

HALIFAX

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

Item No. 10.2.1
Regional Community Council
August 30, 2021

TO: Chair and Members of Regional Centre Community Council

 **(Original Signed)**

SUBMITTED BY:

Erin MacIntyre, Director, Current Planning

DATE: August 18, 2021

SUBJECT: Case 23339: Appeal of Variance Approval – 10 Lancaster Drive, Dartmouth

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 Regional Centre Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 10 Lancaster Drive to permit the construction of a church which does not meet the transition line setback requirement of the Regional Centre Land Use By-law (Map 3).

Site Details:

Zoning

The property zoned R-1 (Single Family Residential) Zone and HR-1 (High Order Residential) Zone under the Dartmouth and Regional Centre Land Use By-Laws, respectively. The relevant requirements of the LUB and the related variance request is as identified below:

	Zone Requirement	Variance Requested
Transition Line setback	6 metres	0 metres

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment A). Two property owners within the 100 metre notification area have appealed this decision (Attachment B) and the matter is now before Regional 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 a 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?

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The lot is within two land use by-laws

(Dartmouth and Regional). The transition line setbacks are intended to support a built form that reflects the character and surrounding context, and allows for a transition to adjacent low-rise residential neighbourhoods. In the subject context, the zoning boundary does not follow a property line, providing transition between two abutting properties, but lies within the property itself.

The applicant is requesting to construct the building closer than required to the transition line and where the transition line is intended to provide separation from abutting properties, it was not felt that the request violated 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 transition line is unusual, as it does not follow property lines. The location of the transition line is shown on Map 3, following a flag shape where the lot abuts Lancaster Drive. This situation was felt to be unique and 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.

The majority of the building is outside the transition line setback and a permit has been issued for work outside this area. Until this matter has been dealt with the permit issued does not authorize work within the transition line setback.

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:

Appellant's Appeal Comments	Staff Response
<i>The church was proposed as fitting in and supporting this neighbourhood, and in order to live up to this, it is expected to abide by the current rules and environment. We live here because it supports our required standards, aesthetics, and the emotional wellbeing of ourselves and our families. Changing the setback of properties will immensely change this. If we wanted to live on top of each other we would choose to live in a more downtown location.</i>	The transition line on this lot is approximately 15m from the front lot line, abutting Lancaster Drive. The proposed location of the church is approximately 12m from the front lot line, and Lancaster Drive. This results in the church currently being approximately 3m over the transition line. If the 6m transition line is applied, the location of the church would need to be moved back approximately 9m, resulting in the church being closer to more dwellings than it would if the variance were approved.

<i>It's already a travesty that we've lost such a lovely area of nature that preceded entering the neighbourhood with the building of the church in the first place. At the community meeting a couple of years ago, the representatives of the church assured us that they would be planting trees and making sure the church fit with the nature of the area. This would not be possible if the church, or anyone, was allowed to build right up to the property lines. We chose this area because of the nature on our doorstep and that it's not overly developed..</i>	The retention of trees isn't a consideration relative to the variance request.
<i>This change would certainly de-value properties as well as raise concerns for current and future residents that at any point a large structure could spring up on their property line and overshadow the tranquillity and privacy of their homes.</i>	As outlined in Map 3, the lot in question is zoned R-1 under the Dartmouth Land Use Bylaw, with only a small segment along Lancaster Drive being zoned HR-1 under the Halifax Regional Centre Land Use Bylaw. The transition line reduction request is relative to building as it faces Lancaster Drive, which will not impact the setbacks of the building from nearby residential buildings.
<i>The variance from 6 meters to 0 meters should not have been needed, we question how such a big construction project can just go ahead and adjust the minimum requirement of 6 meters destroying more of the trees that were there prior to construction. We feel that green space is important, even if it is just 6 meters.</i>	The applicant for this proposed building is permitted to make this variance request, enable through <i>The Halifax Regional Municipality Charter</i> s. 250(1)(b), relating to yard requirements. The request has been reviewed and in the opinion of the Development Officer, the transition line within the lot is a unique constraint that does not allow the building to be built within the area of the lot that would otherwise be an acceptable location, based on all other Bylaw requirements for the zone.

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 request. The HRM cost associated with processing this application can be accommodated with the approved 2020/21 operating budget for Cost Centre C420, Land Development and Subdivision.

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 appellants, the applicant, any

assessed owners within 100 metres of the property, 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. The would uphold the Development Officer's decision and this is staff's recommendation.
2. Approval of the appeal motion would result in refusal of the variance. This would overturn the decision of the Development Officer.

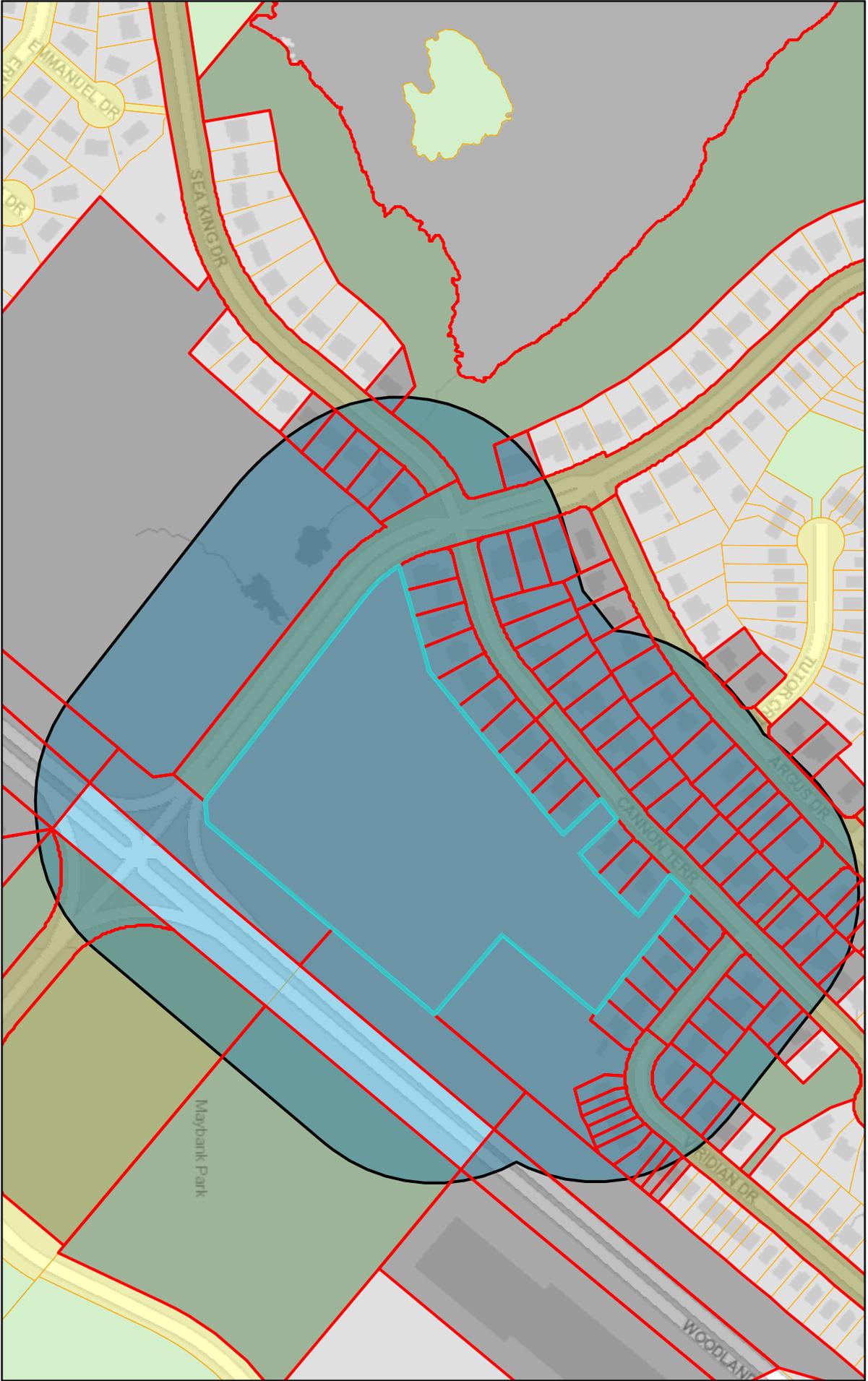
ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Map 3:	Zoning and Transition Lines
Attachment A:	Variance Approval Letter
Attachment B:	Letters 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.

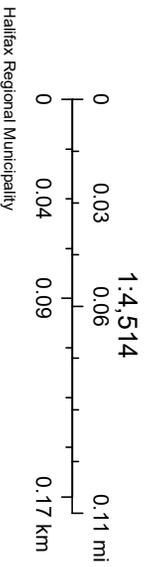
Report Prepared by: Matthew Conlin, Planner 1, 902.719.9457
Sean Audas, Development Officer, 902.476.9553

MAP 1



2/4/2021, 12:07:19 PM

- Community Boundaries
- Parcel
- HRM Owned Land by Classification
- Open Space Land
- Right-of-Way Land
- HRM/NSTIR Exchange Boundary
- Polling District



Map 2 - Site Plan



PARKING - PLACES OF WORSHIP

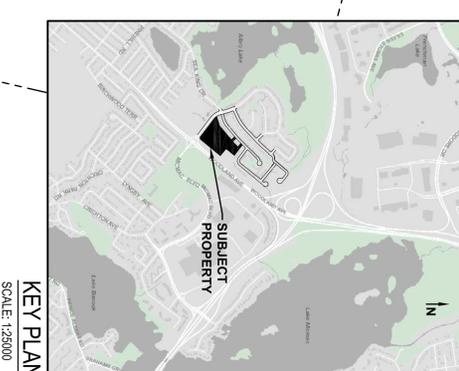
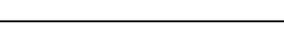
REQUIRED SPACES AT 0.2 PER SEAT =	60.6 SPACES
REQUIRED SPACES AT 10/100M ² =	50.6 SPACES
TOTAL REQUIRED =	61 SPACES
TOTAL PROVIDED =	150 SPACES
BARRIER FREE REQUIRED =	3 SPACES
BARRIER FREE PROVIDED =	5 SPACES

BICYCLE PARKING

INSTITUTIONAL 1 635 SQ M @ 1/650 =	3.3 SPACES
50% CLASS A =	1.7 SPACES
50% CLASS B =	1.6 SPACES
TOTAL PROVIDED	2 SPACES
CLASS A =	4 SPACES
CLASS B =	4 SPACES

LEGEND

- CONCRETE CURB
- CONCRETE PAD OR SIDEWALK
- ASPHALT
- TOPSOIL AND GRASS (HIGHWAY MIX)
- TREELINE
- PROPERTY LINE
- WATER LINE
- SANITARY LINE
- STORM LINE
- NEW TREE
- PROPOSED FINISH GRADE
- EXISTING CONTOUR

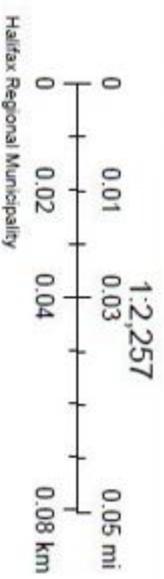


Map 3 - Zoning and Transition Line



8/12/2021, 1:17:06 PM

- Zoning Boundaries
- Development Agreement
- Parcel



This map was produced for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. Date of map is not indicative of the date of data creation.
Halifax Regional Municipality

Attachment A- Variance Approval Letter

February 12, 2021

Dear Sir or Madam:

RE: VARIANCE APPLICATION # 23339, 10 LANCASTER DR., DARTMOUTH, NS. PID 4113887

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 Regional Centre Land Use Bylaw** as follows:

Location: 10 Lancaster Dr., Dartmouth, N.S. PID # 4113887
Project Proposal: Reducing the minimum setback for a building from a Transition Line

LUB Regulation	Requirement	Requested Variance
Minimum setback from a Transition Line	6 metres	0 metres

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, by March 1, 2021 and address your appeal to:

Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, N.S. B3J 3A5
clerks@halifax.ca

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. 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.

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance. If you have any questions or require clarification of any of the above, please contact **Matthew Conlin – Planner I at (902) 719-9457**.

Yours truly,



Sean Audas, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Iain MacLean – Municipal Clerk
Councilor Sam Austin – District 5

HALIFAX

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

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Attachment B - Letters of Appeal



February 19, 2021

Dear sir or madam,

I am writing to file my appeal re: Variance Application #23339, 10 Lancaster Dr, Dartmouth, NS. PID 41113887. I do not support this proposed change. This change does not reflect the nature and current living environment that currently exists in our neighbourhood and one of the main reasons that we, as its residents, chose to live here.

The church was proposed as fitting in and supporting this neighbourhood, and in order to live up to this, it is expected to abide by the current rules and environment. We live here because it supports our required standards, aesthetics, and the emotional wellbeing of ourselves and our families. Changing the setback of properties will immensely change this. If we wanted to live on top of each other we would choose to live in a more downtown location. That is not the case. We greatly value the considered space of our neighbourhood and how it supports our lifestyles. The church must also share this need if it's to truly be part of our community.

It's already a travesty that we've lost such a lovely area of nature that preceded entering the neighbourhood with the building of the church in the first place. At the community meeting a couple of years ago, the representatives of the church assured us that they would be planting trees and making sure the church fit with the nature of the area. This would not be possible if the church, or anyone, was allowed to build right up to the property lines. We chose this area because of the nature on our doorstep and that it's not overly developed.

Making this adjustment would cause us to look elsewhere to settle and we would be looking to the church and municipality to compensation for the loss of value to our home. This change would certainly de-value properties as well as raise concerns for current and future residents that at any point a large structure could spring up on their property line and overshadow the tranquillity and privacy of their homes. None of us want to feel overlooked and this change to the regulations opens the door to that.

Many thanks

Craig Edis Joanna Sajdak

March 1, 2021

Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, Nova Scotia

To whom it may concern,

We are writing to you today regarding the variance approval # 23339 for the construction of a new church at 10 Lancaster Drive, Dartmouth (PID # 41113887).

We reside at [REDACTED], [REDACTED]. We are questioning why we just received notification of the variance approval dated February 12, 2021, since construction at this site began in September 2020. It just seems so late to advise us on this change to reduce the minimum setback from the transition line.

We wish to appeal the approval of the variance. We question why this variance was needed with the amount of land the church owns and why we weren't notified of this application before construction began. The variance from 6 meters to 0 meters should not have been needed, we question how such a big construction project can just go ahead and adjust the minimum requirement of 6 meters destroying more of the trees that were there prior to construction. We feel that green space is important, even if it is just 6 meters.

We realize that the walls of this building are up and there is probably no point in speaking out against this variance since we know it will not be changed, but we would still like to voice our disapproval even if it is too late to take our concerns into consideration.

Thank you,
Josette McCauley and Eric Thrush