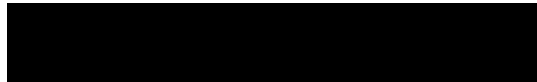




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.2.1
North West Community Council
March 27, 2023

TO: Chair and Members of North West Community Council



SUBMITTED BY: _____
Erin MacIntyre, Director, Development Services

DATE: February 22, 2023

SUBJECT: **Case 23626: Appeal of Variance Approval – 73 Eagle Point Drive, Windsor Junction**

ORIGIN

Appeal of the Development Officer's decision to approve 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 refusal of the variance.

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

Staff recommend that North West Community Council deny the appeal.

BACKGROUND

A variance request has been submitted for 73 Eagle Point Drive in Windsor Junction to allow for the construction of a new detached single car garage (Map 2 and Attachment A). To facilitate this project, a variance has been requested to relax the required front yard setback. As proposed, the building meets all other requirements of the land use by-law.

Site Details:

Zoning

The property is located in the R-1B (Suburban Residential) Zone of the Planning District 14 & 17 Land Use By-Law (LUB) and is within the River-Lakes Secondary Plan Area. The relevant requirements of the LUB and the related variance request is as identified below:

	Zone Requirement	Variance Requested
Minimum Front Yard	30 feet	10 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). One property owner within the notification area has appealed the approval (Attachment C) and two property owners within the notification area have sent letters in support of the approval (Attachment D). 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 approve the request for the 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; 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?

Front yard setbacks help to ensure that structures maintain adequate separation from the street for aesthetics, access, and safety. The proposed reduction to the front yard setback does not appear to compromise aesthetics, access, or safety as the subject and neighboring sites are densely treed, have existing driveway accesses, are near the end of a cul-de-sac, and further, the paved street is approximately 20 feet from the proposed garage. HRM Development Engineering has reviewed this variance request and there are no sight line concerns related to the proposed garage.

The variance requested is to allow a reduced front yard setback, which would only permit the structure to be closer to the street and not an abutting property. The proposed garage will meet all other land use by-law requirements including side yard setbacks.

It is the Development Officer's opinion that this proposal does not 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.

Most of the properties on the street are already developed with an attached or detached garage. Further, this property is constrained by its unique lot configuration, the orientation of the existing dwelling on the left side, the onsite septic system on the right side, and a watercourse buffer in the rear yard. The subject property is shallow, having shortest side yards of any on the street. For these reasons, it is the Development Officer's opinion 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 applicant requested the variance prior to commencing any work related to the proposed garage. Intentional disregard of by-law requirements was not a consideration in this variance request.

Appellant's Submission and Letters of Support:

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 one letter of appeal (Attachment C) 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
<i>A variance is not required to accommodate a garage on the property.</i>	Based on the applicant's rationale and staff's review it does not appear to be possible to accommodate a detached garage without a variance of some kind. The site is constrained on the left by the position of the house, on the right by the onsite septic system, and at the back by the watercourse buffer.

<p><i>To approve the variance to allow a garage 10 feet from the road will negatively impact neighbouring property values and positively impact the subject site's property value.</i></p>	<p>The HRM Charter sets out the criteria against which a variance must be evaluated. Potential impact to property value is not a consideration.</p>
<p><i>A garage that close to the road will impede the ability to see oncoming traffic when leaving driveway.</i></p>	<p>The garage is proposed 10 feet from the street parcel and approximately 20 feet from the paved street. HRM Development Engineering does not have concerns with the sight lines of adjacent properties regarding the placement of the proposed garage.</p>
<p><i>This property is not unique on Eagle Point Drive. The application of the standard regulation does not result in any difficulty or limitations that are not generally present throughout the neighbourhood. The challenges of septic fields, large rocks, mature trees, the watercourse buffer, etc, are not unique to this property. The properties on Eagle Point Drive vary in shape. The property is substantially larger than most of the properties within the notification area, most of which have a garage that meets the LUB requirements. All properties on the street have sufficient land to build a garage while respecting the front setback.</i></p>	<p>It is acknowledged that all of the lots within the notification area are subject to the watercourse buffer, and all are serviced with onsite septic. The property is greater in area than most within the notification area.</p> <p>However, lot area is not the constraint that has resulted in the variance request. The configuration of the lot is unusual, and the placement of the house, location of the onsite septic and application of the watercourse buffers limit the area available for a detached garage. As mentioned in the Discussion section, the property is the most shallow on the street, which represents a particular challenge in meeting both watercourse buffer and front yard requirements.</p>
<p><i>A shed that was added just prior to the submission of the variance application is in one such area where the garage could be located and meet the set back requirements.</i></p>	<p>The applicant has indicated that the garage could not be placed where the shed is, as the driveway to access a garage in that location would have to pass over the onsite septic field, which is between the shed and the roadway.</p>

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not 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 2022/23 operating budget for Planning & 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 approval

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 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 approval 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 refusal of the variance. This would overturn the decision of the Development Officer.

ATTACHMENTS

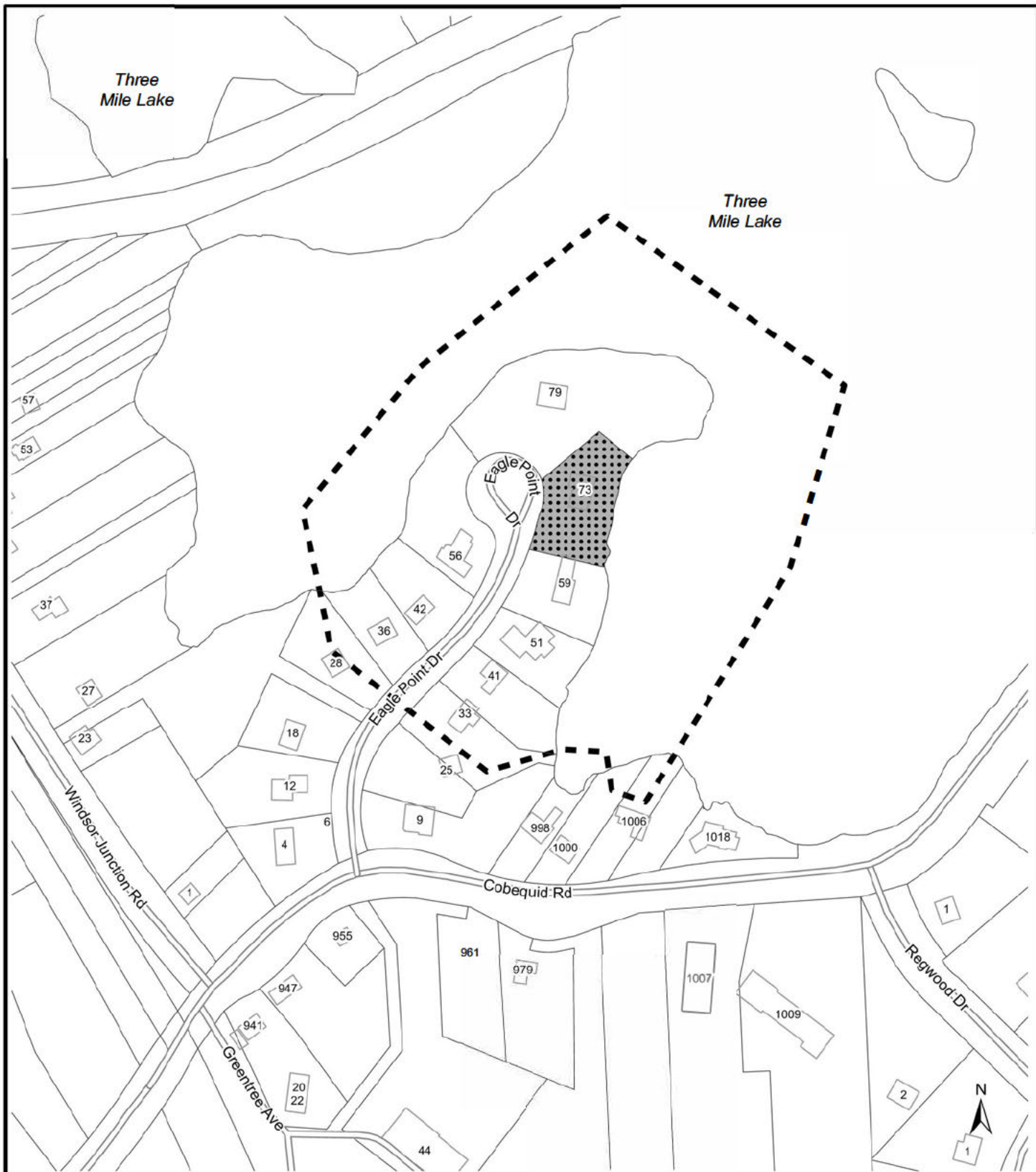
Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevation
Attachment B:	Variance Approval Notice
Attachment C:	Letter of Appeal
Attachment D:	Letters of Support

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: Melinda Francis, Principal Planner, 902-719-9601

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Map 1 : Notification Area



Map 1 - Notification Area

73 Eagle Point Dr,
Windsor Junction



Subject Property



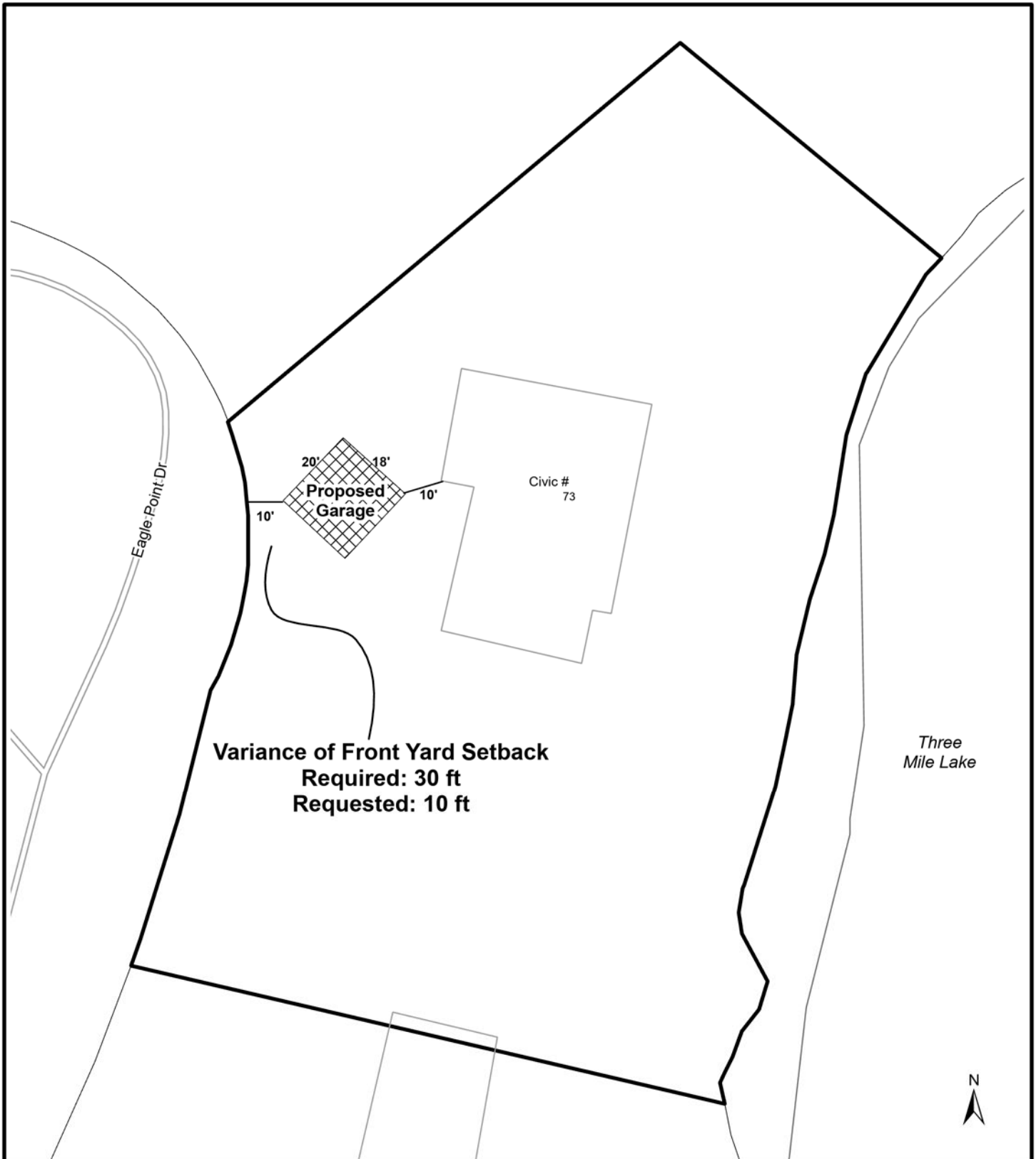
Notification Area

HALIFAX



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

Map 2 : Site Plan



Map 2 - Site Plan

73 Eagle Point Dr,
Windsor Junction



Subject Property

HALIFAX



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



Attachment A - Building Elevation Plan

73 Eagle Point Dr,
Windsor Junction

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

Attachment B: Variance Approval Notice

February 8, 2022

Dear Sir or Madam:

RE: VARIANCE APPLICATION 23626, 73 EAGLE POINT DRIVE, WINDSOR JUNCTION, NS, PID 40015521

As you have been identified as a property owner within 100 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipal Charter, Section 251.

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved a request for a variance from the requirements of the **Planning District 14 & 17 Land Use Bylaw** as follows:

Location: 73 Eagle Point Drive, Windsor Junction
Project Proposal: Variance for front yard setback for proposed detached garage

LUB Regulation	Requirement	Requested Variance
Front yard setback	30 feet	10 feet

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **February 25, 2022** and address your appeal to:


Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, N.S. B3J 3A5
clerks@halifax.ca

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.

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance. If you have any questions or require clarification of any of the above, please contact Melinda Francis, Planner II at 902-716-9601.

Yours truly,



Original signed

Andrew Faulkner, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Iain MacLean – Municipal Clerk
Councillor Deagle Gammon

Attachment C: Letter of Appeal

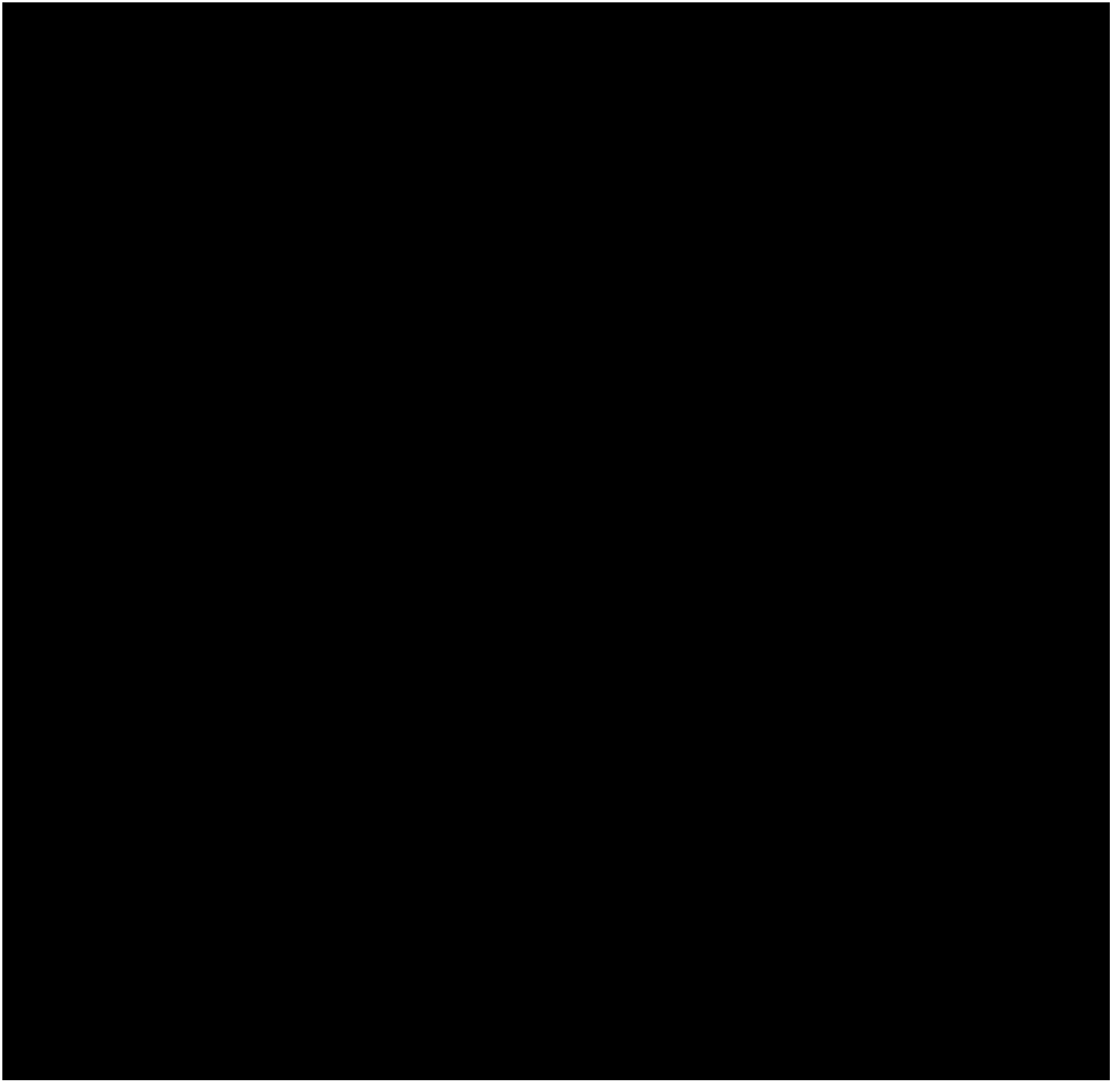
February 22, 2022

The Municipal Clerk
Halifax Regional Municipality
PO Box 1749
Halifax, N.S., B3J 3A5
Sent to: clerks@halifax.ca

PERSONAL

Dear HRM Council Members,

Re: Appeal of Variance Approval (Application 23626), 73 Eagle Point Dr, Windsor Junction, N.S., PID
40015521





Sincerely,

Original signed

Jayne & Ted Connolly

PERSONAL

CC Cathy Deagle Gammon

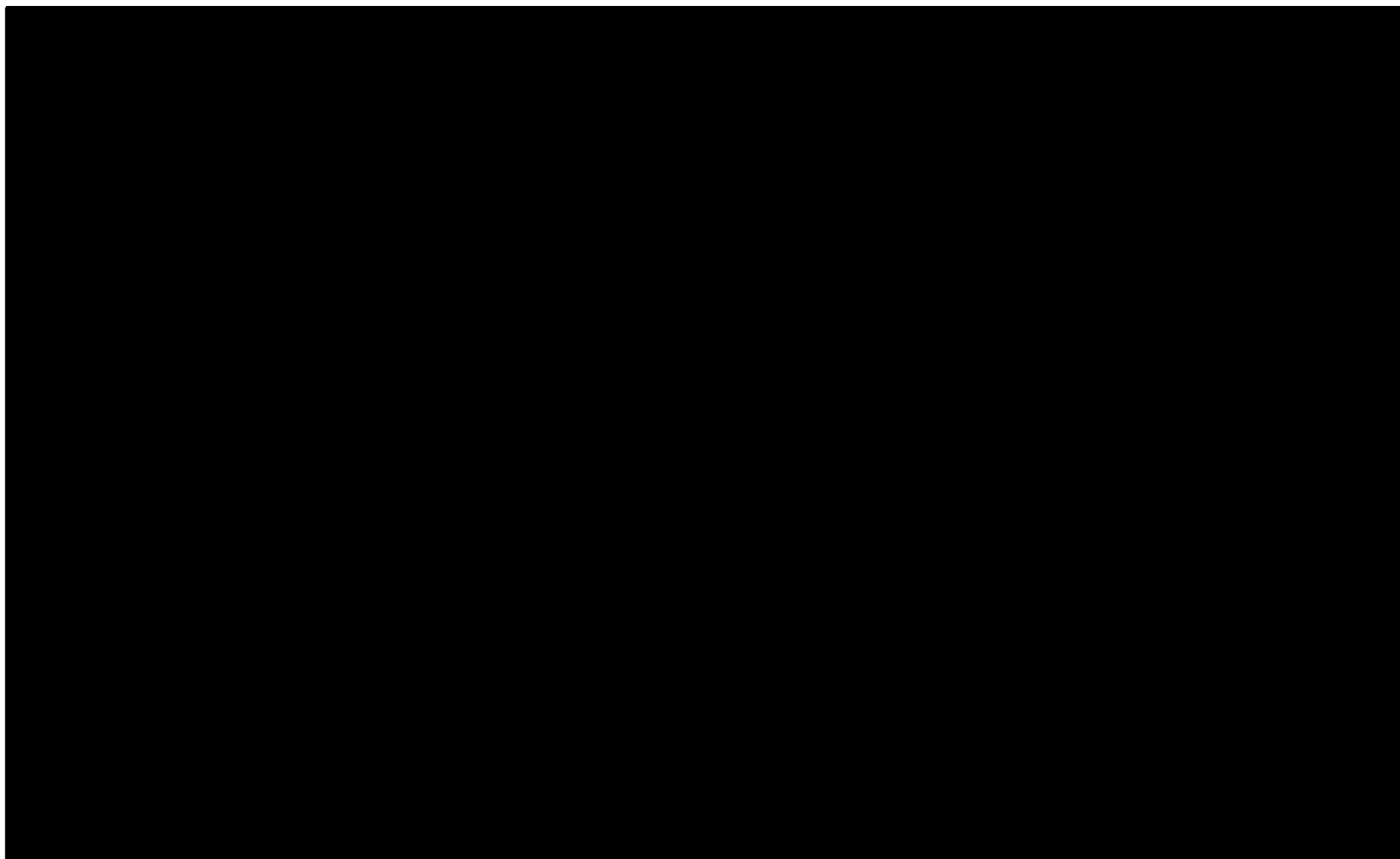
"PERSONAL"

February, 16, 2022

Municipal Clerk
Halifax Regional Municipality
P.O. Box 1749, Halifax, N.S. B3J 3A5

To Whom it Might Concern:

Re: Variance Application 23626, 73 Eagle Point Drive, Winsor Junction, NS, PID 40015521



Sincerely,

Original signed

Dana & Susan Atwell

---Original Message-----

From: Mark Hammond <>

Sent: Friday, February 25, 2022 11:25 PM

To: Office, Clerks <clerks@halifax.ca>

Subject: [External Email] Variance 23626

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

Hello

I have received your notification of the variance for 73 Eagle Point Drive PID 40015521. I completely approve of this application and approval. The home owners are long standing residents who always display respect for the neighbourhood and the residents. Everything they do on their property is thought out to compliment and enhance, not only their own property, but the street landscape in general.

In trust,

Mark Hammond