



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

**Item No. 10.2.1**  
**Halifax and West Community Council**  
**October 15, 2019**

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

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

**DATE:** July 9, 2019

**SUBJECT:** Case 22123: Appeal of Variance Refusal – 5527 Kane Place, Halifax

**ORIGIN**

Appeal of the Development Officer's decision to refuse 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 the approval of the variance.

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

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

## **BACKGROUND**

A variance request has been submitted for 5527 Kane Place to permit a shed in the side yard (Map 2). To facilitate the project, a variance has been requested to relax the side yard setback. The shed had been placed on the property prior to the application for the required permit. All other requirements of the Land Use By-law are met.

### **Site Details:**

#### **Zoning**

The property is located within the R-2 (General Residential) Zone of the Halifax Peninsula Land Use By-Law (LUB). 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</b>	4 feet	1 foot

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (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 recommendation contained within 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 that Community Council deny the appeal and uphold the decision of the Development Officer to refuse the variance.

## **DISCUSSION**

### **Development Officer’s Assessment of Variance Request:**

When hearing a variance appeal, Council may make any decision that the Development Officer could have made, within the context of 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 generally required to provide for separation distances from abutting property lines and to allow for maintenance of a structure without encroachment on neighbouring properties. Side setbacks also

provide for access to rear yards and provide passive, open space on a property. Section 4E of the LUB states that an accessory building may be located in the side and front yard, subject to the yard requirements applicable to main buildings. If the shed is located in the side yard, the setback from the side property line is a minimum of 4 feet. The reduction of the required setback from 4 feet to 1 foot is relatively substantial and does not provide for the ease of access to the rear yard, nor the separation from the adjacent property that the LUB intends.

It is the Development Officer's opinion that this proposal violates 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.

During review, it was found that the subject property is slightly larger than most of the properties within the notification area (Map 1). The average size of the lots within the neighborhood is 1,891 square feet and the subject property has an area of 2,282 square feet., The property is one of the larger lots within the notification area, providing it more opportunity than most to locate a shed in accordance with the LUB requirements. The shed could potentially be located within the rear yard.

The difficulty experienced is not general to 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.

The shed in question is less than the minimum size required for application of the building code and therefore the owner mistakenly presumed no permit was required. Notwithstanding the absence of code implications, the Land Use By-law does apply and a Development Permit is required to regulate accessory building location and height. This confusion led the owner to construct the shed without the required permits in a location not permitted by the Land Use By-Law. However, staff are satisfied this action was not intentional and therefore the difficulty here is not considered to be the result of intentional disregard for By-law requirements.

**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:

**Sample:**

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<i>In order to meet the 4-foot setback requirement, the shed could be moved closer to the front property line. This would make the driveway too short. Also, the shed would need to be rotated 180 degrees so that the sliding door on the house could be</i>	In order to meet minimum setback requirements, the shed must be 4' from the side line, if located in the front yard. A 15' setback is required from both Kane Place and Kane Back Lane. It is agreed that moving the shed forward on the lot may not be the best solutions, and that there is more opportunity for LUB compliance if the shed were to

<i>accessed. Reorienting the shed would result in the design and appearance no longer matching the house design and a more conspicuous result.</i>	be located to the rear of the dwelling, where no side yard setbacks are required.
<i>Moving the shed to either the left or right side of the back would result in the shed being elevated and it might slide into the neighbour's fence. A crane will be required in order to relocate the shed, and it would be a safety hazard because of the utility wire located on the house. In addition, the crane would need to drive around the block in order to access the rear of the property.</i>	The relocation of the shed would need to be graded properly. Construction of any similar accessory building would need to be of an acceptable standard to prevent it from negatively impacting neighbouring lots. Although a crane may be the preferred method to relocate the existing structure, other alternatives could be explored in order to safely relocate the shed.
<i>The shed was designed to be inconspicuous and match the house.</i>	This complementary design could be maintained while still complying with the minimum requirements of the LUB.

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts 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 refusal 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 refusal 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 approval of the variance. This would overturn the decision of the Development Officer.

**ATTACHMENTS**

Map 1: Notification Area  
Map 2: Site Plan

Attachment A: Building Elevations  
Attachment B: Variance Refusal Notice  
Attachment C: Letter of Appeal from Applicant

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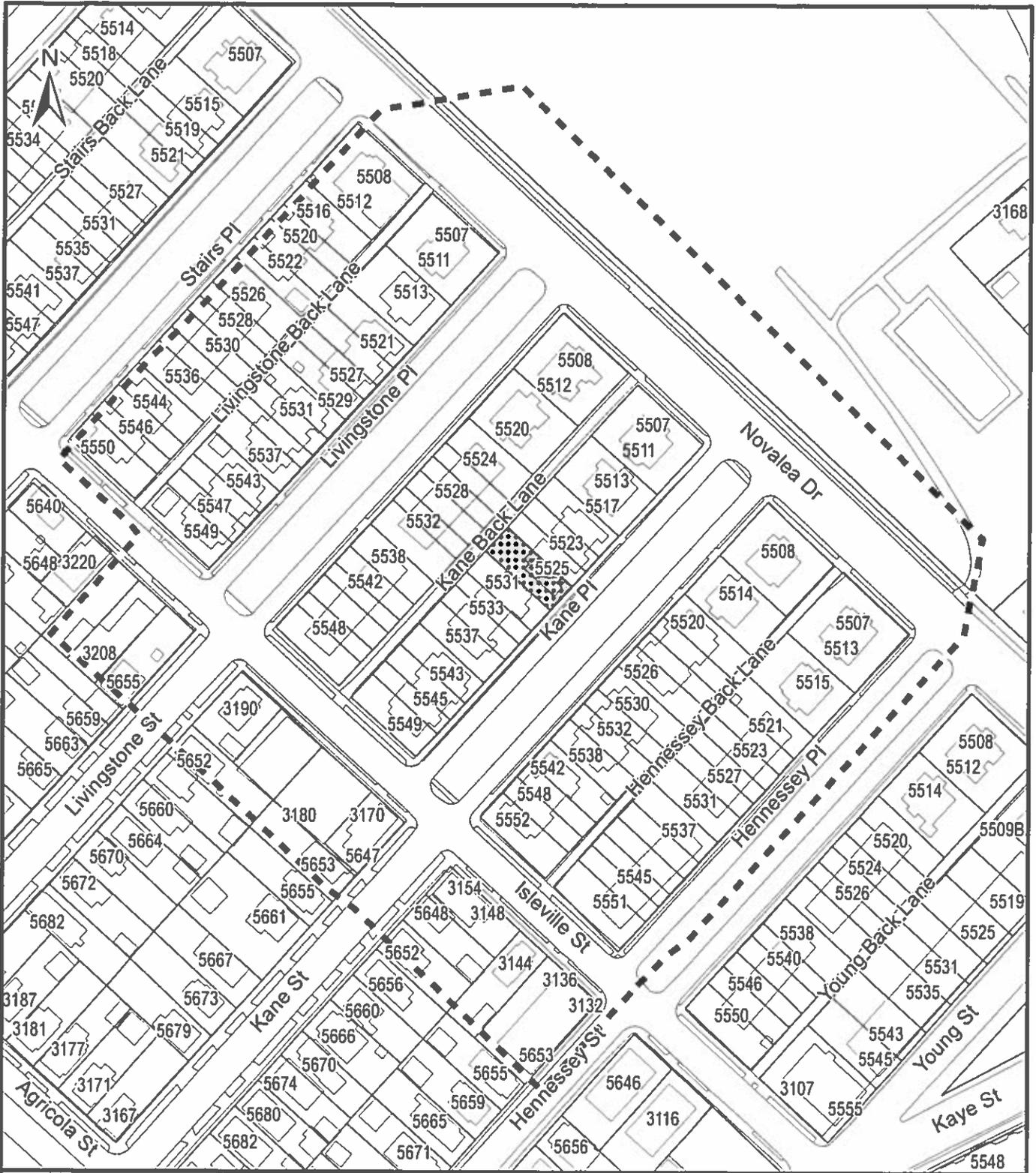
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Laura Walsh, Planner, 902.490.4462  
Rosemary MacNeil, Principal Planner/Development Officer, 902.490.4650

*-Original Signed-*

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

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**Map 1 - Notification Area**

5527 Kane Place  
Halifax



Subject Property



Notification Area

Halifax Plan Area

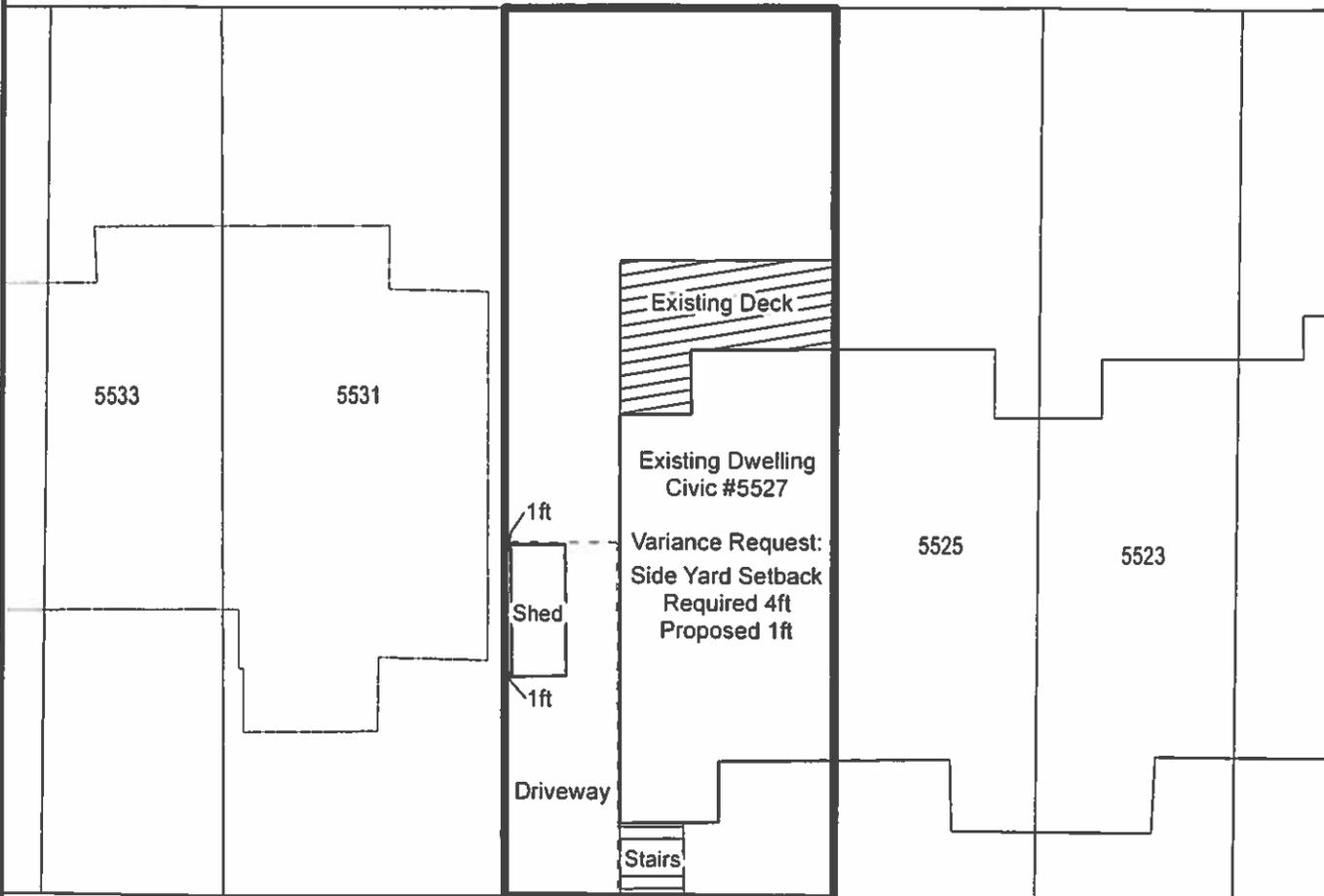
The accuracy of any representation on this plan is not guaranteed



**HALIFAX**



Kane Back Lane



Kane Pl

### Map 2 - Site Plan

5527 Kane Place  
Halifax



Subject Property

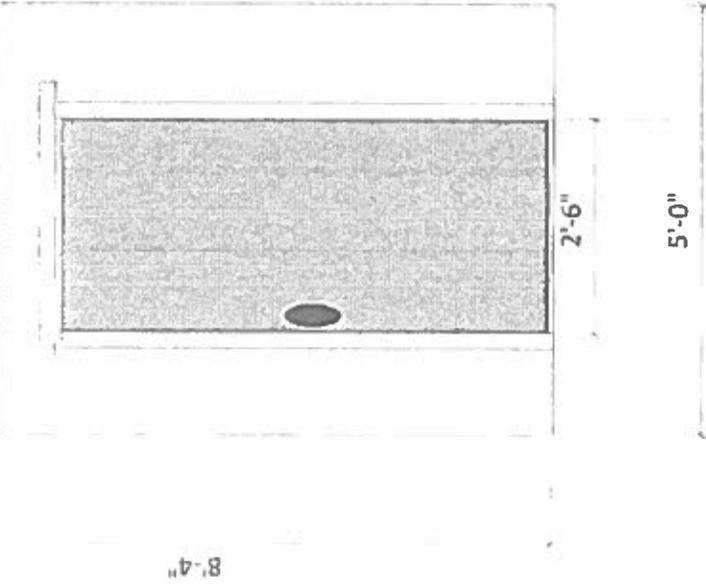
# HALIFAX

Halifax  
Plan Area



The accuracy of any representation on this plan is not guaranteed

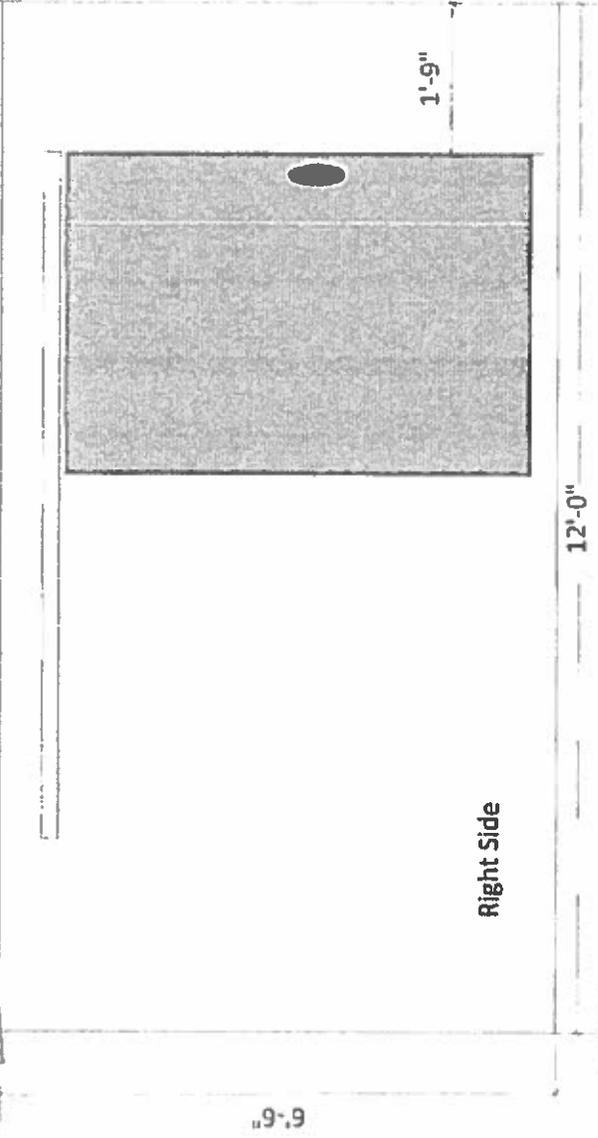
Attachment A- Building Elevations



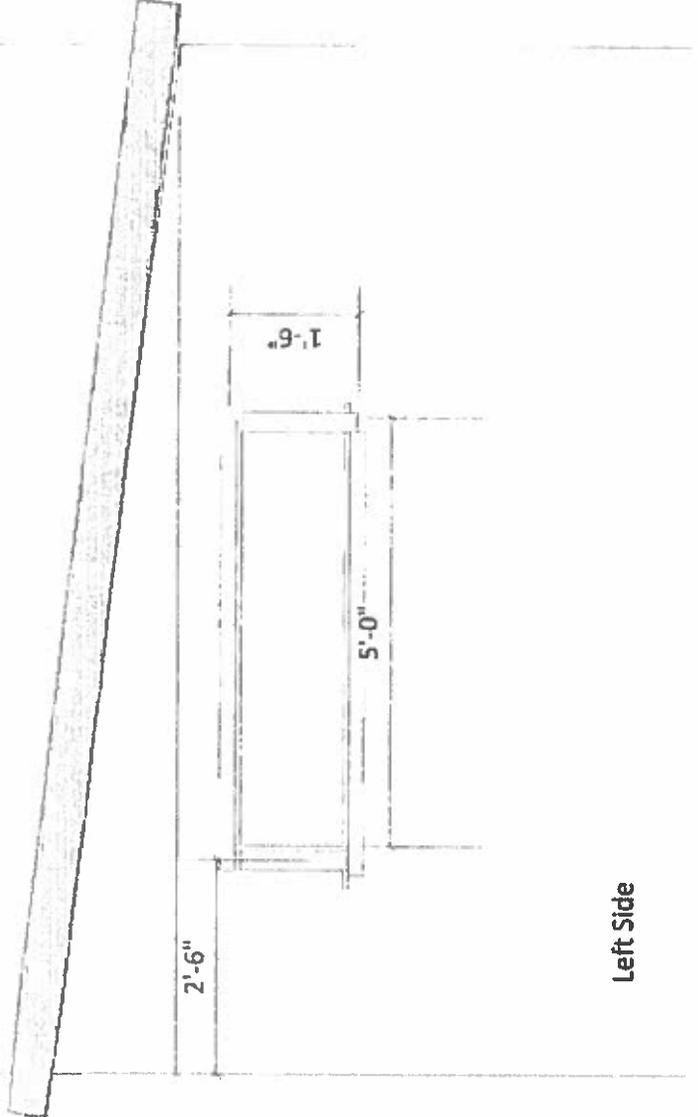
Front

Notes:

1. Roof: metal
2. Siding: wood shingles
3. Side door: sliding, barn door
4. Doors, wall colours match home door, wall



Right Side



Left Side

5527 Kane Place  
5 x 12 shed

Attachment B- Variance Refusal Notice



April 23, 2019

[Redacted address line]

Dear [Redacted name]

RE: VARIANCE APPLICATION #22123, 5527 KANE PLACE, PID #00135780

This will advise that I have refused your request for a variance from the requirements of the Halifax Peninsula Land Use Bylaw as follows:

Location: 5527 Kane Place, Halifax  
Project Proposal: To legalize a shed built without a permit

LUB Regulation	Requirement	Proposed
Side Yard Setback	4 feet	1 foot

Section 250(3) of the Halifax Regional Municipality Charter states that a variance may not be granted if:

- (a) the variance violates the intent of the land use bylaw,
- (b) the difficulty experienced is general to properties in the area; or
- (c) the difficulty experienced results from the intentional disregard for the requirements of the land use bylaw.

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (c) the difficulty experienced is general to the properties in the area.

Pursuant to Section 251 of the Halifax Regional Municipality Charter you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk  
Halifax Regional Municipality  
Development Services - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
clerks@halifax.ca

Your appeal must be filed on or before May 3, 2019.

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Page 2  
Variance # 22123  
April 23, 2019

If filing an appeal, be advised that your submission and appeal documents will form part of the public record, and will be posted on-line at [www.halifax.ca](http://www.halifax.ca). If you feel that information you consider to be personal is necessary for your appeal, please attach that as a separate document, clearly marked "PERSONAL". It will be provided to the committee and/or council members and staff, and will form part of the public record, but it will not be posted on-line. You will be contacted if there are any concerns.

If you have any questions or require clarification of any of the above, please call Laura Walsh, Planner 1 at (902) 490-4462.

Sincerely,

Rosemary MacNeil, Principal Planner / Development Officer  
Planning & Development – Land Use & Subdivision  
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk  
Councillor Lindell Smith

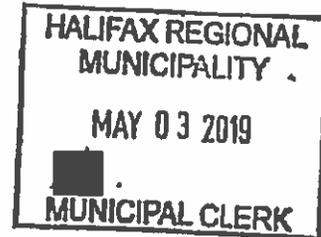
**Stewart, April**

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**From:** [REDACTED]  
**Sent:** May-03-19 2:26 PM  
**To:** Office, Clerks  
**Cc:** Walsh, Laura; Weagle, Jennifer  
**Subject:** [External Email] Variance Application #22123, 5527 Kane Place  
**Attachments:** Appeal 5527 Kane Place.pdf

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

to:  
Kevin Arjoon  
Municipal Clerk, Halifax Regional Municipality  
Development Services - Western Region



re:  
Variance Application #22123, 5527 Kane Pl, PID#00135780

Dear Mr. Arjoon,

I wish to appeal the decision by the Planning and Development – Land Use & Subdivision department to refuse my request for a variance to the side yard setback requirement for a shed. I have included information to support my appeal in the attached document.

If you have questions, or would like additional information, please let me know.

Thank-you for your consideration.

Cheers,

[REDACTED]

May 3, 2019

Kevin Arjoon  
Municipal Clerk  
Halifax Regional Municipality  
Development Services – Western Region  
PO Box 1749  
Halifax, NS B3J 3A5

Re: Variance Application #22123, 5527 Kane Place, PID #00135780

Dear Mr. Arjoon,

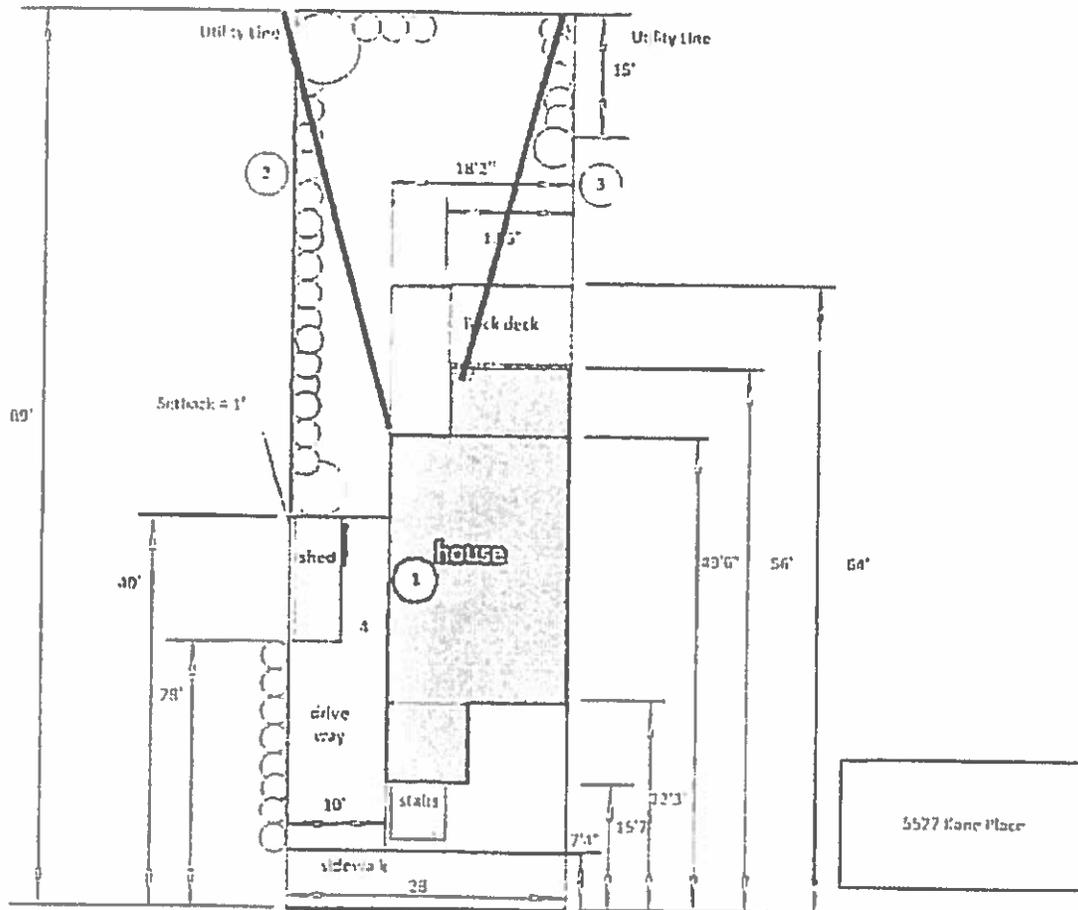
I wish to appeal the decision by the Planning and Development – Land Use & Subdivision department to refuse my request for a variance to the side yard setback requirement for a shed. I have included below a chronology of events and information to support my appeal.

#### Chronology of Events

September	2018	Prior to construction starting, discuss proposed shed location with neighbour who shares property line adjacent to shed location and receive consent to proceed.
September 15,	2018	Start construction.
October 25,	2018	Receive notice from City to stop work. Work stopped immediately. I acknowledge that construction started before a development permit was requested. I incorrectly assumed that a small shed (5'x12' = 60ft <sup>2</sup> ) did not require permits.
November 2,	2018	Apply for development permit.
November 21,	2018	Receive notice that development permit application would not be approved
December	2018	Prior to applying for variance, confirm with neighbour that shed's location and design is acceptable
December 20,	2018	Apply for variance
April 23,	2019	Variance application refused

## Supporting Information

In a letter dated April 23, the Development Officer wrote that the variance application does not merit approval because the difficulty experienced is general to properties in the area. I believe that there are issues unique to the property that prevent moving the shed so that it conforms to setback requirements. The plot plan below shows three alternative locations for the shed, marked 1, 2 and 3.



1. Move shed flush with side of house so that the 4' setback is respected.
  - This option requires the shed being moved closer to the front of the yard to allow access to the backyard behind the shed and between the shed and the mature tree. Moving the shed closer to the front yard would make the driveway too short for parking a car.
  - The shed would have to be rotated 180°, so that the sliding door is accessible. That would mean the shed's design would no longer match the house design: the roof sloop would be opposite to the home, the short front side of the shed would face the backyard, the taller back of the shed would face the street and the blue "front door" that matches the home would face the back of the property.
  - The result would be more conspicuous as a result of this option.

## 2. Move shed to left side of backyard

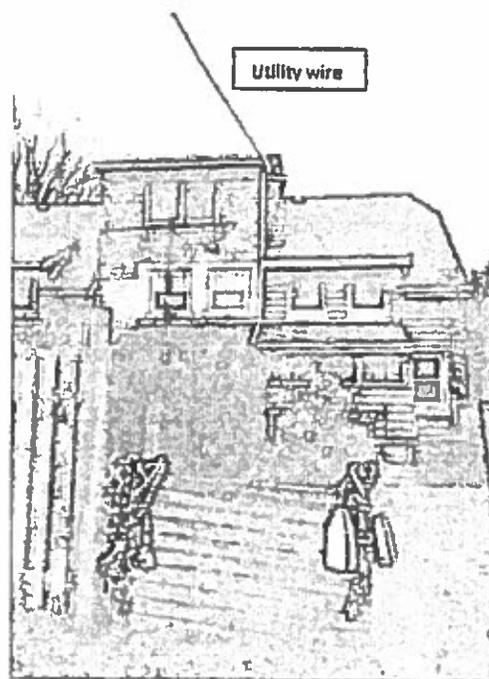
- The left side of the backyard is elevated when compared to the neighbour's yard. Therefore, if the shed were positioned at or near the property line, the weight of the shed would cause the earth and shed to slide into the neighbour's fence.
- A truck with a crane would be required to move the shed into the backyard because of the weight of the shed and that there is no room to pass the shed between the home and the mature tree at the back of the driveway. A truck would need to lift the shed, drive around the block to the back of the property and then lift the shed into place at its new location.
- There is a utility wire running from the corner of the home to the back, left corner of the property. It would be a safety hazard to attempt to lift the shed off a truck and place it under the utility wire.

## 3. Move shed to right side of backyard

- As described above, a truck with a crane would be required to move the shed into the backyard because of the weight of the shed and that there is no room to pass the shed between the home and the tree at the back of the driveway. A truck would need to lift the shed, drive around the block to the back of the property and then lift the shed into place at its new location.
- There is a utility wire running from the corner of the home to the back, right corner of the property. It would be a safety hazard to attempt to lift the shed off a truck and place it under the utility wire.



Location 2: left side of backyard



Location 3: right side of backyard

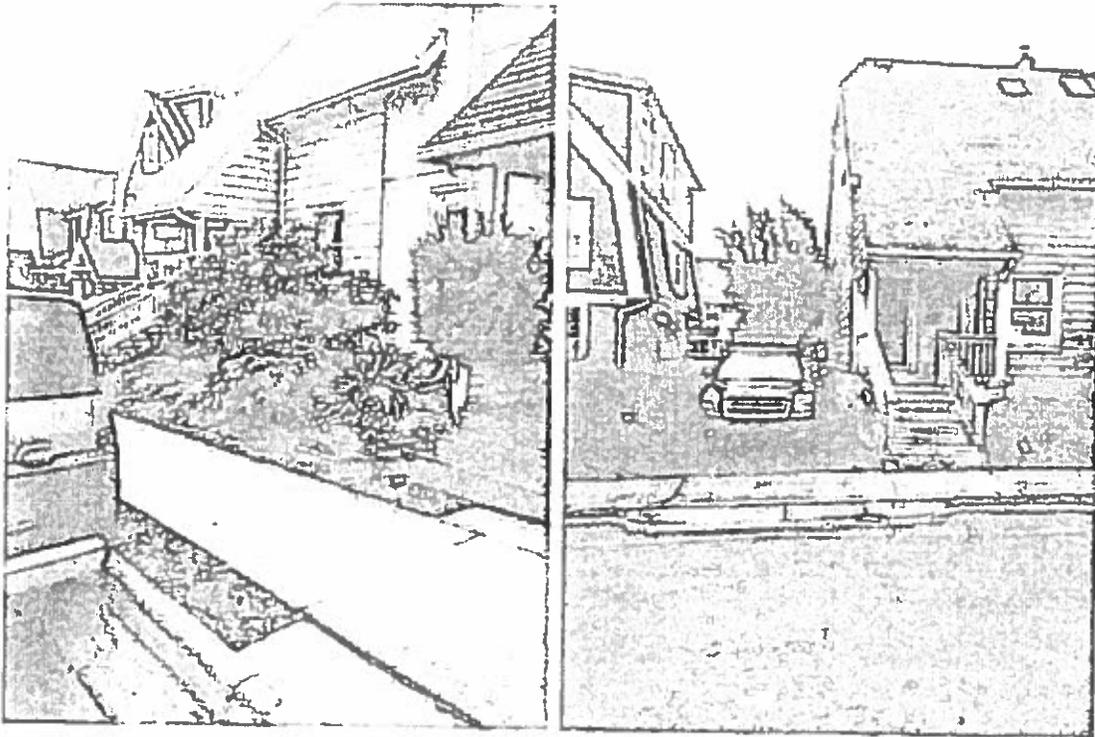
The current location of the shed is preferred because its primary purpose is to securely store bicycles. The family can use the driveway to come and go rather than use the back garden.

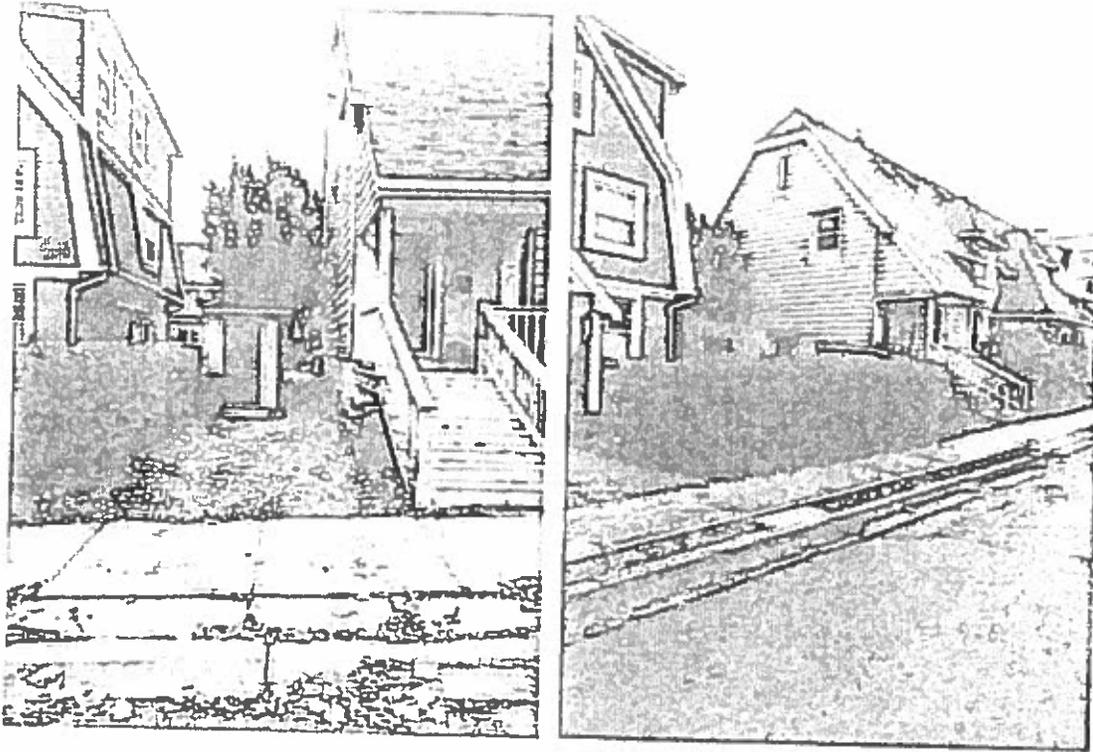
Prior to construction and during the permit and variance review process I consulted with our neighbour who shares the property line in question to ensure that they had no objections to the shed.

The shed was designed to be inconspicuous and to have a consistent look and feel to the home:

- It is small (5'x12', 60ft<sup>2</sup>)
- The mature tree behind the shed and the hedge beside the shed help the shed blend into the property and make it less obvious from the road. The shed is mostly out of site when the car is parked in the driveway.
- The roof slope is consistent with the home's roof slope.
- The front of the shed has a door (not functional) to match the home.
- The colours of the roof, walls and door match the home.

The following photos show what a passerby sees when traveling down the street.





**If you have questions or require additional information, please let me know.**

**Thank-you for your consideration.**

**Sincerely,**

**[Redacted Signature]**