



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

Item No. 10.1
North West Community Council
February 26, 2024

TO: Chair and Members of North West Community Council



SUBMITTED BY:

Erin MacIntyre, Director, Development Services

DATE: February 6, 2024

SUBJECT: **Case VAR-2023-01314: Appeal of Variance Approval – Civic 15 Shankel Rd, Hubbards**

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.
- s. 250A, A development officer shall grant under Section 250 a variance respecting a setback or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.
- 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 15 Shankel Road in Hubbards to enable an attached deck associated with an existing single unit dwelling (Map 2 and Attachment 1). The attached deck was built without a permit. An Order to Comply was issued on July 17, 2023, directing the property owner to apply for the required building permit. The property owner applied for a deck permit on August 3, 2023. The siting of the deck does not meet the front yard setback requirements of the land use by-law, so a variance is required to relax the front yard setback. The deck meets all other requirements of the land use by-law.

Site Details:

Zoning

The property is located in the MU-1 (Mixed Use 1) Zone of the Planning Districts 1 & 3 Land Use By-Law (LUB), and is within the Mixed Use "A" (MUA) designation of the Planning Districts 1&3 Municipal Planning Strategy (MPS). The relevant requirements of the LUB and the related variance request is as identified below:

	Zone Requirement	Variance Requested
Minimum Front Yard Setbacks	20 feet	10.9 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 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 requested 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*.

On November 9, 2023, Bill 329 received Royal Assent, amending the sections of the *HRM Charter* dealing with a Development Officer's ability to approve a variance for a setback. Specifically, the Development Officer is now obliged to approve a setback variance, provided that section 250A is met:

Variance respecting setback or street wall

250A(1) A development officer shall grant under Section 250 a variance respecting a setback or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.

In evaluating variance requests, staff must determine if the municipal planning strategy sets forth any policy respecting setback or yard requirements with which the application would materially conflict. If the proposed

setback variance does not materially conflict with the Municipal Planning Strategy, then the Development Officer shall grant the variance request.

Policy Consideration

Policy	Staff Comments
<p>MU-2 Within the Mixed Use "A" and "B" Designation, it shall be the intention of Council to establish a Mixed Use 1 and Mixed Use 2 Zone respectively which permits all uses with the exception of mobile home parks, multi-dwellings, shared housing with special care containing over twenty (20) bedrooms, commercial entertainment uses, video arcades, campgrounds, marinas, intensive agricultural uses, extractive uses, sawmills and industrial mills related to forestry over three thousand (3,000) square feet, penal institutions, industrial uses excepting traditional uses, including telecommunication towers, hazardous waste disposal or storage sites, sanitary land fill sites, C & D Material Operations, commercial and industrial developments greater than 697 square metres (7,500 square feet) of GFA on any one lot, and salvage yards. The Mixed Use 1 Zone shall permit fish processing plants and the Mixed Use 2 Zone shall not. Standards shall be contained in the land use by-law for non-residential uses, including controls on outdoor storage and display, parking, buffering and setbacks.</p>	<p>The variance does not materially conflict with this policy as intention has not been given regarding setbacks for residential uses.</p>

The reduction of the front yard setback does not materially conflict with any policies in the Planning Districts 1 & 3 Municipal Planning Strategy for the Mixed Use "A" Designation. Therefore, the Development Officer has concluded that this proposal does not materially conflict with the Municipal Planning Strategy, and the requested variance was approved.

Appellant's Submission:

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 their letters 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
<p><i>Backyard is a mess, and no variance should be granted until the yard is cleaned up.</i></p>	<p>The basis for decision-making on the variance is limited to applicable policies of the MPS relating to setbacks. The argument relative to the back yard is not relevant to the variance evaluation.</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 2023-2024 operating budget 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 approval is appealed, a hearing is held by Council to provide the opportunity for the applicant, appellants and all assessed owners within 30 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 be in the 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.

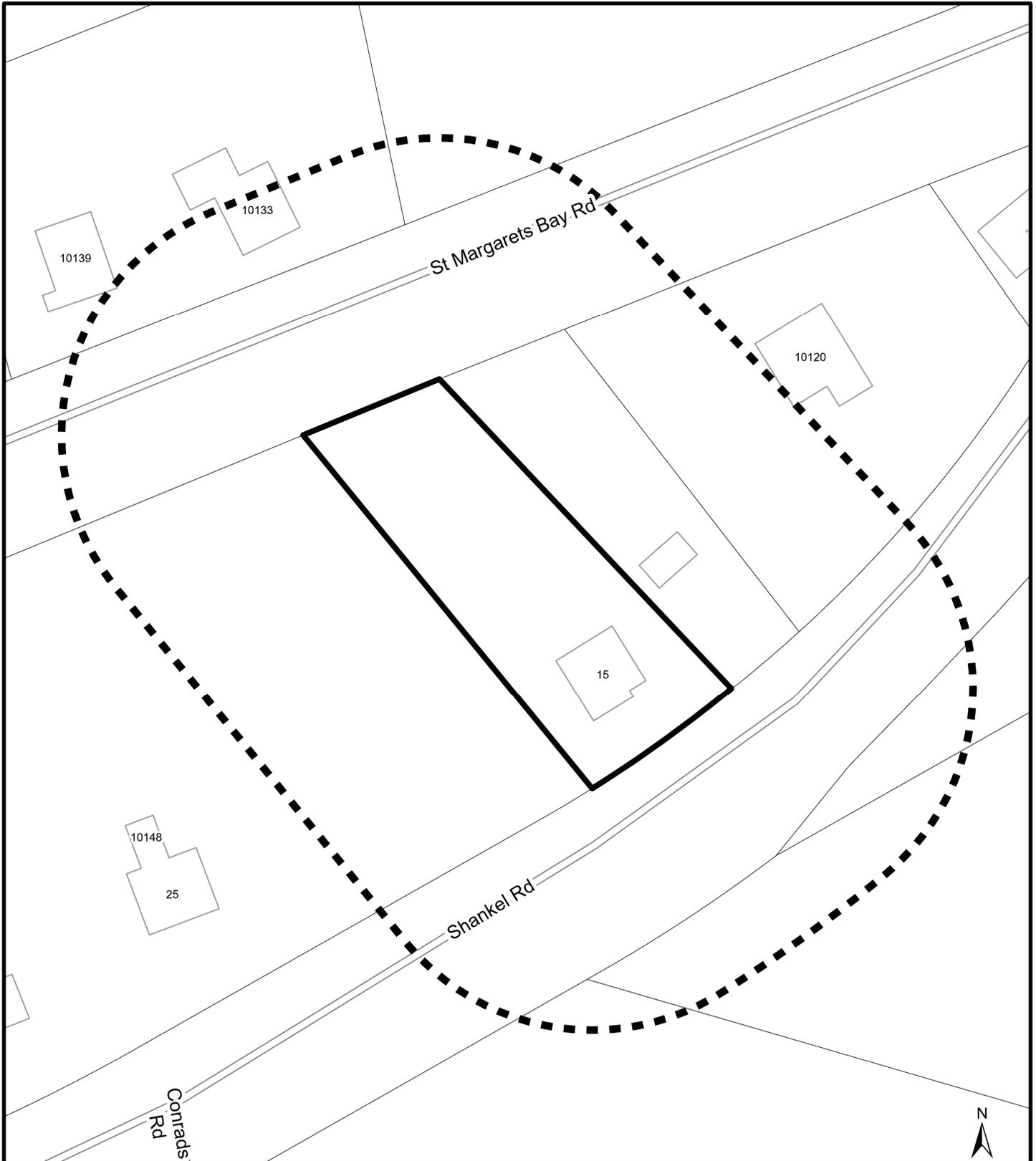
ATTACHMENTS

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Site Photos
Attachment B:	Variance Approval Notice
Attachment C:	Letter of Appeal

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: Michael Hart, Planner 1, 902.943.0952
Peter Nightingale, Development Officer, 902.719.9478

Report Approved by: Sean Audas, Program Manager - Land Development & Subdivision, 902.476.9553



Map 1 - Location and Notification Area

15 Shankel Road,
Hubbards

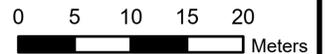


Subject Property



Notification Area

HALIFAX

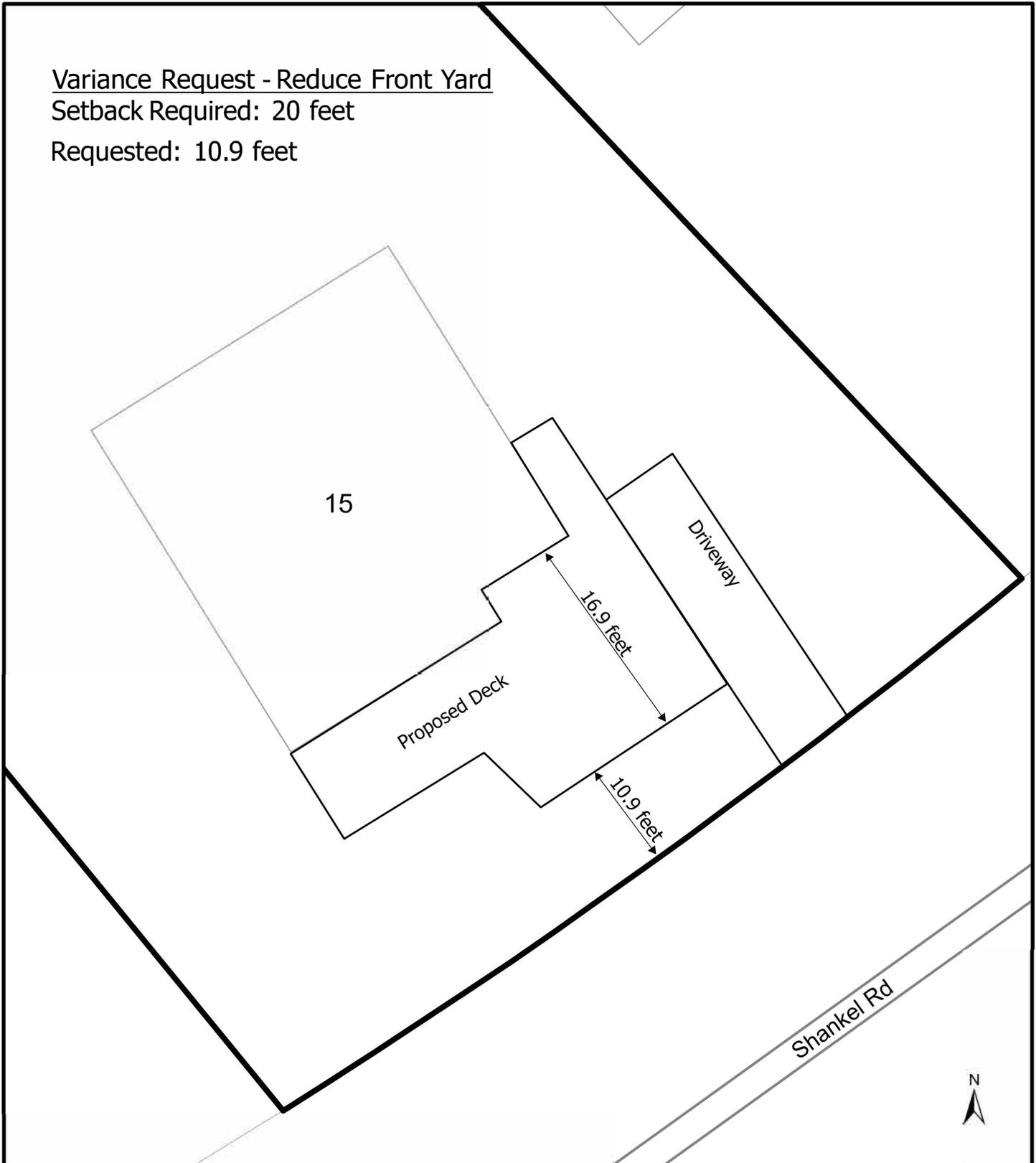


The accuracy of any representation on this plan is not guaranteed.

Variance Request - Reduce Front Yard

Setback Required: 20 feet

Requested: 10.9 feet



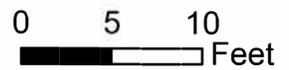
Map 2 - Site Plan

15 Shankel Road,
Hubbards



Subject Property

HALIFAX



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

Attachment A: Site Photos



Attachment B: Variance Approval Notice

January 5, 2024



Dear Property Owner:

RE: VARIANCE APPLICATION 2023-01314, 15 SHANKEL RD, HUBBARDS, NS, PID 40023434

As you have been identified as a property owner within 30 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 Districts 1 & 3** as follows:

Location: 15 Shankel Rd, Hubbards | PID 40023434
Project Proposal: Construct an attached deck.

LUB Regulation	Requirement	Requested Variance
Minimum Front Yard Setbacks	20 feet	10.9 feet

Pursuant to Section 250A of the Halifax Regional Municipality Charter, the development officer shall grant a variance respecting a setback unless the variance would materially conflict with the Municipal Planning Strategy. This request to reduce the front yard setback does not materially conflict with the Planning Districts 1 & 3 Municipal Planning Strategy and the setback reduction was therefore approved.

Pursuant to Section 251 of the Halifax Regional Municipality Charter, assessed property owners within 30 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **January 23, 2024**, and address your appeal to:

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

Section 251A of the Halifax Regional Municipality Charter requires that any appeals to this variance approval must clearly state the grounds for appeal.

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 Michael Hart, Planner 1, at (902) 943-0952.

Sincerely,



Peter Nightingale, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councillor Pam Lovelace

Attachment C: Letter of Appeal

From: [Office, Clerks](#)
To: [Hart, Michael](#); [Nightingale, Peter](#)
Cc: [MacIntyre, Erin](#); [Campbell, Catherine](#)
Subject: VARIANCE APP 2023-01314, 15 SHANKEL RD, HUBBARDS, NS, PID 40023434
Date: Wednesday, January 17, 2024 3:10:03 PM
Importance: High

Please see below, which I'm forwarding for any action as you may deem appropriate.

Regards,

LESLIE NEATE

LEGAL & LEGISLATIVE SERVICES
OFFICE OF THE MUNICIPAL CLERK

HALIFAX

PO BOX 1749
HALIFAX NS B3J 3A5
T. 902-490-4210
F. 902-490-4208

halifax.ca

From: Cherry Hunt [REDACTED]
Sent: Wednesday, January 17, 2024 1:48 PM
To: Office, Clerks <clerks@halifax.ca>
Subject: [External Email] Variance question

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

To whom it may concern: We received a request for approval on Variance Application(2023-01314) 15 Shankel Rd Hubbards..Please come and look at their backyard as I have to and you would say no right away.Since every storm and every time since then their backyard remains a mess that we have to look at everyday.So no, I feel bad saying this but I will not approve anything until they clean up their backyard. It has not been touched since 2019..Thank You.