



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

**Item No. 10.2.1**  
**North West Community Council**  
**July 18, 2022**

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

- Original Signed -

**SUBMITTED BY:** \_\_\_\_\_  
Erin MacIntyre, Director, Development Services

**DATE:** July 6, 2022

**SUBJECT:** **Case 24176: Appeal of Variance Refusal – 1236 Beaver Bank Road, Beaver Bank**

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**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's approval of the appeal will result in approval of the variance.

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

Staff recommend that North West Community Council deny the appeal.

## **BACKGROUND**

A variance request has been submitted for 1236 Beaver Bank Road to allow for the location of a shipping container within the required side yard setback. The shipping container is currently being used as a refrigerator/freezer accessory to an existing restaurant. (Map 2 and Attachment A).

In spring of 2020, staff were made aware of the placement of a shipping container on the subject property without the required permit, which resulted in a land use compliance investigation. Due to Covid restrictions in place at the time, a notice to comply was not issued until June of 2021. In accordance with the requirements of the notice, the property owner submitted a development permit application on July 30, 2021. Review of the development permit application determined that the amount of available space between the side property line and the main building was not sufficient to locate the structure while meeting the required side setback and separation distance. A variance to reduce these requirements to accommodate the existing shipping container was submitted on March 22, 2022.

The variance application requested a reduction in the required 8 foot side yard setback to 1.5 feet and a reduction in the required 12 foot separation between buildings to 6 feet. This variance application was refused by the Development Officer on May 5, 2022. A site inspection later determined that a variance to reduce the building separation distance to 5 feet was required, and the requested variance was amended accordingly.

Notwithstanding the reductions to the side yard setback and separation distance, the accessory structure meets all other requirements of the Beaver Bank, Hammonds Plains, and Upper Sackville Land Use By-law.

It is of note that the adjacent property that would be most impacted by the variance request, and which shares the common side property line with the property subject to the variance, was purchased by the applicant in July of 2020.

### **Site Details:**

#### **Zoning**

The property is in the C-4 (Highway Commercial) Zone of the Beaver Bank, Hammonds Plains, and Upper Sackville Land Use By-law (LUB). The requirements of the LUB and the related variance request are identified below:

<b>LUB Regulation</b>	<b>Requirement</b>	<b>Requested Variance</b>
<b>Minimum Side Yard Setback for an Accessory Structure</b>	8 ft.	1.5 ft.
<b>Minimum Separation Distance for an Accessory Structure</b>	12 ft.	5 ft.

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment B). The applicant has subsequently appealed this (Attachment C) and the matter is now before North West Community Council for decision. Notice of the appeal has been mailed to property owners within the 100m notification area as show on Map 1.

#### **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 recommends that Community Council deny the appeal and uphold the decision of the Development Officer to refuse the request for 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?**

The intent of a separation distance is to maintain area for access between structures and for aesthetics. At 5 feet there remains enough room for access and to conduct maintenance. Aesthetically, the relative scale of the shipping container to the main building is such that this separation distance is not deemed to be contrary to the intent of the By-law.

Setbacks are intended to provide adequate separation from neighbouring structures and allow for privacy, access around the building and a consistent visual makeup relative to neighbouring properties. The intent of the side yard setback is also to ensure that the placement of a structure or building does not impede the enjoyment of a neighboring property and provides an adequate buffer between properties. At 1.5 feet, the location of the shipping container is very near to the side property line. As a result, the location of the shipping container essentially eliminates the buffer, and results in a structure very close to the neighbouring residentially zoned property.

It is the Development Officer's determination that the setback variance violates the intent of the Land Use By-law.

#### **2. Is the difficulty experienced general to properties in the area?**

This property is one of two commercially zoned properties within the neighborhood, the other being an adjacent pumping station owned and operated by Halifax Water (HW). The configuration of the property significantly limits the ability to place an accessory structure that is compliant with setback and separation requirements. Given that the specific conditions of the property are unique, the Development Officer has determined that 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 shipping container was placed on the property without the required development permit. There is nothing to suggest that this was a result of an intentional disregard for the requirements of the Land Use By-law, but rather stemmed from lack of awareness that a development permit is required to locate a shipping container on the property. Since being made aware of the requirements the applicant has made the required development permit and variance applications in an attempt to bring the property into compliance.

Intentional disregard of By-law requirements was not a consideration 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 applicant has raised certain points in their letter of appeal (Attachment C) for Council's consideration. While the appellants' letter is brief, subsequent email exchanges provided further context for the applicant's perspective. These points are summarized together and staff's comments on each are provided in the following table:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
As you are aware this is our cold storage for our business and the location is vital. We are struggling during these uncertain times and we can not absorb other unforeseen expenses.	There is room in the rear yard of this property to locate the shipping container, however it is acknowledged that this location would be less effective at meeting the operational needs of the existing restaurant.
The sea container in question was purchased new and in no way unsightly. It is wired in for cold storage and houses all of their freezers and cold storage. If a (...) variance could not be approved, the sea container would have to be removed altogether at a significant loss and other arrangements made for cold storage also at an extremely high cost to this business.	The appearance of the structure is not regulated under the Land Use By-law.
Where the container is located now, is in fact in very close proximity to a bordering neighbour. This is not considered an issue as this neighbour was given permission to put a child's playhouse on the adjacent parcel of land owned by Sonia.	Side, rear and front yard setbacks are measured to property lines regardless of property ownership or private agreements between property owners.

**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 request. The HRM cost associated with processing this application can be accommodated with the approved 2022/23 operating budget with existing resources.

### **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 appellant, property owners within the 100 metre notification area, 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 context 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.

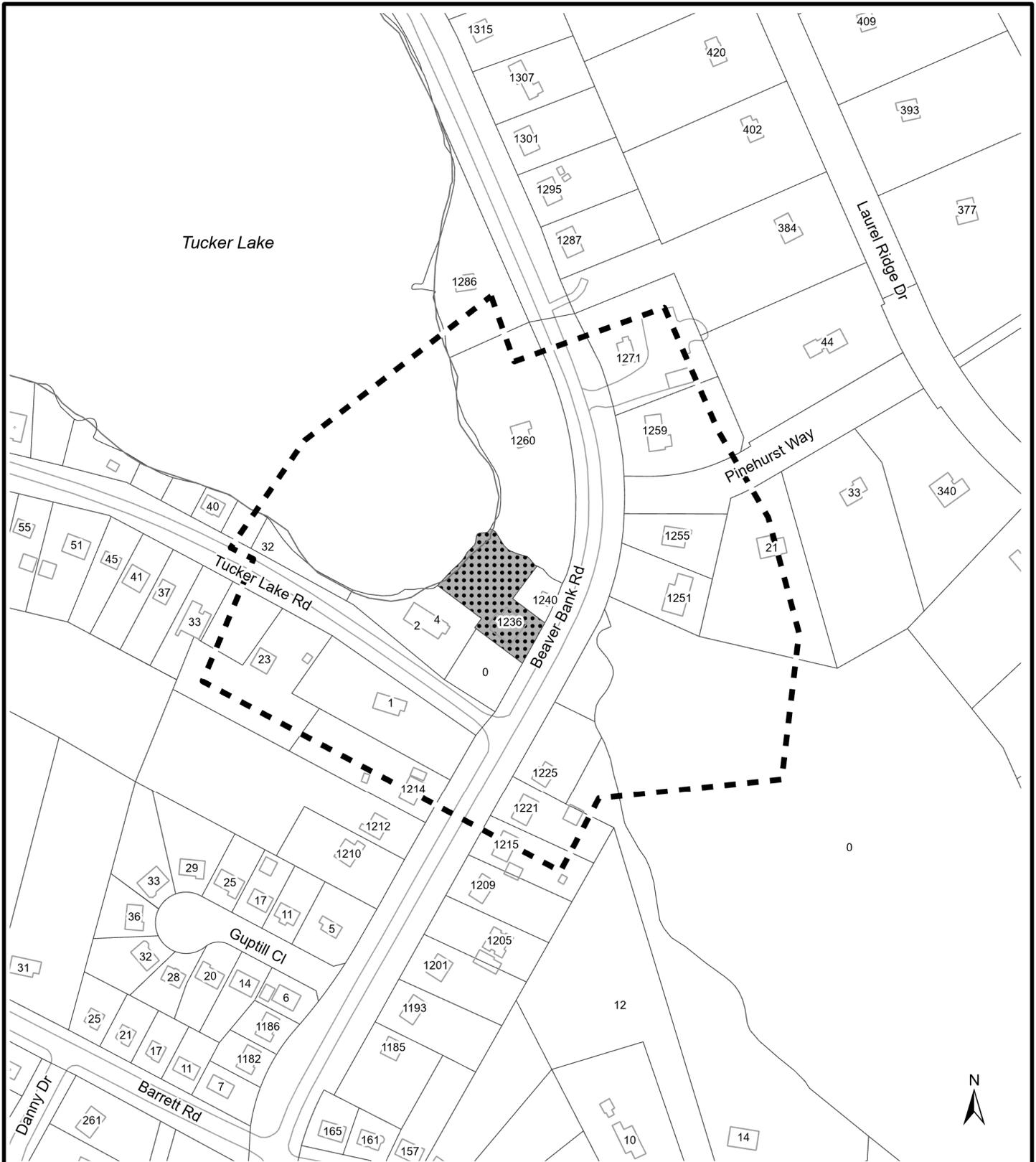
### **ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Site Visit Photo
Attachment B:	Variance Refusal Notice
Attachment C:	Letter of Appeal

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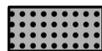
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: James Coons, Planner I, 782.640.7651  
Peter Nightingale, Principal Planner/Development Officer, 902.719.9478

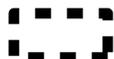


**Map 1 - Notification Area**

1236 Beaver Bank Road,  
Beaver Bank



Subject Property

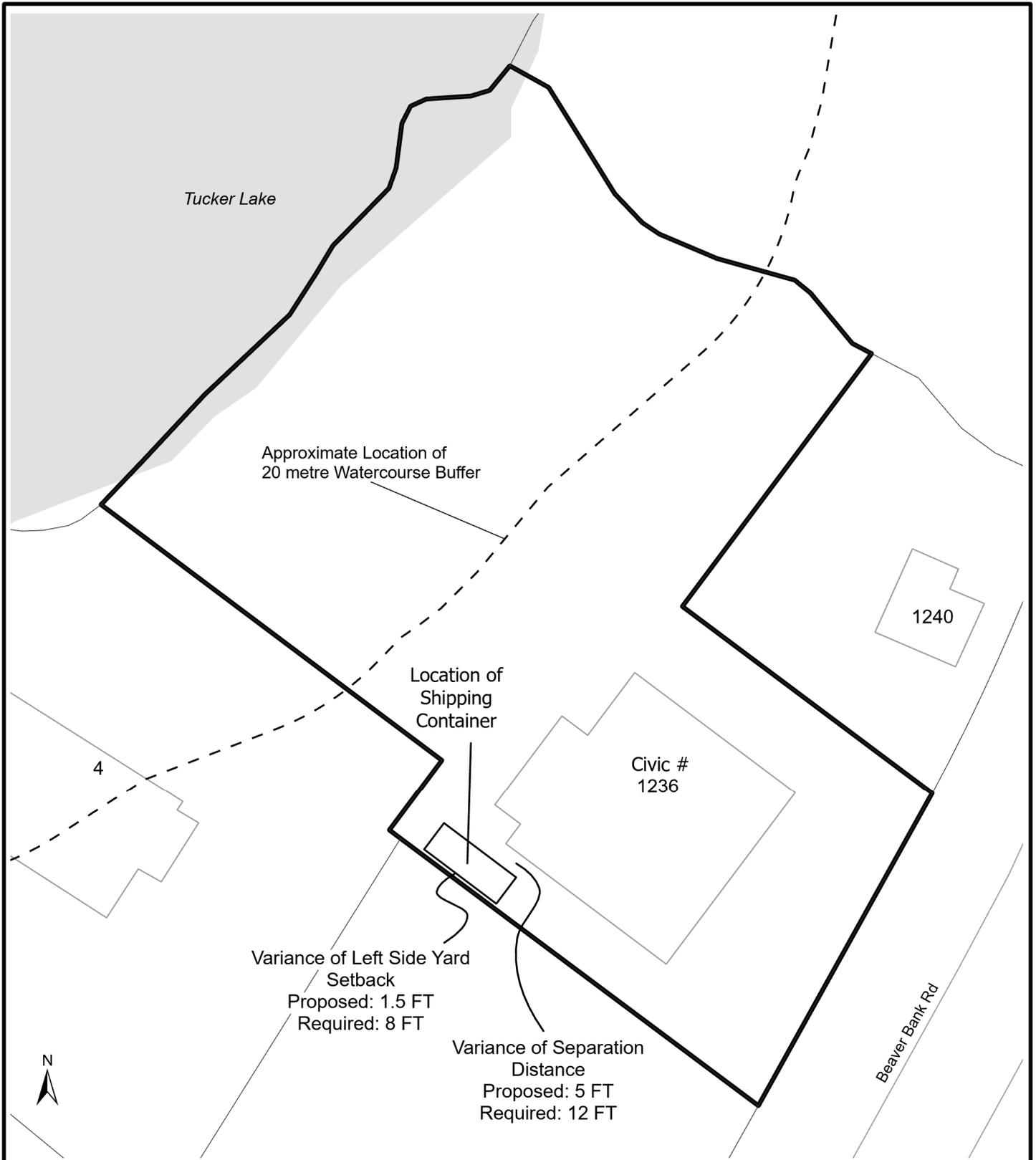


Notification Area

**HALIFAX**



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



**Map 2 - Site Plan**

1236 Beaver Bank Road,  
Beaver Bank

**HALIFAX**



Subject Property



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

**Attachment A - Photo**



## Attachment B - Variance Refusal Notice

May 5<sup>th</sup>, 2022

Sonia Joukhadar  
[REDACTED]  
[REDACTED]  
[REDACTED]

By email: [REDACTED]

Dear Sonia Joukhadar:

**RE: VARIANCE APPLICATION #24176, 1236 BEAVER BANK ROAD, PID # 00467340**

This will advise that I have refused your request for a variance from the requirements of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law as follows:

**Location:** 1236 Beaver Bank Road, Beaver Bank  
**Project Proposal:** Accessory Structure for Commercial Business

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	8 feet	1.5 ft.
Minimum separation distance between buildings	12 feet	6 ft.

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 the variance violates the intent of the land use bylaw.

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**  
**P.O. Box 1749, Halifax, N.S. B3J 3A5**  
[clerks@halifax.ca](mailto:clerks@halifax.ca)

Your appeal must be filed on or before **Monday, May 16<sup>th</sup>**.

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 do not hesitate to contact James Coons at 782-640-7651.

Sincerely,

**Original signed**

Peter Nightingale, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Iain MacLean - Municipal Clerk  
Councillor Lisa Blackburn

## Attachment C - Letter of Appeal

**From:** Elias Joukhadar [REDACTED]  
**Sent:** Monday, May 9, 2022 8:39 PM  
**To:** Office, Clerks <clerks@halifax.ca>  
**Cc:** james.coones@halifax.ca; Hamilton, Logan <hamiltl@halifax.ca>  
**Subject:** [External Email] Appeal Variance Application #24176

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

Reference letter dated May 5th,2022 regarding application for Variance application # 24176, 1236—  
Beaverbank Road,PID#00467340, signed by Peter Nightingale.

Mr Coons,

This email is to appeal the refusal of the Variance as outlined in the above letter.

Our solution to this situation is to move the sea container from it's present location and attach it to the business,construct a roof over it and from part of the business. In doing so,it will meet the minimum left side setback of 8 feet and negate the minimum separation distance between buildings as it will form part of the existing building.

I would further respectfully request Mr.Coons do a site visit so that our proposed change could be relayed and explained in person rather than a phone call.

As this a time sensitive matter and our deadline for appeal is fast approaching (16 may), please advise how you would like us to proceed with this proposed change.

Thank you for your time and look forward to your visit.

Sonia Joukhadar.