



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

Item No. 10.2.2
North West Community Council
March 27, 2023

TO: Chair and Members of North West Community Council

SUBMITTED BY:



Erin MacIntyre, Director - Development Services

DATE: March 20, 2023

SUBJECT: **Case 24451: Appeal of Variance Refusal – 178 Sunnyvale Crescent, Lower Sackville**

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 the refusal of the variance.

Staff recommend that North West Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 178 Sunnyvale Crescent in Lower Sackville to allow for an addition to an existing single unit dwelling to create a larger living room and dining room space on the main floor. To facilitate this project, a variance has been requested to relax the existing non-conforming side yard setback from 2.32 metres to 1.11 metres (Map 2 and Attachment B). As proposed, the addition meets all other requirements of the land use by-law.

Site Details:

Zoning

The property is located in the R-1 (Single Unit Dwelling) Zone of the Sackville Land Use By-Law (LUB). The relevant requirements of the LUB and the related variance request is as identified below:

	Zone Requirement	Variance Requested
Minimum Side Yard	Required by land use bylaw: 2.44 metres Existing non-conforming setback of 2.32 metres	1.11 metres

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variance (Attachment C). The applicant has appealed the refusal (Attachment D) and 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.

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; or*
- (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?

Side yard setbacks help to ensure that structures maintain adequate separation from adjacent properties/buildings for maintenance, aesthetics, access, and safety. The existing building is currently set back slightly less than the permitted requirement. Section 4.8 of the land use bylaw provides for existing buildings to be renovated, repaired, enlarged, or reconstructed provided that the enlargement, reconstruction, repair, or renovation does not further reduce the front or side yard which does not conform. The applicant is requesting to further reduce the side yard setback to approximately half the distance of an already reduced non-conforming setback. It was determined that this request is considerably less than the existing setback and does not meet the intent of the land use by-law. There also appears to be space in the rear of the dwelling which could possibly accommodate this addition, however, this would require a redesign of the proposal.

It is the Development Officer's opinion that the requested variance violates the intent of the land use bylaw.

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.

Many of the properties in this neighbourhood were created in 1987 and are generally consistent in size and dwelling location on each lot. The variance application did not highlight any site constraints or geographical factors which would differentiate this property from adjacent properties in the area. Also, many nearby properties exceed the minimum lot area and existing building setbacks. The Development Officer determined,, because of a consistent lot pattern and the lack of any identified site constraints, that the difficulty experienced is 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 bylaw, 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 applicant requested the variance prior to commencing any work related to the proposed addition. Intentional disregard of bylaw 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 applicants have appealed the Development Officers decision (Attachment D) for Council's consideration.

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 does 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 2022/2023 operating budget for Planning and Development.

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 subject 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 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.

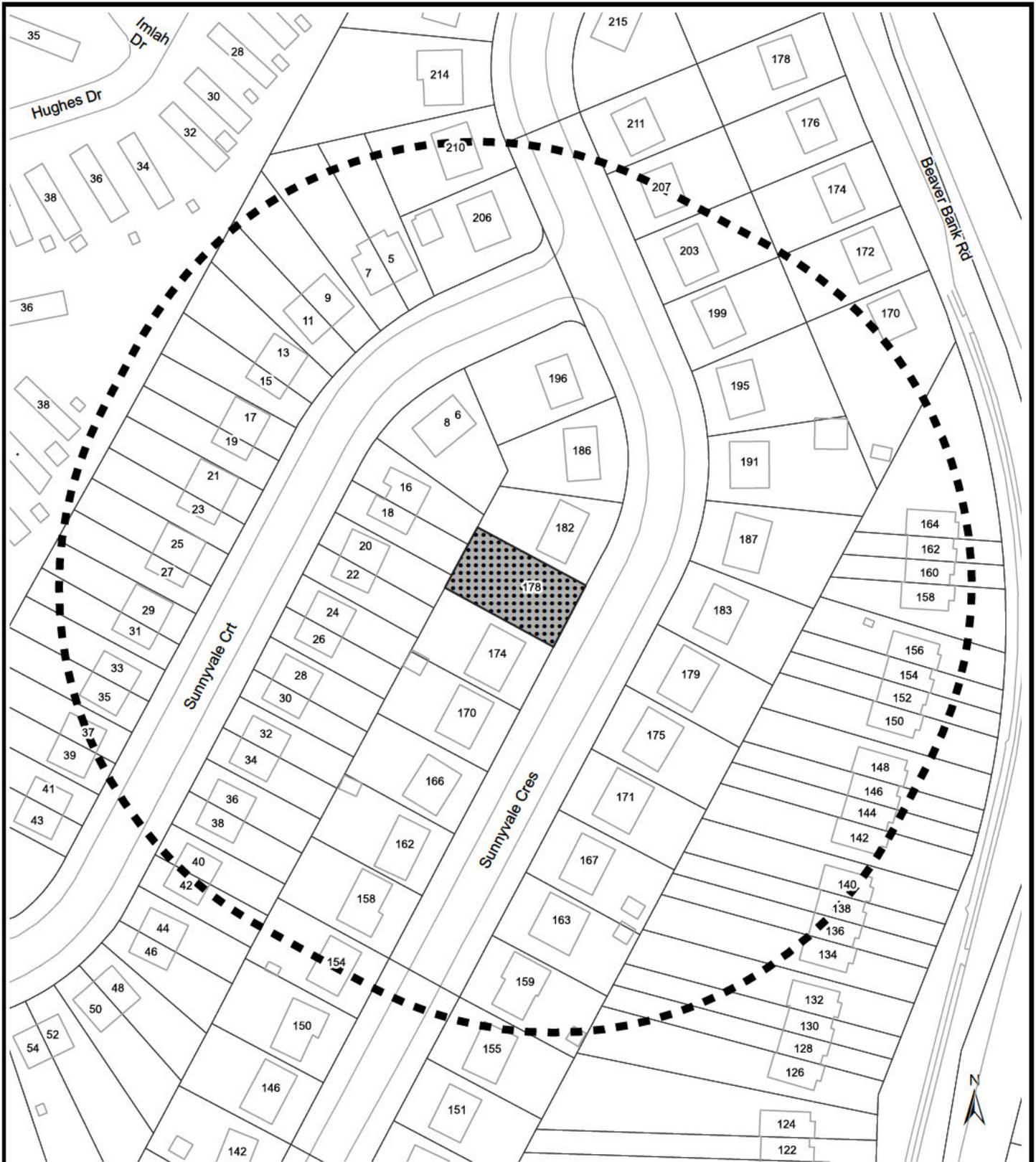
ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Existing Building Elevations
Attachment B:	Proposed Building Elevations
Attachment C:	Variance Refusal Notice
Attachment D:	Letter of Appeal from Property Owner

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: Jaime Swinton, Planner 1, 902-430-7547

Trevor Creaser, Development Officer, 902-476-1591



Map 1 - Notification Area

178 Sunnyvale Crescent,
Lower Sackville

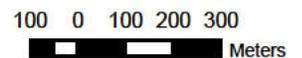


Subject Property



Notification Area

HALIFAX



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



Map 2 - Site Plan

178 Sunnyvale Crescent,
Lower Sackville



Subject Property



Proposed Addition

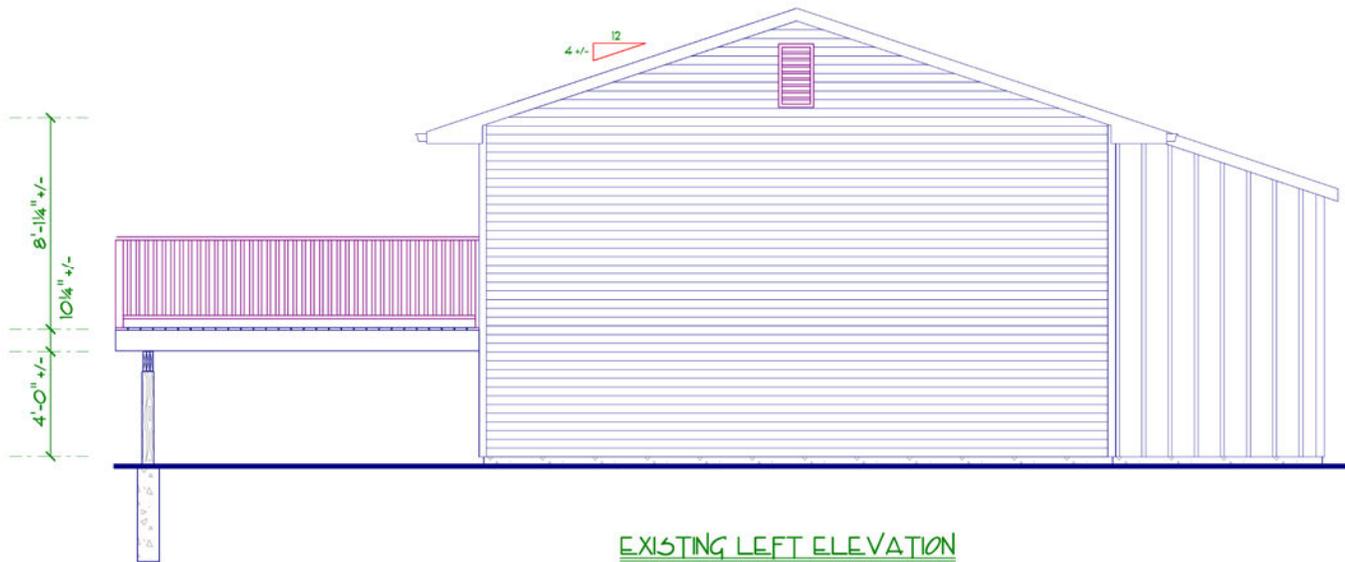
HALIFAX



The accuracy of any representation on this plan is not guaranteed.
Measurements provided by applicants. For discussion purposes only.



EXISTING FRONT ELEVATION



EXISTING LEFT ELEVATION

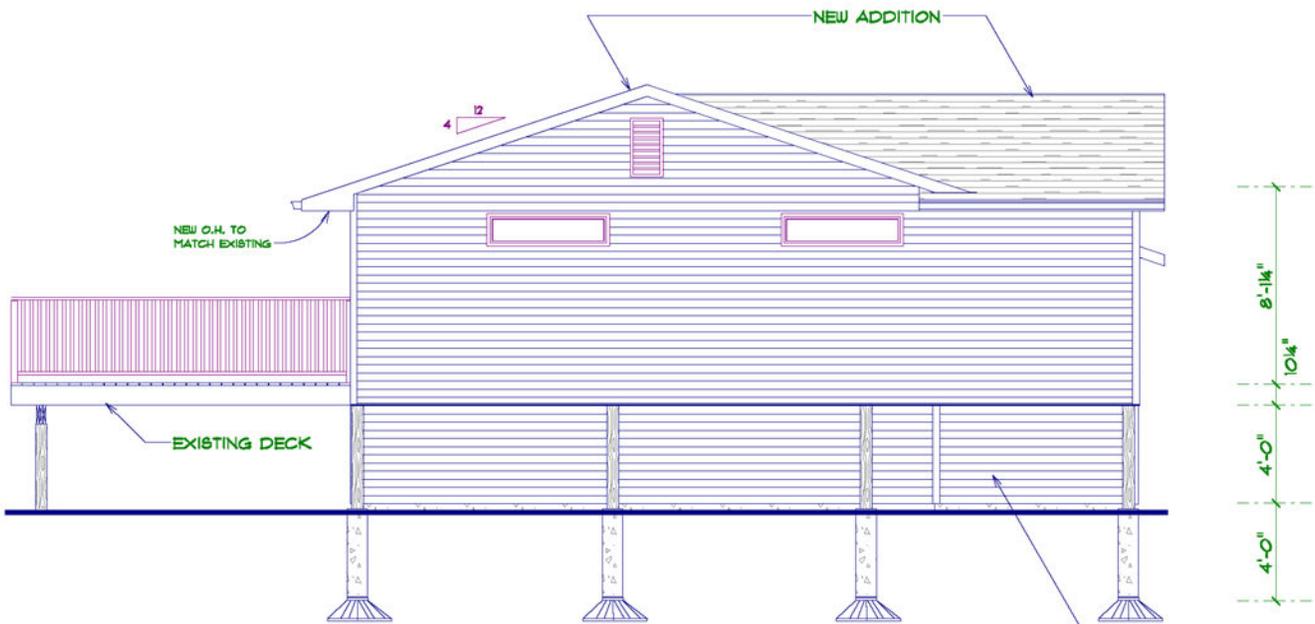
Attachment A - Existing Building Elevation Plans

178 Sunnyvale Crescent,
Lower Sackville

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



NEW FRONT ELEVATION



NEW LEFT ELEVATION

Attachment B - Proposed Building Elevation Plans

178 Sunnyvale Crescent,
Lower Sackville

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

Attachment C – Variance Refusal Notice

November 16, 2022

47 Neily Drive
Lower Sackville
B4C 2G8

Dear Greg MacMullin,

RE: VARIANCE APPLICATION #24451, 178 Sunnyvale Crescent, PID #40445264

This will advise that I have refused your request for a variance from the requirements of the Sackville Land Use Bylaw as follows:

Location: 178 Sunnyvale Crescent
Project Proposal: Construct addition to existing dwelling closer to the left side property boundary than permitted by the land use bylaw.

LUB Regulation	Requirement	Proposed
Minimum Left Side Setback	8 feet	3'- 8"

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 bylaw
- (b) the difficulty experienced is general to properties in the area

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 **November 25th, 2022**

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 Jaime Swinton, Planner I at 902-430-7547

Sincerely,

A black rectangular redaction box covers the signature. The text "Original signed" is printed in white within the box. There are faint blue scribbles above the box.

Original signed

Trevor Creaser, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councillor Paul Russell

Attachment D – Letter of Appeal from Property Owner

From: simon gagné [REDACTED]

Sent: Thursday, November 24, 2022 5:21 PM

To: Office, Clerks <clerks@halifax.ca>; Russell, Paul <russelp@ha> [REDACTED]

Subject: [External Email] Variance application #24451, November 24, 2022

To Whom It May Concern,

Please note that both Erika Gagne and myself, Simon Gagne, of 178 Sunnyvale Crescent, would like to appeal the denial of our variance application.

This appeal has been sent at 5:20 p.m. on Thursday, November 24, 2022.

Regards,

Simon Gagne

[REDACTED]
Redacted