



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

**Item No. 10.1.1**  
**Regional Centre Community Council**  
**July 24, 2024**

**TO:** Chair and Members of Regional Centre Community Council

**SUBMITTED BY:** Original Signed  
Erin MacIntyre, Director, Development Services

**DATE:** July 12, 2024

**SUBJECT:** Case VAR-2024-00642: Appeal of Variance Refusal – 3162 Ralston Avenue,  
Halifax, PID 00205211

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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; 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 granting of the variance.

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

Staff recommend that Regional Centre Community Council deny the appeal.

## **BACKGROUND**

A variance request has been submitted for 3162 Ralston Avenue, Halifax (Map 1) to permit an attached deck within the rear yard of a low-density dwelling use. In April of 2024 a permit application was made (DECK-2024-03842) for replacement of an existing attached deck in the required rear yard. The setback from the existing building to the rear property line is 5.4 metres (Map 2). The proposed attached deck would have a rear setback of 2.3 metres, which does not meet the required six metre rear yard setback. Staff were unable to locate permits authorizing the original construction of the existing rear attached deck. All other aspects of the proposal (including the replacement of stairs in the flanking yard) are compliant with the land use by-law requirements.

A variance application to reduce the rear yard requirement from the required 6 metres to the existing 2.3 metres was made on April 17, 2024. In accordance with the Regional Centre Land Use By-law, the rear setback is determined as the distance between the use (deck) and the rear lot line.

### **Site Details**

#### **Zoning**

The property zoned ER-3 (Established Residential 3) of the Regional Centre Land Use By-Law (LUB). The relevant requirements of the LUB and the related variance request is as identified below:

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum Rear Yard</b>	6 m	2.3 m

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment A). The applicant has appealed the refusal (Attachment B) and the matter is now before Regional Centre 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 refuse the request for this 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?**

Building setbacks are intended to ensure that structures maintain adequate separation from adjacent structures, streets, and property lines for access, safety, privacy, and consistency of neighbourhood character.

The 6 metre rear yard setback applies to all main buildings in the Established Residential zones, as well as rear yards in many other zones. The provision of a 6 metre rear yard creates the opportunity for green space, allowing for natural separation and retention of the scale and character of existing low-rise residential neighbourhoods. The request to reduce the setback by 3.7 metres is considered to be substantial and the proposed reduction would not adequately provide a natural buffer that is consistent with the scale and character of the area. For these reasons, the Development Officer determined that the request was not consistent with 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 the characteristics of the site are unique compared to the surrounding area. If the difficulty is general to properties in the area, then the variance must be refused. Many of the surrounding properties, created in 1952 as part of the Abbot Heights subdivision, are of a similar shape and lot area, with similar constraint due to the placement of the main building on the lot, meaning that, should a similar proposal be contemplated, a similar difficulty would be experienced relative to the rear setback requirement. In this case where the lots are of similar shape and area and with several having similar house placement, the Development Officer determined that the difficulty experienced is general to the 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 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 applied for a permit, and submitted the variance request upon learning that the proposal does not meet the requirements of the land use by-law. Intentional disregard of the bylaw 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 appellants have raised certain points in their letters of appeal (Attachment B) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<i>The rear setback requirement of the zone only allows for a 2' deep deck here, which is not functional at all. That doesn't even allow for a landing at the back door.</i>	The lot was created in 1952, at which time the former Halifax Peninsula Land Use By-law applied a rear setback of eight feet. At some point, the rear setbacks of the now-repealed Halifax Peninsula Land Use By-law were increased to a minimum of 20 feet. Without records establishing that the existing rear deck is non-conforming

	(lawfully permitted at the time of its construction), the only available option is to reduce the current requirement through the variance process.
<i>This is a corner lot and due to the placement of the house on the lot, there isn't room for a deck to be built on either the rear and inner side of the house. There is nowhere else to put this deck with some privacy (not beside the road on the front or flanking side).</i>	The LUB does provide some flexibility- encroachments are permitted into required rear yard setbacks for uncovered decks under 0.6 metres in height. It's agreed that there are challenges in meeting the rear yard requirements. Privacy fences are permitted and not subject to setback requirements.
<i>The deck we are proposing to build is smaller than the current deck, therefore projecting less far into the setback.</i>	As noted above, without records indicating when the existing deck was constructed, staff are not able to determine what requirements applied at that time. For that reason, the existing attached deck is not able to be taken into consideration as part of the evaluation of the variance request.

### **Conclusion**

Staff have reviewed all information relevant to 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 proposed variance is determined to conflict with the intent of the land use by-law and the difficulty experienced is general to the area. The matter is now before Community Council to hear the appeal and render a decision.

### **FINANCIAL IMPLICATIONS**

The HRM costs associated with processing this application can be accommodated with the approved 2024/25 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 30 metres of the variance 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 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 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: Variance Refusal Notice  
Attachment B: Letter of Appeal from Applicant

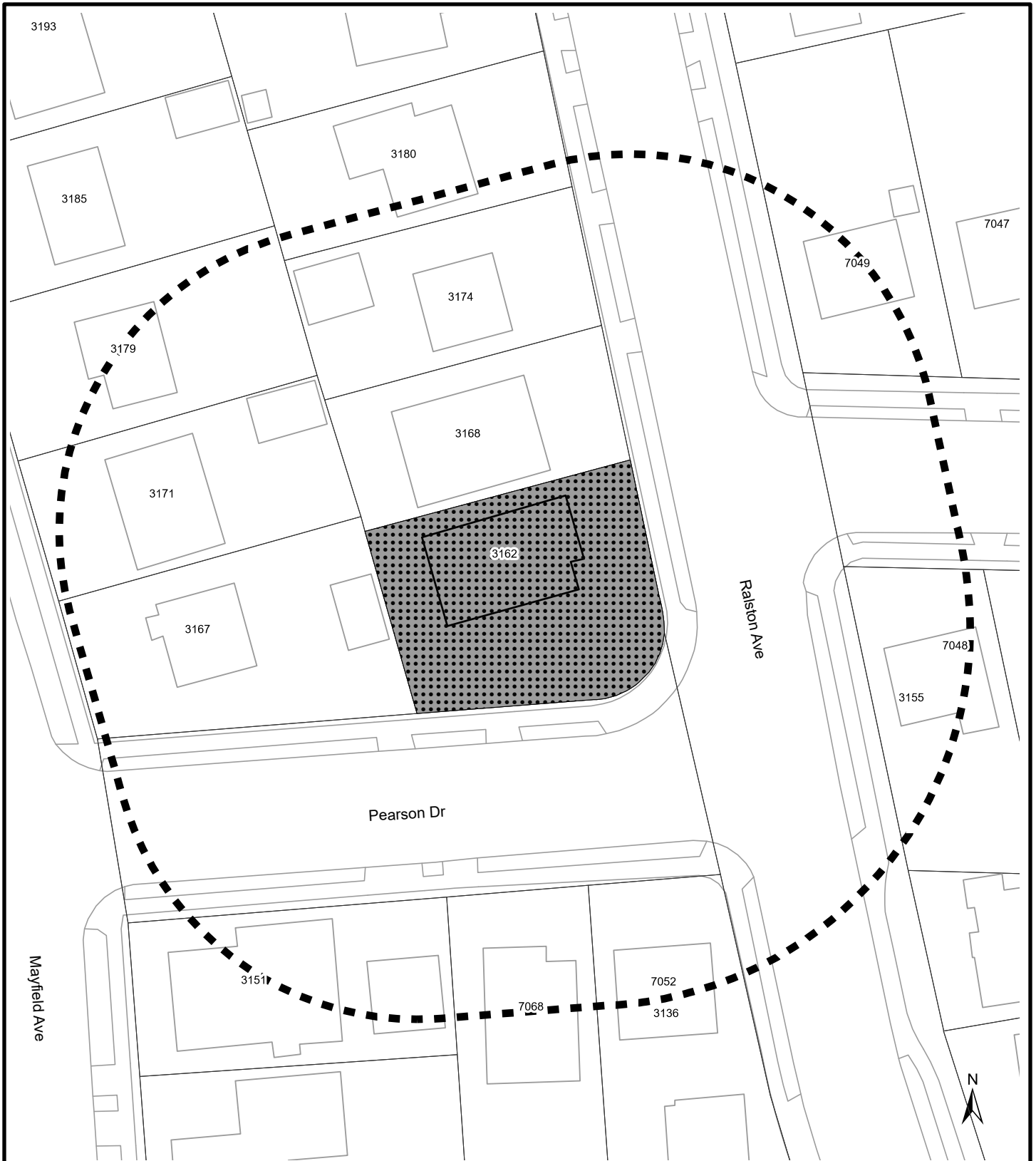
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Ronan Grey, Planner I, 902-399-6843  
Stephanie Norman, Principal Planner/Development Officer, 782-640-0702

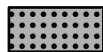
Report Approved by: Sean Audas, Program Manager, Land Development & Subdivision, 902-490-9553

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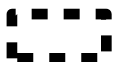


**Map 1 - Notification Area**

3162 Ralston Avenue,  
Halifax

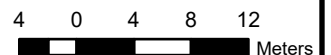


Subject Property

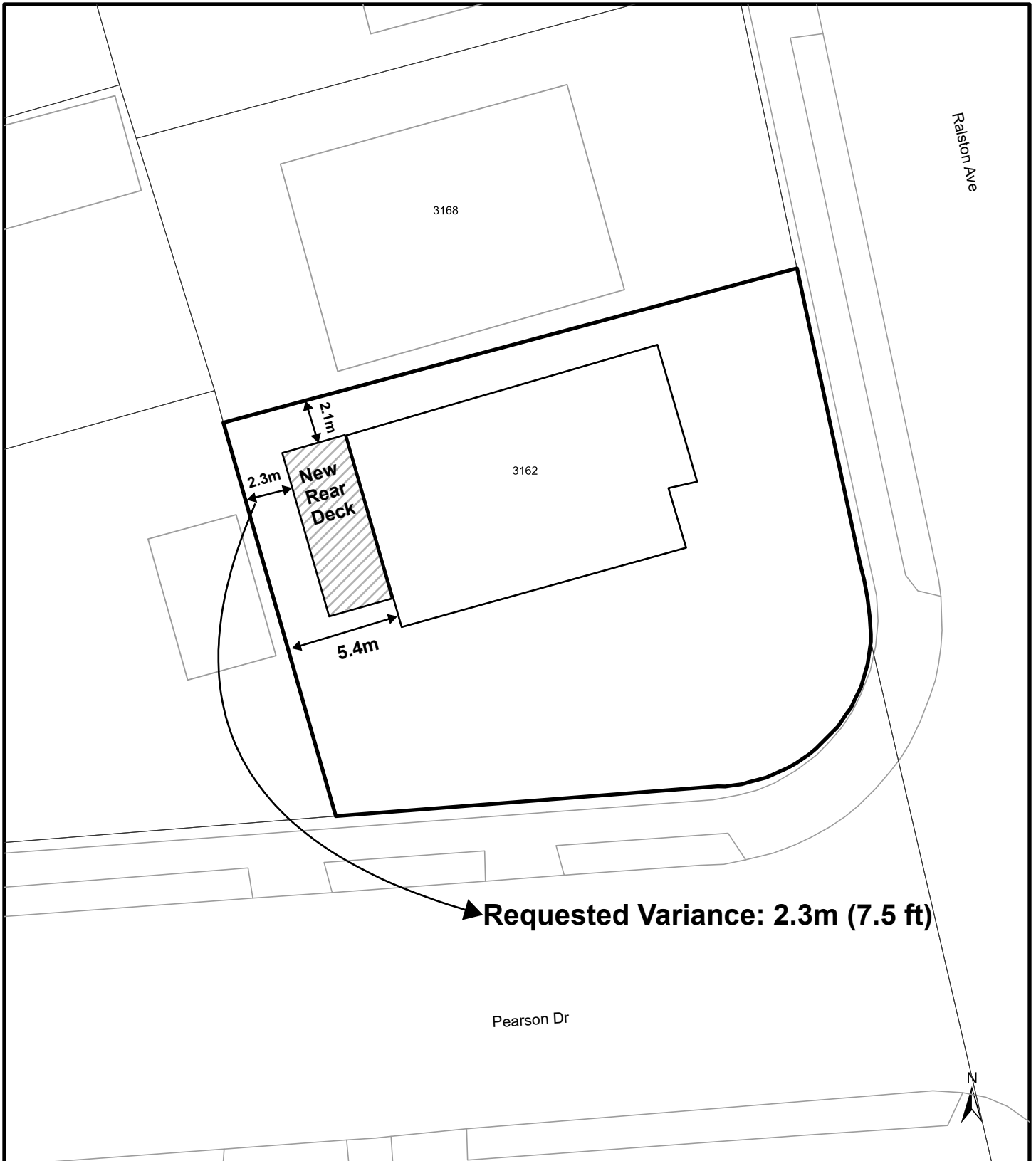


Notification Area

**HALIFAX**



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



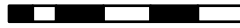
**Map 2 - Site Plan**

3162 Ralston Avenue,  
Halifax



Subject Property

**HALIFAX**

0 35 10 20 20 30  
 Feet

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

# ATTACHMENT A

May 9, 2024

Delivered electronically

Dear Kristen Lewis:

**RE: Variance # VAR-2024-00642**

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

**Location:** 3162 Ralston Ave, Halifax, NS  
**Project Proposal:** Reduce the required rear yard to 2.3m

LUB Regulation	Requirement	Proposed
Minimum Rear Yard Setback	6m	2.3m

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; and
- (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](mailto:clerks@halifax.ca)

Your appeal must be filed on or before **May 16<sup>th</sup>, 2024**.

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 call Ronan Grey at (902) 399 6843 or [ronan.grey@halifax.ca](mailto:ronan.grey@halifax.ca).

Sincerely,



Stephanie Norman, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Office of the Municipal Clerk- [clerks@halifax.ca](mailto:clerks@halifax.ca)  
Shawn Cleary

## ATTACHMENT B

May 14, 2024

Attn:

Municipal Clerk  
Halifax Regional Municipality  
Development Services - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
[clerks@halifax.ca](mailto:clerks@halifax.ca)

Please consider this a formal appeal for the variance refusal at 3162 Ralston Ave, Halifax, NS (VAR-2024-00642).

One reason for the refusal was “the difficulty experienced is general to properties in the area”, however we don’t feel that this is accurate. There is only one other property nearby with a similar situation at the rear setback (3168 Ralston Ave). All other homes in the area appear to have space to comply with the 6m rear setback, but we don’t since the house itself is within the setback. We feel that the situation with 3162 Ralston Ave is unique due to the position of the existing house on the property and it being a corner lot.

Another aspect of the refusal explanation is that they considered “the existing scale/character of existing neighbourhoods,” however there is a larger deck here currently so we will not be changing the existing scale or character of the neighbourhood. Our intention is to build a smaller, safer deck than there is currently. The rear deck is required for the family to access the existing rear exit of the home.

Thank you

Kristen Lewis, Archadeck of Nova Scotia

On behalf of Arthur McCalla & Aine Humble