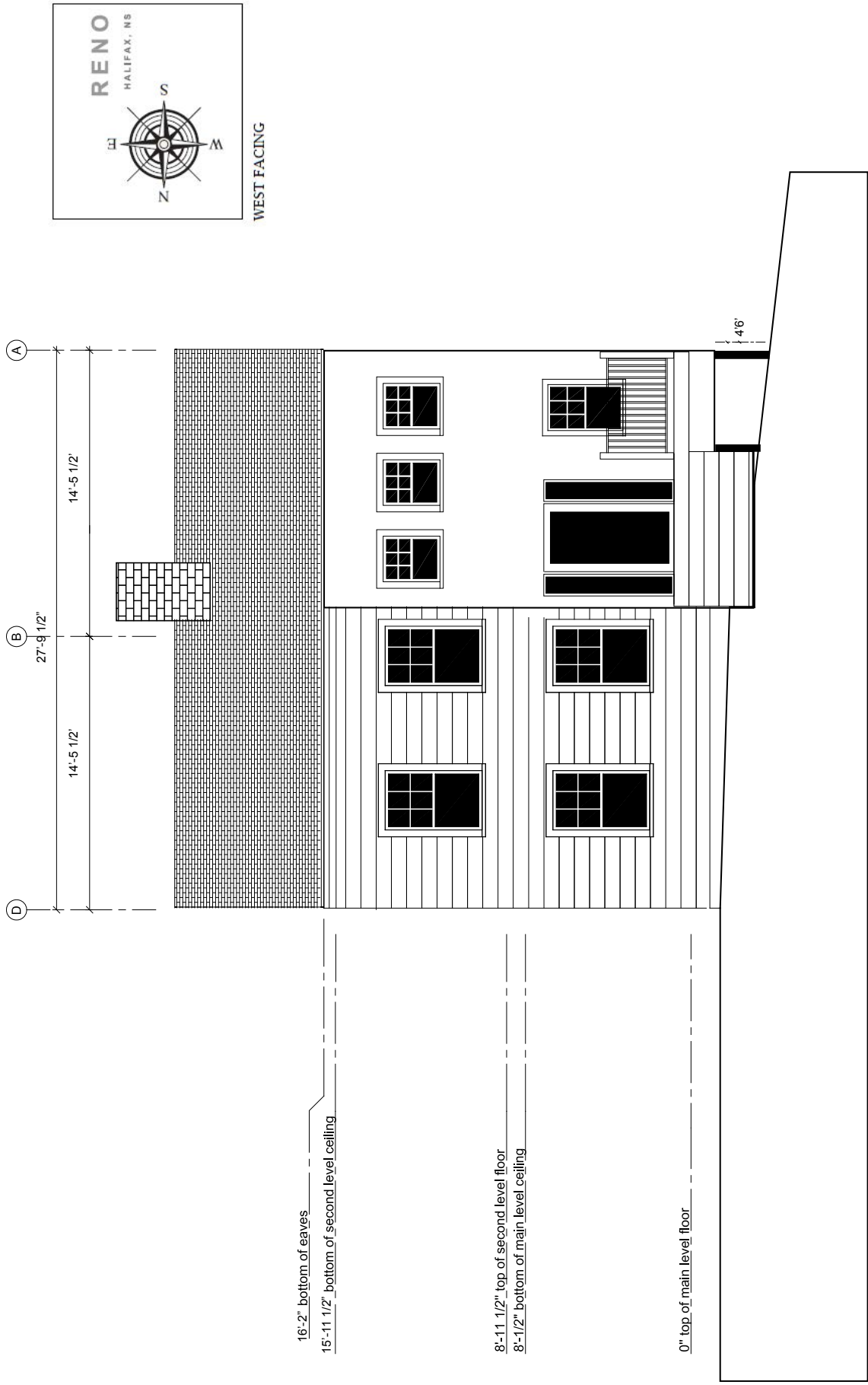
 Subject Site



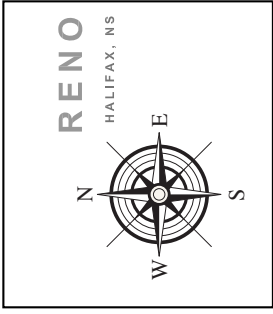
Halifax  
Plan Area

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

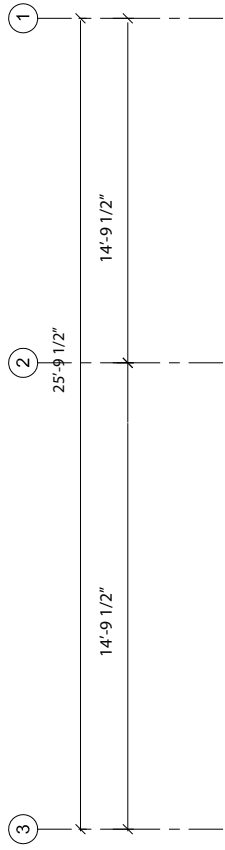
Attachment A – Building Elevations







SOUTH FACING



16'-2" bottom of eaves

15'-11 1/2" bottom of second level ceiling

8'-11 1/2" top of second level floor  
8'-1/2" bottom of main level ceiling

7' front addition

0" top of main level floor

GRADE LEVEL -4'

4'6"

6'0"

6'6"

7'1"

8'10"

GRADE LEVEL

STONE STEPS 9 feet in length PLUS 1'5" JUST INCASE

Set back from property line 7'5"

A L D E R W O O D D R

July 5, 2018

██████████  
Halifax, NS  
B3N 1S8

**RE: VARIANCE APPLICATION # 21703, 12 ALDERWOOD DR, HALIFAX, NS, PID # 00300624**

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 Mainland Land Use Bylaw as follows:

**Location:** 12 Alderwood Dr, Halifax (PID # 00300624)

**Project Proposal:** Allow an addition to a single unit dwelling to be constructed closer to the front and side lot lines than permitted under the land use bylaw

LUB Regulation	Requirements	Proposal
Front Yard Setback	20 ft	7 ft 5 in
Side Yard Setback	8 ft	4 ft

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 on or before Sunday July 22, 2018.**

**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 Tessa Williams, Planner I, at (902) 490-4413.

Sincerely,

**Trevor Creaser**, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Shawn Cleary, Councillor

[REDACTED]

July 16,2018

Trevor Creaser  
Principal Planner/Development Officer  
Halifax Regional Municipality

Re: Variance application #21703, 12 Alderwood Dr , Halifax, NS, PID #00300624

Dear Mr Creaser,

As the owner of [REDACTED] Halifax I would like to reject the proposal of building a single unit dwelling on an undersized parcel. The proposed building will be blocking the view from my [REDACTED] on Chocolate Lake and affect negatively the value of my property. As you mentioned the proposed project doesn't meet the required criteria of flankage yard and size of the land.

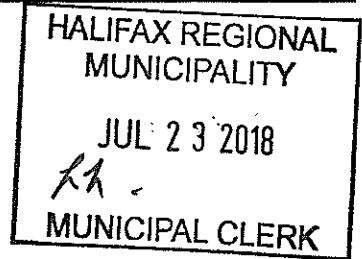
Please accept this letter as Notice of the appeal.

Sincerely,

Sania Dorey

**Stewart, April**

**From:** Eastern Habitats [REDACTED]  
**Sent:** July-22-18 10:55 PM  
**To:** Office, Clerks  
**Cc:** Cleary, Shawn  
**Subject:** Variance application number 21703



Re variance application number 21703, 12 Alderwood Dr., Halifax, Nova Scotia, PID number 00300624

Dear Mr. Creaser

This email is to inform you that we as owners of a property at [REDACTED], do not approve of the above variance. I noticed in the letter that it says that the variance has already been approved by your office but we have to state that this variance shows blatant favoritism On behalf of our city. It is for this reason that we are not giving our approval of this and wish to appeal.

We purchased a property which was a [REDACTED] and later had one of the units ,which we found out was built illegally ,closed down. Our unit had egress on the windows, we had smoke and fire detectors, fire extinguishers, ample parking for the unit. We have applied on several occasions to reopen this unit and have been denied repeatedly. Opening our unit would not involve expanding our property beyond its current boundaries or to make any exterior changes.

Recently some properties owned by [REDACTED] were approved to increase the number of units in each of the buildings. At that time I phoned the city and requested that they review our property. Again we were denied.

We would like an explanation, something other than you just can't, as to why we cannot reopen our suite yet people around us can expand their properties almost to the property line And can be able to add more units when They don't even really have enough parking for what they have. In contrast we are completely denied over and over again. I think these decisions need to be reviewed and it needs to be some fairness exercised a monks the decisions.

Thank You  
Michael and Paula Hodson