

HALIFAX

Case 24176
Variance Hearing
1236 Beaver Bank Road, Beaver Bank

North West Community Council

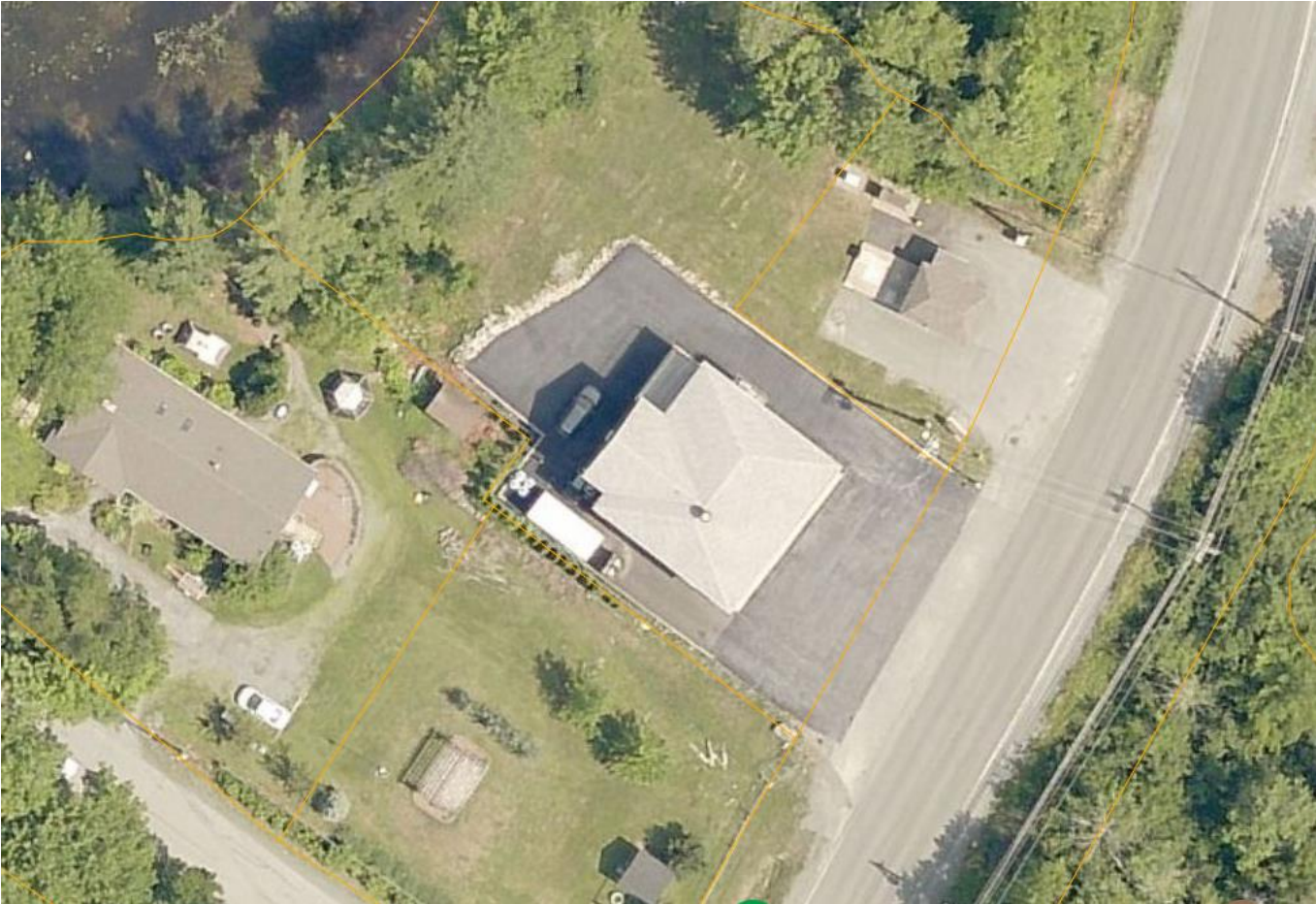
July 18th, 2022

Site Location



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Air Photo of 1236 Beaver Bank Road



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Site Visit Photo



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Site Visit Photo



Proposal

- The property owners are requesting a variance to reduce the required setbacks and separation distances for an accessory building (shipping container) in order to help facilitate the operation of the existing restaurant.
- The requested variance would reduce the required side yard setback from 8 ft. to 1.5 ft. and the required separation distance from 12 ft. to 5 ft.

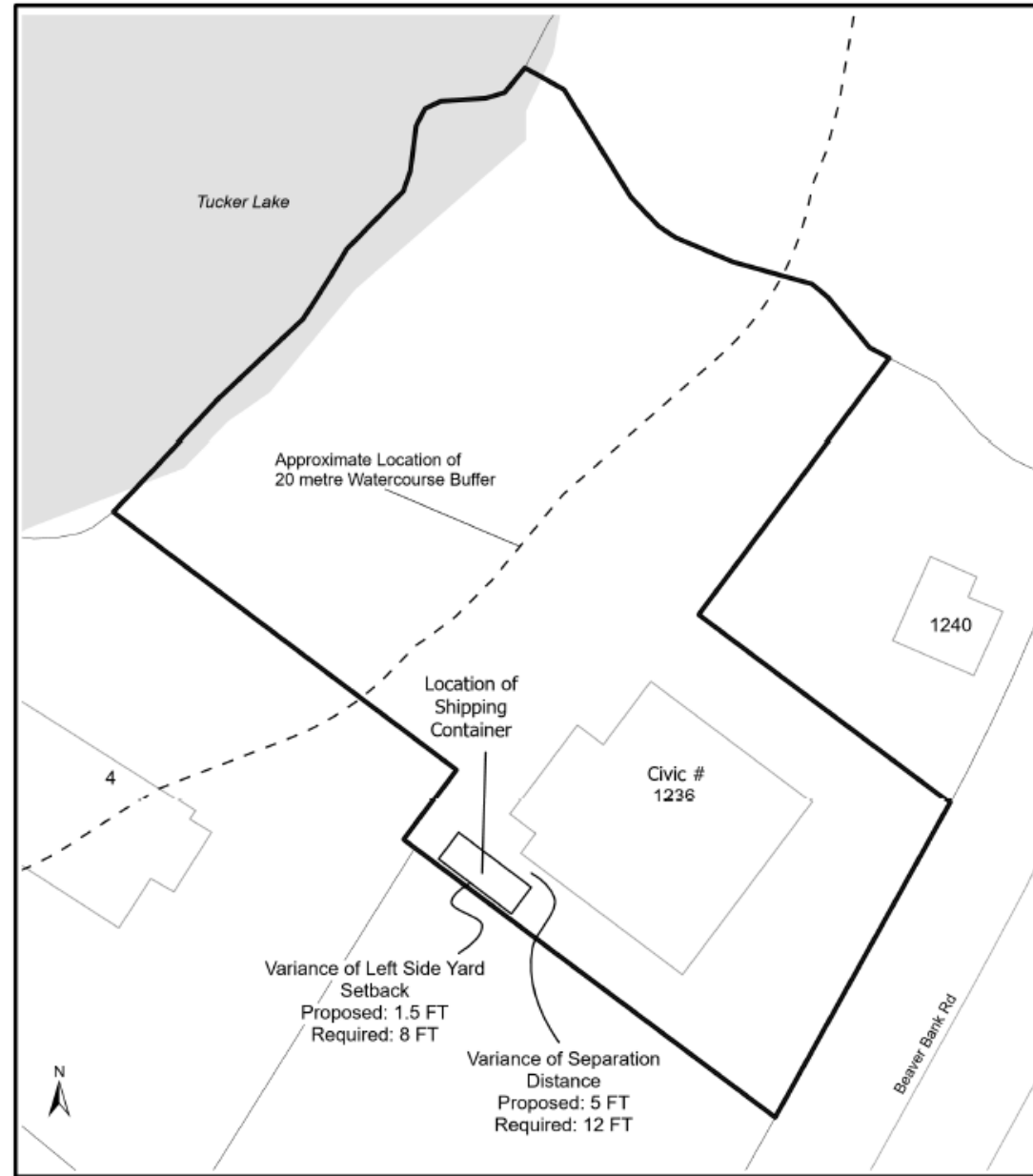
Background

- In the spring of 2020 Staff were made aware of a shipping container without a permit. A notice to comply was issued in June 2021.
- A development permit application was completed in August 2021. A review of the application determined that the amount of space between the side property line and the main building was not sufficient to locate an accessory building.
- A variance request was submitted on March 22nd and was refused on May 5th, 2022. This decision was subsequently appealed.

Variance Request

LUB Regulations	Zone Requirement	Variance Requested
Minimum Side Setback	8 ft.	1.5 ft.
Minimum Separation Distance	12 ft.	5 ft.

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 reduction of the side yard setback violates the intent of the Land Use By-law.
- The intent of the setback is to create a buffer that provides for privacy, access, and a consistent visual makeup, and ultimately ensures that a structure does not impede upon the enjoyment of a neighboring property.
- The location of the shipping container essentially eliminates this buffer and results in a structure very close to the neighboring residentially zoned property.

Is the difficulty experienced general to properties in the area?

- The difficulty experienced is not general to properties in the area.
- This property is one of two commercially zoned properties in the neighborhood, the other being an adjacent lot owned and operated by Halifax Water.
- The configuration of the property limits the ability to place an accessory structure that is compliant with setback and separation requirements.

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

- Staff are satisfied that there is no intentional disregard. The difficulty being experienced is likely a result of a lack of awareness that a development permit is required to locate a shipping container on the property.

Variance Decision

- This variance request was refused by the Development Officer on the basis that it violates the intent of the land use by-law.
- The decision was subsequently appealed by the applicant.

Alternatives

- The alternatives before Community Council are:
 - a) If North West Community Council **does not allow the appeal** of the Development Officer's decision, **the decision will be upheld** and the Variance will be denied.
 - b) If North West Community Council **allows the appeal** of the Development Officer's decision, **the decision will be overturned** and the Variance will be granted.
- a) is the recommended alternative.

Thank you!

James Coons – Planner I

Peter Nightingale – Development Officer

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