



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

Item No. 10.2.2
Halifax and West Community Council
September 19, 2019

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *-Original Signed-*

Steve Higgins, Manager, Current Planning

DATE: August 29, 2019

SUBJECT: Case 22266: Appeal of Variance Approval – 58 Bedford Highway, Bedford

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 to allow internal conversion of an existing commercial/office building to a mixed use building with four residential units and commercial space at 58 Bedford Highway (Map 2).

The building in question is located 5 feet 1 inch from the left property line and 3 feet 4 inches from the right property line (see Map 2). The structure is used solely for commercial purposes. The minimum side yard requirements for commercial uses are 12 feet from the right property line and 0 feet from the left property line. The building does not comply with the minimum right side yard but it was lawfully constructed prior to the establishment of these yard requirements. Therefore, the existing building as a commercial use is considered lawful as a non-conforming structure pursuant to the HRM Charter.

The proposed addition of residential uses triggers application of additional zoning requirements. The side yard requirement for the mixed use building with residential uses is a minimum of 6 feet from both right and left side property boundaries. The current siting of the building does not comply with these requirements. All other requirements of the Land Use By-law are met or are considered lawfully non-conforming.

In order to issue a permit for conversion to residential use, the building would have to be altered to comply with the side yard requirements. Alternatively, the side yard requirements would have to be altered to accommodate the building. The applicant's intention is to utilize the existing structure without any physical alterations.

A variance has been requested to reduce the minimum side yard requirements for a four unit residential building.

Site Details:

Zoning

The property is zoned C-2B (Highway Commercial) Zone under the Halifax Mainland Land Use By-Law (LUB). The relevant requirements of the LUB and the related variance request is as identified below:

	Zone Requirement	Variance Requested
Minimum right side yard setback	6 feet	3' 4" feet (existing building setback)
Minimum left side yard setback	6 feet	5' 1" feet (existing building setback)

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment A). One property owner within the notification area has appealed this approval (Attachment B) 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 request for variances.

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?

The proposal is to convert an existing building which is located on the Bedford Highway. This building is well established in the area. The immediate neighbourhood contains a variety of uses and the conversion from commercial/office to a residential use is not viewed as out of character for the neighbourhood. The intent of a residential setback requirement is to ensure a separation distance between properties and provide open space. The basic concept is for larger buildings with multiple units to allow a buffer between the building itself and adjacent existing and potential land uses. This minimizes the impact of a large building and its proximity to the property line. This request before Council is to maintain the established side yards of the existing building. This is not seen as violating the intent of the land use by-law because the building exists and has an existing separation distance which is already well established and only marginally less than the current requirements. For these reasons the submission was not seen to 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 lot fabric within the notification area is varied and contains a mix of land uses, such as town houses, apartments and commercial uses. The proposed conversion is simply requesting to maintain an established setback from a pre-existing use. It was felt that the submission request was unique and not general to properties within 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 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 concern 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 B) 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
<i>"I am extremely concerned of the change of use to this property as the 58 Bedford Highway does not have its own water meter and this change of use is extremely detrimental to me"</i>	<p>The issue raised in the appeal is unrelated to the proximity of the building to the side property boundaries and does not impact any of the HRM Charter Criteria for variance approval.</p> <p>The appeal does not provide any detail regarding how the absence of a water meter on this property negatively impacts the use the of the adjacent land. Therefore, staff cannot comment on the applicability of this allegation.</p> <p>Concerns relative to presence or absence of water meters should be directed to Halifax Water. The appellant has indicated that this step has been taken. In the event of variance approval, a construction permit for the proposed conversion would require Halifax Water's review and approval. This should result in any irregularities in water service infrastructure being resolved at that time.</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 *HRM 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 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

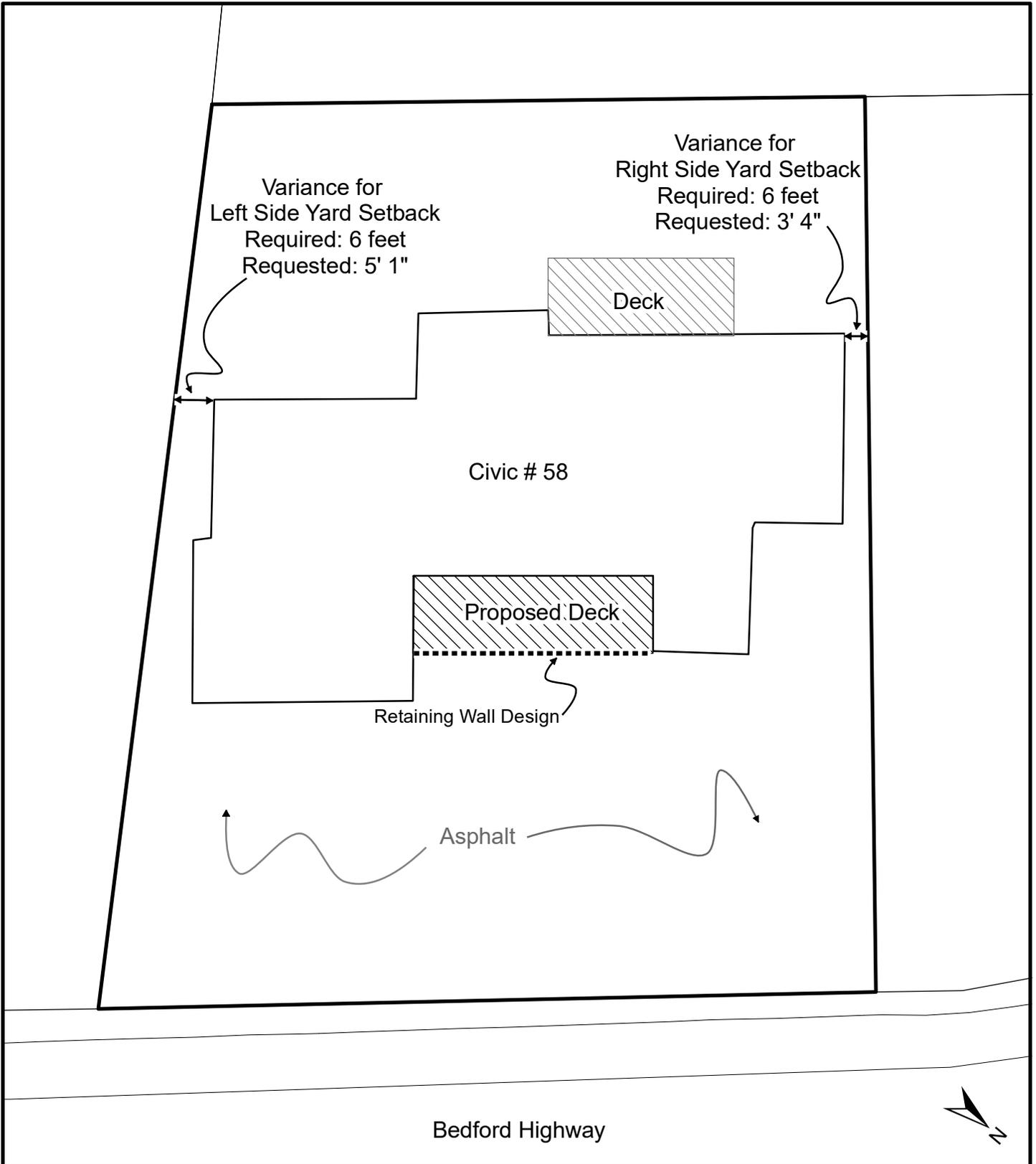
Attachment A: Variance Approval Notice
Attachment B: Letter of Appeal

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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

-Original Signed-

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



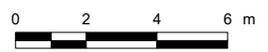
Map 2 - Site Plan

58 Bedford Highway,
Bedford



Subject Property

HALIFAX



Halifax Plan Area

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

Attachment A - Variance Approval Letter

April 5, 2019

[REDACTED]
P.O. Box [REDACTED]
Dartmouth, N.S. B2W 6B2

Dear [REDACTED]:

RE: Variance Application #222266 – 58 Bedford Highway, Halifax, PID 00294975

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: 58 Bedford Highway, Halifax
Project Proposal: Convert existing commercial building to a four residential unit plus commercial space.

	Land Use Requirements	Requested Variance
Minimum right side yard setback	6 feet	3' 4" feet Existing building setback
Minimum left side yard setback	6 feet	5' 1" feet Existing building setback

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 **April 23, 2019**.

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 Brenda Seymour, 902-490-3244.

Sincerely,

Sean Audas
Principal Planner/Development Officer

cc. Kevin Arjoon, Municipal Clerk
Councillor Russell Walker

HALIFAX

Halifax Regional Municipality
PO Box 1749, Halifax, Nova Scotia
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halifax.ca

Attachment B - Letter of Appeal

Stewart, April

From: [REDACTED]
Sent: April-17-19 6:04 PM
To: Office, Clerks
Cc:
Subject: [External Email] Variance application #222266 - 58 Bedford Highway

[This email has been received from an external person or system]

This is further to a letter received Monday April 15, 2019 in my mail dated April 5, 2019!

I wish to advise that I require time to forward this letter to my representative for their review and require to April 30, 2019.

If you do not extend me this deadline, please take this as an appeal to this variance.

I own the adjacent property at [REDACTED] Bedford Highway.

I am extremely concerned of the change of use to this property as the 58 Bedford Highway does not have its own water meter and this change of use is extremely detrimental to me.

I have requested my representative to contact both the adjacent owner and halifax water to inquire as to the possibility of dealing with this.

This is sent to you today as we are approaching a very long weekend of Good Friday and I'm sure the City also closes Monday after Easter.

Therefore time is of the essence.

[REDACTED]

