



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**July 9, 2019**

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

**-Original Signed-**

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

**DATE:** June 18, 2019

**SUBJECT:** Case 21864: Appeal of Variance Approval – 14 Melvin Road, 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 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 has been requested to allow construction of a two-storey addition to an existing single unit dwelling at 14 Melvin Road (Map 2). The addition consists of garage on the first storey with a second storey habitable space above. The Land Use Bylaw (LUB) requires an eight foot setback from the side and rear property boundaries and allows for a reduction in those setbacks to four feet for an attached garage. This means that living space above an attached garage must be set back an additional four feet to meet the LUB requirements. The requested variance would relax the eight foot setback for the living space on the second floor, aligning the second storey of the addition with the main floor garage. All other requirements of the Land Use By-law are met.

### **Site Details:**

#### **Zoning**

The property is located in the H (Holding) Zone of the Halifax Mainland Land Use By-Law (LUB) and is within 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 Side Yard Setback<br/>(for habitable space above the garage)</b> | 8 feet                  | 4 feet                    |
| <b>Minimum Rear Yard Setback<br/>(for habitable space above the garage)</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). One property owner within the notification area has appealed the approval (Attachment C) and 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 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?**

Setbacks are required by the LUB to provide separation between adjacent structures. In low-density residential settings, side setbacks provide access to the rear yard and both side and rear setbacks provide area for natural stormwater absorption, and to reduce proximity impacts on adjacent properties. The reduced setback for attached or detached accessory buildings intends to allow uninhabited structures to be closer to neighbouring properties as there are typically less impacts generated by uninhabited portions of buildings.

As shown on Map 2, the configuration of the property is such that there is limited impact of the reduced setback for the inhabited, upper storey of the structure. There are no nearby adjacent buildings that would be impacted by the reduced setback. The submitted floor plans confirm the addition will consist of a new garage area on the main level, with a family room and bathroom on the second storey of the addition. All other requirements of the Land Use By-law will be met.

It is the Development Officer's opinion that this variance does not violate the intent of the Land Use By-Law.

**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 siting of the existing structure, as well as the configuration of property, are considered to be unique within the 100m notification area. The dwelling is situated on a steep incline which screens the proposed addition from adjacent properties. Most other dwellings within the notification area could reasonably be enlarged and still meet the required setbacks.

It is the Development Officer's opinion that the difficulty experienced is not general to the area.

**3. Does the difficulty experienced result from 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 Development Permit in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

**Appellant's Submission:**

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:

| <b>Appellant's Appeal Comments</b>  | <b>Staff Response</b>  |
|---|--|
| <i>Undersized existing lot was granted a building permit to increase the dwelling size without considering well and septic requirements.</i>                          | Research of the property records demonstrates that various permits have been issued for the property. However, no increase in the number of bedrooms has been approved. Therefore, no review or approval was required from Nova Scotia Environment, as there has been no increase in the number of bedrooms.   |
| <i>Granting this permit and variance will increase the hard surface ...by over 50%.</i>   | There are no specific requirements in the Land Use By-law regarding hard surfaces. The lot is located outside of the Urban Service Boundary, and therefore the Lot Grading By-law does not apply. Maximum lot coverage requirements of the Land Use By-law (35%) have not been exceeded with this application. |
| <i>Run off will gravitate to the Northwest Arm. Has NS Environment approval been granted?</i>   | It is the property owner's responsibility to ensure that adjacent properties, including watercourses, are not negatively impacted by alterations to the grade of their property. NSE approval is not required for an application of this nature.   |
| <i>On some maps there is a right of way for Melvin Rd that swings left around behind and across 14 Melvin Road's back lot to connect to other end of Melvin Road.</i> | Survey plan and description from 1962 do not show a road right of way. However, a reciprocal easement was filed in June of 2013, granting access across the driveway for lots 4 and 5.   |

**Conclusion:**

Staff reviewed all the relevant information in this variance proposal and it was determined the proposal does not conflict with the statutory criteria set out in the *Charter*. As a result, the variance request was approved. That approval was appealed by an area resident and the matter is now before Council to hear the appeal and render a decision.

**FINANCIAL IMPLICATIONS**

There are minimal financial implications related to this variance. The costs can be accommodated within the existing 2019-20 operating budget for C420-Planning and Development.

**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 contact 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 decision of the Development Officer.

### **ATTACHMENTS**

Map 1: Notification Area  
Map 2: Site Plan  
  
Attachment A: Site Photos  
Attachment B: Variance Approval Notice  
Attachment C: Letter of Appeal from Abutter

---

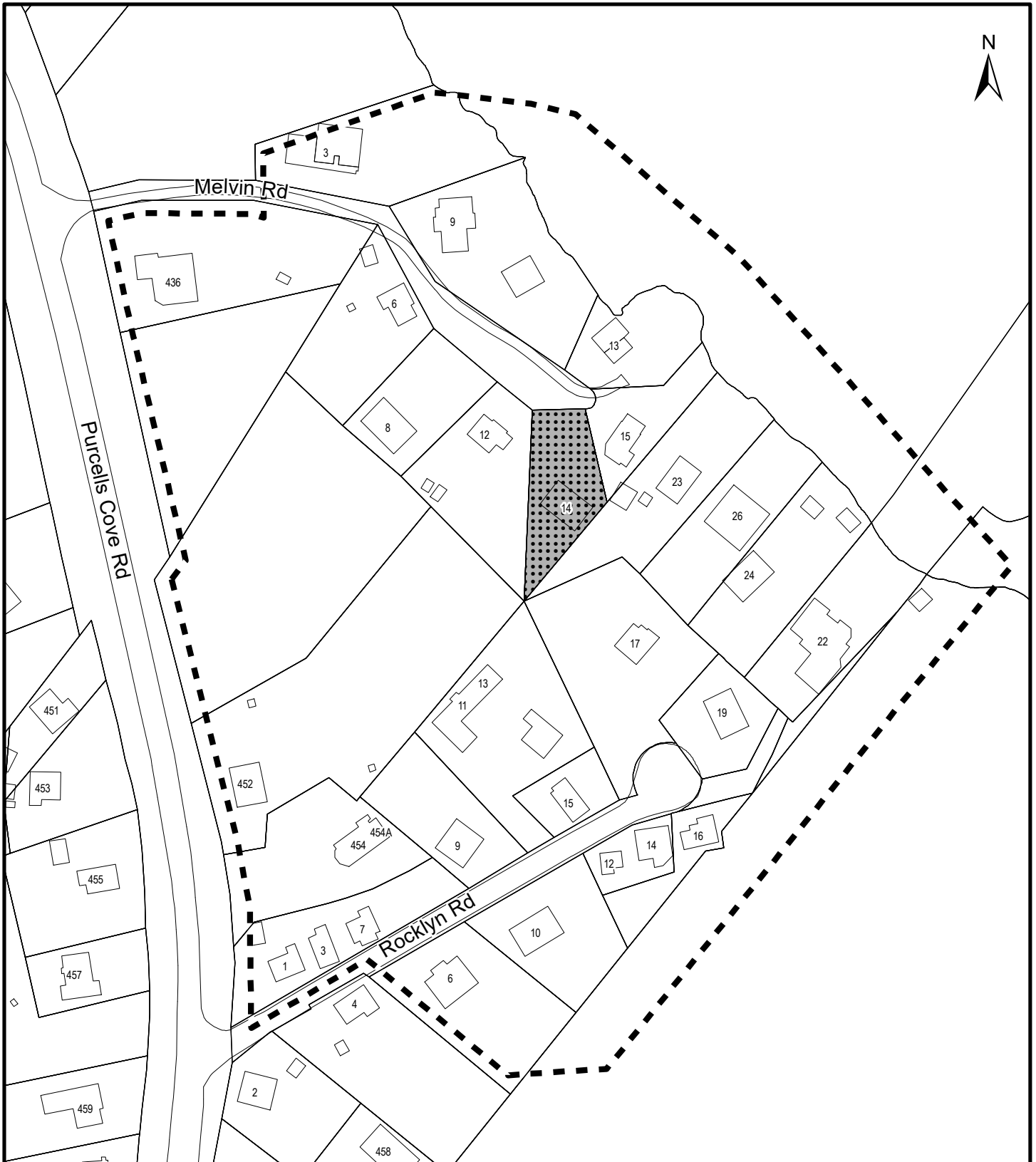
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Connie Sexton, Planner, 902-490-1208,  
Rosemary MacNeil, Principal Planner/Development Officer, 902-490-4650

***-Original Signed-***

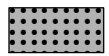
Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902-490-1210

---

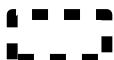


**Map 1 - Notification Area**

14 Melvin Road,  
Halifax

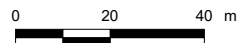


Subject Property



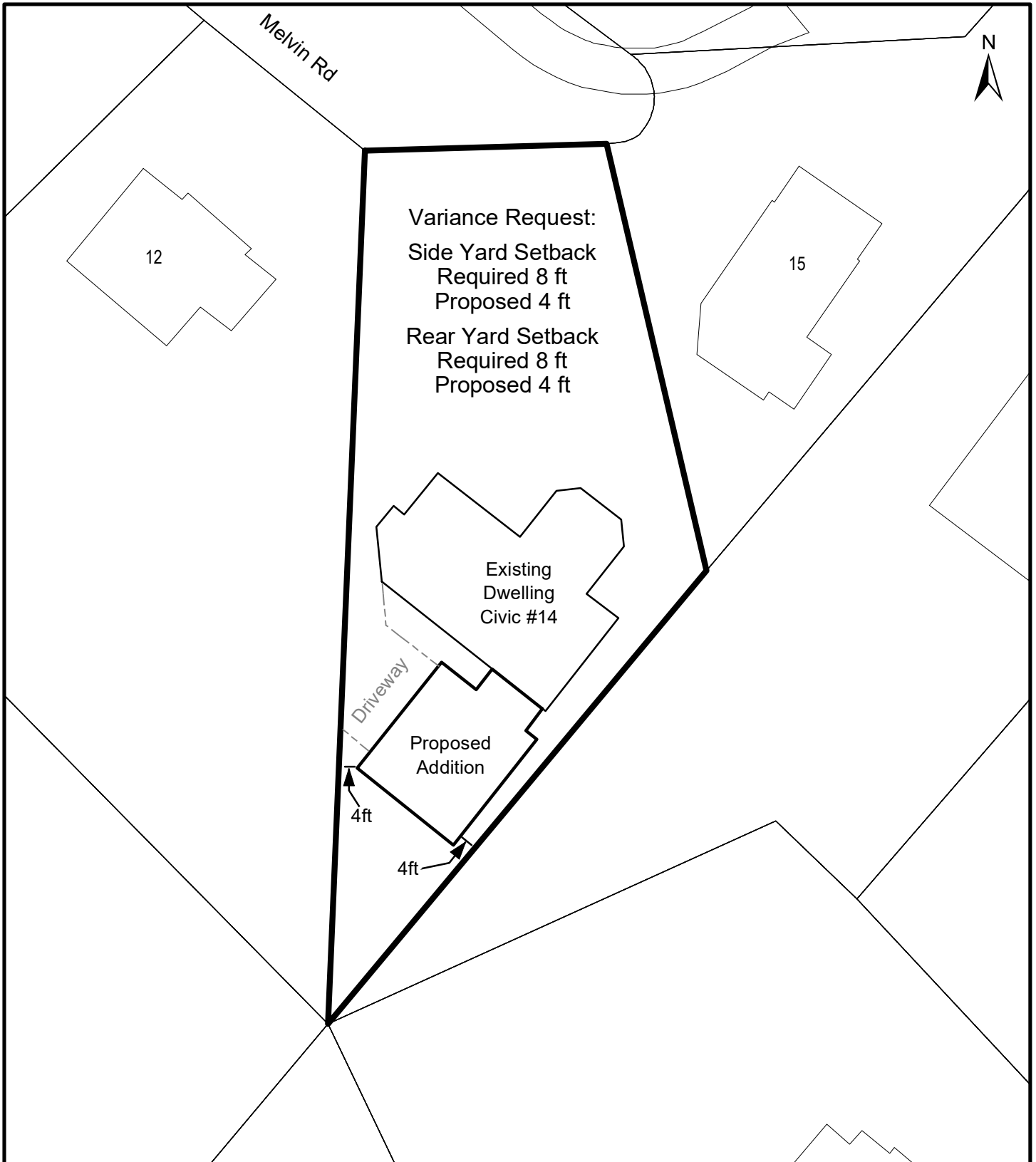
Notification Area

**HALIFAX**



Halifax Plan Area

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



**Map 2 - Site Plan**

14 Melvin Road,  
Halifax



Subject Property

**HALIFAX**









**Attachment B- Variance Approval Notice**

November 13, 2018

Ms. Sharon Fogo  
Triptych Design Ltd.

Dear Ms. Fogo:

**RE: Variance Application # 21864 at 14 Melvin Road PID # 00269241**

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

**Location:** 14 Melvin Road, Halifax (PID #00269241)  
**Project Proposal:** Second storey residential addition to single unit dwelling above garage

| LUB Regulation  | Requirements | Proposal          |
|---|--------------|-------------------|
| Side Yard Set Back (for main floor of garage)         | 4 feet       | 4 feet (complies) |
| Side Yard Set Back (for habitable space above garage) | 8 feet       | 4 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 November 30, 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 Connie Sexton, Planner 1 at 902-490-1208 .

Sincerely,

Original Signed

Rosemary MacNeil, Principal Planner/Development Officer  
Halifax Regional Municipality  
Current Planning, Land Development and Subdivision  
Planning and Development

cc. Kevin Arjoon, Municipal Clerk  
Councillor Steve Adams



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

halifax.ca

**MacNeil, Rosemary**

---

**From:** MacNeil, Rosemary  
**Sent:** March-19-19 1:50 PM  
**To:** MacNeil, Rosemary  
**Subject:** FW: Appeal re Variance Application # 21864

-----Original Message-----

**From:** Rod Giffen [REDACTED]  
**Sent:** November-30-18 1:15 PM  
**To:** Office, Clerks <[clerks@halifax.ca](mailto:clerks@halifax.ca)>  
**Subject:** Appeal re Variance Application # 21864

As owners of the 2 properties at [REDACTED] Purcells Cove Rd and the one immediately north state our objection to the Variance that has been allowed for the construction of a Second storey residential addition to the single unit dwelling above the garage. We also object to the preposed Garage.

A little information on the subject property:

The original home was known as the Goodman's home (14 Melvin Road) existed before amalgamation of the County of Halifax and Halifax as a single story residence on a unserviced lot with a well and septic system (drum in the ground). The property was a small lot of 9497 sqft. was grandfathered to the new regulations both provincial and municipal regulation. In 2004 it was sold. Imagine our surprise when we found the new owners had obtained a building permit to double the size with added bedrooms, washrooms of it in spite of Provincial and Halifax regulations requiring a minimum lot of 20,000 sqft for onsite treatment of waste. The building permit should not have been granted.

In January 2014 the property was again sold and the new owners have applied for permits to build this year, which has resulted in this variance Application.

We had a few questions on this application so I contacted [REDACTED] during the conversation my questions were answered. The planning department was granting the permit on the assumption the lot was on municipal services. This is far from the truth. It is Zoning Holding with Private Septic and Well and at 9497 sqft the lot is less than 50% of the regulatory requirements now.

Granting this permit and variance will increase the hard surface, all ready very large with the residence and paved drive and yard area, by over 50% (Roof run off etc.) Where will the run off go (North West Arm)? Has NS ENVIRONMENT signed off yet?

We have also noticed on some maps that a right of way for Melvin Rd swings left around behind and across 14 Melvin Rd's back lot to connect to other end Melvin Rd. if this is so it would be interfered by the garage-addition.

We believe any expansion of this residence should be placed on hold until such a time municipal service are supplied to the area.

My wife and I have a great love for this area especially her being born within 100ft of 14 Melvin RD and descendant from a family that has been in Purcells Cove since before 1800.

We regret that we must object to this Variance and proposed construction

Yours Truly

Rod Giffen

Louise Velcoff Giffen