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**Case 23398
Variance Hearing
52 Shalimar Cres, Cole
Harbour**

Harbour East- Marine Drive
Community Council

13 July 2022

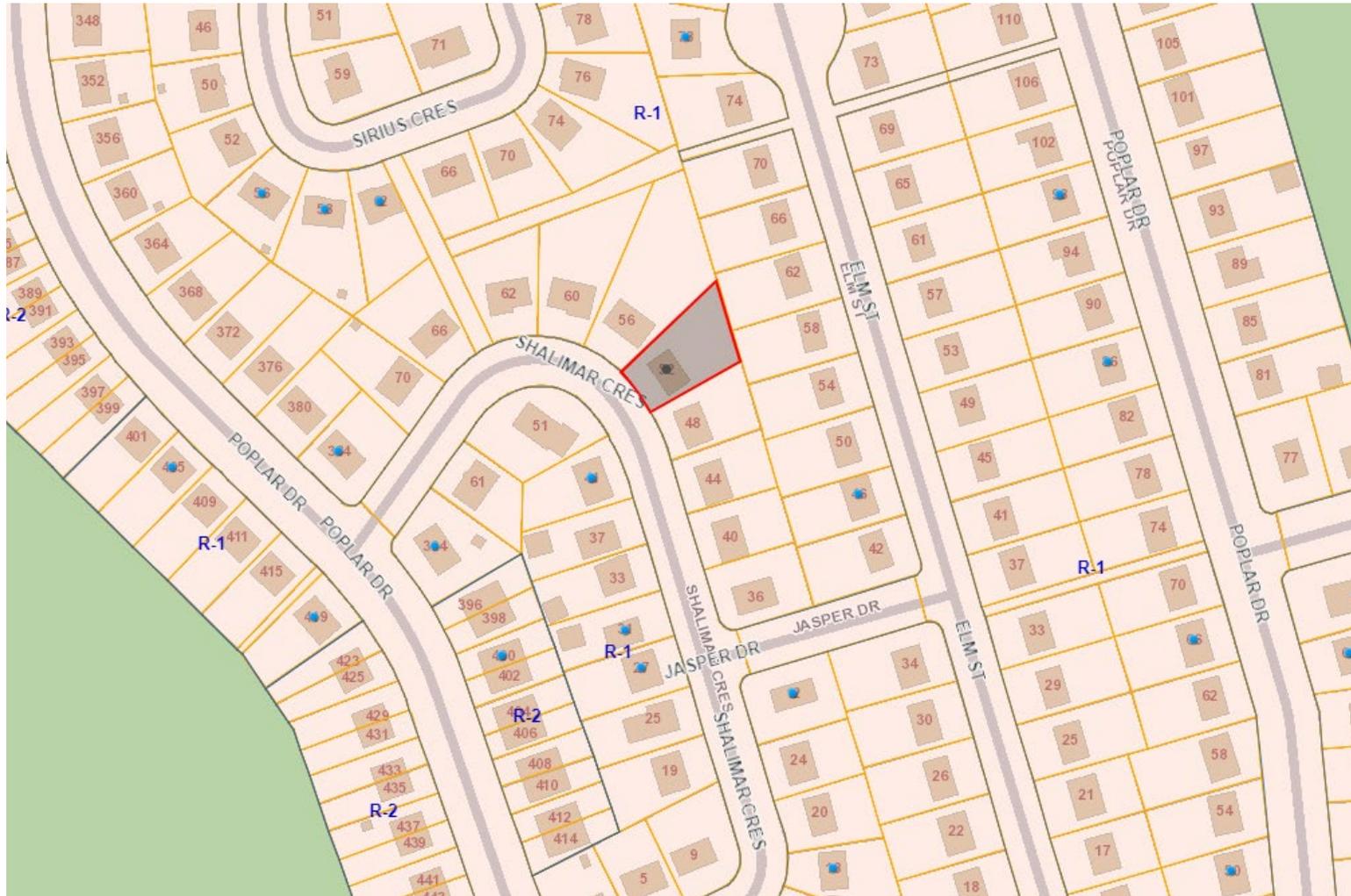
Proposal

- A variance request has been submitted for 52 Shalimar Crescent in Cole Harbour to allow a deck, which was constructed without a permit, to remain closer to the right side property boundary than is permitted by the Land Use By-law.

Background

- This property is zoned R-1 (Single Unit Dwelling) in the Cole Harbour / Westphal Land Use By-Law. Staff were made aware of a deck being constructed without a permit and the matter was referred to Municipal Compliance and Building staff.
- Two orders were posted at the property between June and August of 2019 requiring that the owner cease construction until a building permit was obtained.
- A permit application was submitted for the deck and refused, as documents requested to confirm setbacks were not received. A Notice to Comply was issued by the Compliance Officer in 2021.
- The deck was completed without a permit.

Site Location



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Aerial View of 52 Shalimar Cres.



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Previous Site Photographs

- Property conditions in 2018. The deck had not been constructed.



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Current Site Photographs

- Completed deck in right side yard, as viewed from the front and rear.

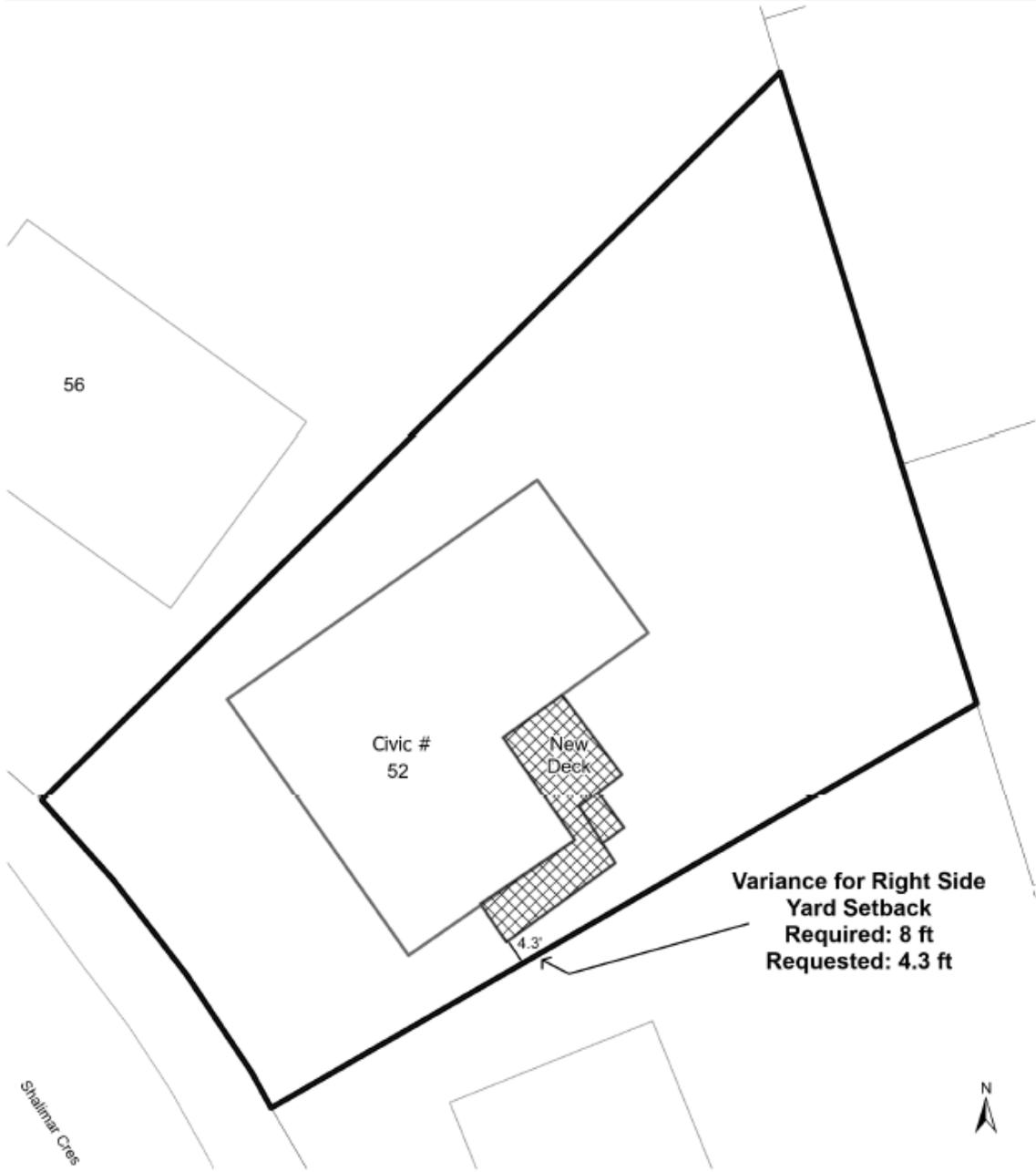


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Variance Request

	Zone Requirement	Variance Requested
Minimum Side Yard	8ft	4.3ft

Site Plan



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Variance Criteria

250 (3) A variance may not be granted where

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

Does the proposal violate the intent of the land use by-law?

- The intent of setbacks in the LUB is to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, privacy, and aesthetics.
- The proposed 4.3ft setback is approximately half of the required setback distance and considerably reduces the separation intended to exist between the dwelling and the shared property line.
- This proposal violates the intent of the Land Use By-Law.

Is the difficulty experienced general to properties in the area?

- Properties in this neighbourhood were created through the same plan of subdivision and are generally consistent in size and dwelling location on each lot.
- There are no site constraint or geographical factors that set this property apart from properties in the area. The 8 foot side yard requirement is typical for the R-1 zoning of the area and appears to have been met at the subject property prior to the construction of the deck.
- The difficulty experienced is general to properties in the area.

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Is the difficulty experienced the result of an intentional disregard for the requirements of the LUB?

- The applicant continued building the deck even after being informed of the requirement to obtain a permit and completed construction of the deck in violation of two orders from Municipal Building Officials.
- Subsequent charges related to the unauthorized construction and completion of this deck without a permit are presently before the Court. The property owner has pled guilty in relation to these charges.
- The difficulty experienced results from intentional disregard for the LUB requirements.

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Alternatives

- Council may overturn the decision of the Development Officer and allow the appeal, resulting in approval of the Variance.

Or

- Council may uphold the Development Officer's decision and deny the appeal, resulting in refusal of the Variance. **This is the recommended alternative.**

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