



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

Item No. 10.2.1
North West Community Council
January 17, 2022

TO: Chair and Members of North West Community Council

SUBMITTED BY: - Original Signed -
Erin MacIntyre, Director, Current Planning

DATE: December 29, 2021

SUBJECT: Case 23496: Appeal of Variance Refusal – 10 Shipyard Road, Bedford

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; or
(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 approval of the variance.

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

Staff recommend that North West Community Council deny the appeal.

BACKGROUND

A permit was issued in June of 2004 to replace an existing boathouse that had been destroyed by Hurricane Juan. The existing slab was used to support the reconstruction of the boathouse in the same location on the property. The proposal subject to this variance request is to change the use of the building from a boathouse to a dwelling. The zoning requirements for a single unit dwelling differ from those that apply to a boathouse and need to be met to permit the alteration to convert the building to a single unit dwelling.

Site Details:

Zoning

The property zoned RSU (Residential Single Unit) Zone for the Bedford Land Use By-Law (LUB). The relevant requirements of the LUB and the related variance request are as identified below:

LUB Regulations	Zone Requirement	Variance Requested
Minimum Right Side Setback	8 feet	3 inches
Minimum Left Side Setback	8 feet	4 feet

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (Attachment A). The applicant has appealed this decision (Attachment B). Property owners within the notification area (Map 1) have been notified of the appeal of the refusal and the matter is now before North 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 deny 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 RSU zone in the Bedford Land Use By-law requires that single unit dwellings be set back at least 8 feet from both side property lines, and that accessory buildings (including boathouses) have at least 4 foot side setbacks. The existing building is non-conforming as it is currently sited on the property, meaning that it pre-dates the currently regulations. The LUB disallows a boathouse from being used as a dwelling. Setbacks for single unit dwellings are greater than those for dwellings in order provide separation from an inhabited building, and for access and safety from abutting properties. Accessory buildings require a lesser standard for setbacks and have a corresponding greater restriction on area and height. The variance request presents a substantial reduction in the side yard setbacks from the established requirements for an inhabited dwelling. The requested reduction was determined 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 in question is 1205 square feet in size, which is less than the By-law requires. Many of the lots within the neighbourhood meet or exceed the required lot area. This lot is unique for the area because of the existing boathouse use. A change in use from a boathouse to a dwelling requires a greater standard for setbacks. Where this lot is undersized and narrow, it is recognized that the setbacks are difficult to achieve. Due to its size, the difficulty presented was determined not to be 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. This is not the case in this instance as the applicant applied for the variance prior to conducting any construction on the property. There is no intentional disregard as the owner has also made the investment in applying for a subdivision to achieve the required lot coverage and rear yard 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 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
It is our understanding the decision made by the Development Officer imposes a unique and unfair restriction that prevents equitable residential development of 10 Shipyard Road. The decision to maintain side yard setbacks of 8 feet imposes a restriction that does not support the intent of the land use bylaw in providing fair and equitable development opportunities to Bedford residents.	The RSU Zone requirements are standards set by the community and have been established since the By-law's adoption in 1996. The minimum setback standard of the By-law applies to all single unit dwellings in the RSU zone.

10 Shipyard Road is a uniquely narrow property. When side yard setbacks are maintained the property can only accommodate a residence that is a maximum 8 feet wide. It is our understanding the resultant building width after maintaining 8 feet side yard setbacks does not fulfill the intent of the land use bylaw.	The existing lot is undersized and has an established boathouse on the property. The request is to change the use of the existing building, in which case, the LUB requires a greater setback.
The property has an existing boathouse/summer cottage that is located 3 inches from the left property line and 9 feet from the right property line. We are asking council to grant permission to maintain the existing 3 inch setback on the left property line, and build within 4 feet of the right property line.	The regulations of the Bedford Land Use By-law provides for the change in use, subject to meeting increased setback requirements, necessitating the variance request.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was denied 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 request. The HRM cost associated with processing this application can be accommodated with the approved 2021/22 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 metres of the variance 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 denial 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: Refusal Letter
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: Connie Sexton, Planner 1, 902.719.8976 and Andrew Faulkner, Development Officer, 902.476.2982

Shipyards Rd

Civic # 10
Proposed 2
Story Dwelling

8

3in

4f

Variance Request
Side Yard Setbacks

Required 8ft
Proposed 3in



Map 2 - Site Plan

10 Shipyards Road,
Bedford

HALIFAX

5 3 0 5 10
Feet



Subject Property

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

ATTACHMENT A

July 13, 2021

Mr. Micah Edelstein
[REDACTED]

SENT VIA E-MAIL - [REDACTED]

Dear Mr. Edelstein:

RE: VARIANCE APPLICATION #23496 at 10 Shipyard Road, Bedford, PID # 00431098

This will advise that I have refused your request for a variance from the requirements of the Bedford Land Use By-law as follows:

Location: 10 Shipyard Road, Bedford
Project Proposal: To construct a single unit dwelling

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	8 feet	4 feet
Minimum Right Side Setback	8 feet	3 inches

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:

- (a) the variance violates the intent of the land use by-law,

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 **JULY 23, 2021**

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.

If you have any questions or require clarification of any of the above, please call Connie Sexton at 902-719-876

Sincerely,



Andrew Faulkner, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Iain MacLean – Municipal Clerk
Councillor Tim Outhit

Attachment B

July 22, 2021

Dear Municipal Clerk

On behalf of Sean Christie, owner of 10 Shipyard Road, I am appealing the decision of the development Officer to the Municipal Council.

Grounds of the Appeal

It is our understanding the decision made by the Development Officer imposes a unique and unfair restriction that prevents equitable residential development of 10 shipyard Road. The decision to maintain side yard set backs of 8 feet imposes a restriction that does not support the intent of the land use bylaw in providing fair and equitable development opportunities to Bedford residents.

10 Shipyard Road is a uniquely narrow property. When side yard sets back are maintained the property can only accommodate a residence that is a maximum 8 feet wide. It is our understanding the resultant building width after maintaining 8 feet side yard setbacks does not fulfill the intent of the land use bylaw.

We look forward to making our appeal to council for consideration to allow Sean Christie to build a new residence within 4" of the left property line, and within 4 feet of the right property line.

The property has an existing boathouse/summer cottage that is located 4" from the left property line and 9 feet from the right property line.

We are asking council to grant permission to maintain the existing 4" setback on the left property line, and build within 4 feet of the right property line.

Sincerely
Micah Edelstein

