

BACKGROUND

A variance request has been submitted for 1783 East Petpeswick Rd, East Petpeswick (PID 40404857) to permit an agriculture use in an accessory structure (Map 2). While the barn has been in existence for a number of years, it was not used for an agricultural use (a single horse) until approximately 2015. The setbacks and separation distances for a structure containing an agricultural use are significantly greater than those for an accessory structure used for any other purpose.

Staff received a complaint about a horse located in an existing building sited within the required setback from potable water supplies and watercourses, and within the required separation distance from neighbouring dwellings. To permit the agricultural use within the structure, seven variances are required.

Site Details:

Zoning

The property is in the FV (Fishing Village) Zone of the Eastern Shore (West) Land Use By-law (LUB). The applicable requirements for an agricultural use in this zone are found in Section 7.10 (Other Requirements: Agricultural Uses). These applicable requirements and the related variance request are as demonstrated on Map 2 and as identified below:

	Requirement	Variance Requested
Minimum Side Setback (Left)	50 feet (15.24 metres)	23 feet 11 inches (7.3 metres)
Minimum Setback from Watercourse or Waterbody (north of property)	300 feet (91.26 metres)	131 feet 3 inches (40 metres)
Minimum Setback from Watercourse or Waterbody (south of property)	300 feet (91.26 metres)	241 feet 1 inch (73.4 metres)
Minimum Setback from residential dwelling (1769 East Petpeswick Rd.)	300 feet (91.26 metres)	193 feet 7 inches (59 metres)
Minimum Setback from residential dwelling (1787 East Petpeswick Rd.)	300 feet (91.26 metres)	177 feet 2 inches (54 metres)
Minimum Setback from potable water supply (1769 East Petpeswick Rd.)	300 feet (91.26 metres)	196 feet 10 inches (60 metres)
Minimum Setback from potable water supply (1787 East Petpeswick Rd.)	300 feet (91.26 metres)	221 feet 9 inches (67.6 metres)

For the reasons detailed in the Discussion section of this report, the Development Officer refused the requested variance (Attachment A). The applicant appealed the refusal (Attachment B) and the matter is now before Harbour East-Marine Drive 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 variances.

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;*
- (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?

The subject property is located within the Mixed Use designation of the Eastern Shore (West) plan area. Agricultural uses are supported by plan policy as a Resource and Traditional Use, with application of appropriate separations between specific (in this case, agricultural) uses from residential uses, potable water supplies and watercourses. The corresponding LUB requirements include a minimum 15.2m or 50 foot setback from side lot lines, 91.4m or 300 feet from residential dwellings, potable water supplies and watercourses. The purpose of these setbacks is to carry out the intent of the MPS policy to allow agricultural uses, while creating restrictions which consider the environment, human health, and potential impact and compatibility with neighbouring properties. Additionally, the large setback requirements ensure that agricultural uses have a large supply of land which is often necessary for these uses.

In this case, a total of seven variances are required and many of these requested variances are significant reductions from the standard regulation. For example, the minimum setback from a watercourse is requested to be reduced from 300ft to 131 ft 3 inches. Given the significant reduction of the requirements, the potential for impacts (such as water contamination) is higher.

It is the Development Officer’s opinion that this proposal violates the intent of the Land Use By-law to provide separation of agricultural uses from residential uses, watercourses and potable water supplies.

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.

There are a variety of large and small lots of varying shapes and sizes along East Petpeswick Road. Many of the smaller lots would not be capable of meeting the setback requirements for an agricultural use, particularly the watercourse setback of 300 feet, as many of these lots are directly across the road from Petpeswick Inlet. Some of these lots are as small as 750 square metres in area and 30 metres wide, making it difficult to meet the agricultural use setback requirements. However, there are also some larger lots on East Petpeswick Road several acres in size that could easily meet the agricultural use setback requirements.

Given the variety of lot sizes and configurations in the area, the difficulty experienced is not general to properties in the area. This criterion did not inform the refusal of the variance request.

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 agricultural use commenced on the property without a development permit in 2015 when the property owner/applicant adopted the horse (Attachment B). The applicant has stated he was not aware that the LUB restricted agricultural uses. Staff were made aware of the illegal agricultural use in November 2021. Staff have since suggested that a variance application was an option, and that the relaxation in requirements would be needed in order to bring the use into conformity with the Land Use By-law and enable issuance of a development permit, which is required to authorize the change in use.

Since being made aware of the requirements the applicant has made the required variance application. Intentional disregard of by-law requirements did not inform the refusal of the 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 appellant has raised certain points in their letter of appeal (Attachment B) 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>"The location is less than the required 300 feet from the wells on the two abutting properties at 1769 East Petpeswick and 1787 East Petpeswick. But my property and the two abutting properties are on the side of a steep hill, and both the abutting wells are quite a bit higher than the location of the barn. Neither property owner has ever spoken with me about any contamination problems with their wells. Given that my property is downhill from these two wells, the likelihood of contamination is lower than if we were all on the same level. So I believe that a relaxation of the 300-foot requirement</i>	No assessments of the wells on surrounding properties has been submitted with the application. Staff can offer no assurance that water quality of wells or watercourses in the area has not been impacted, or that it will not be impacted in the future. The LUB requirements exist to ensure agricultural uses are located outside of an area where the potential for contamination exists.

<p><i>would not violate the intent of the ordinance to protect these water sources.”</i></p>	
<p><i>“In addition, I am now removing all solid waste and spoiled hay from the area and distributing the material with my tractor to neighbors along the road who use it for their gardens. Well-rotted manure supplies critical amounts of nitrogen to the soil. In addition to reducing any possibility of contaminating the abutting wells, this process also reduces the possibility of contaminating the inlet that lies across the road from my property.”</i></p>	<p>Once a variance is issued, the LUB does not contain any performance standards to ensure that manure removal is continuously done or that it is effective at preventing water contamination. This cannot be considered as part of the variance application as it cannot be enforced over time.</p>
<p><i>“I understand that the setback for the barn is too small. The barn is a small structure, and I can move it away from the left side to provide the required 50-foot minimum setback.”</i></p>	<p>Moving the accessory structure to meet the side yard setback would likely decrease the setbacks to the dwelling and potable water supply at 1787 East Petpeswick Road, thus making the requested variance request more significant.</p>
<p><i>“People have been keeping animals along East Petpeswick Road for centuries. There’ve been horses at other locations along the road recently. “</i></p>	<p>The Eastern Shore (West) Land Use By-law was adopted in 1996 and these requirements have applied since that date. Any agricultural uses in the Fishing Village (FV) Zone must meet the same requirements.</p>

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 conflicts 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 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 beyond those addressed within the Discussion section of this report.

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.

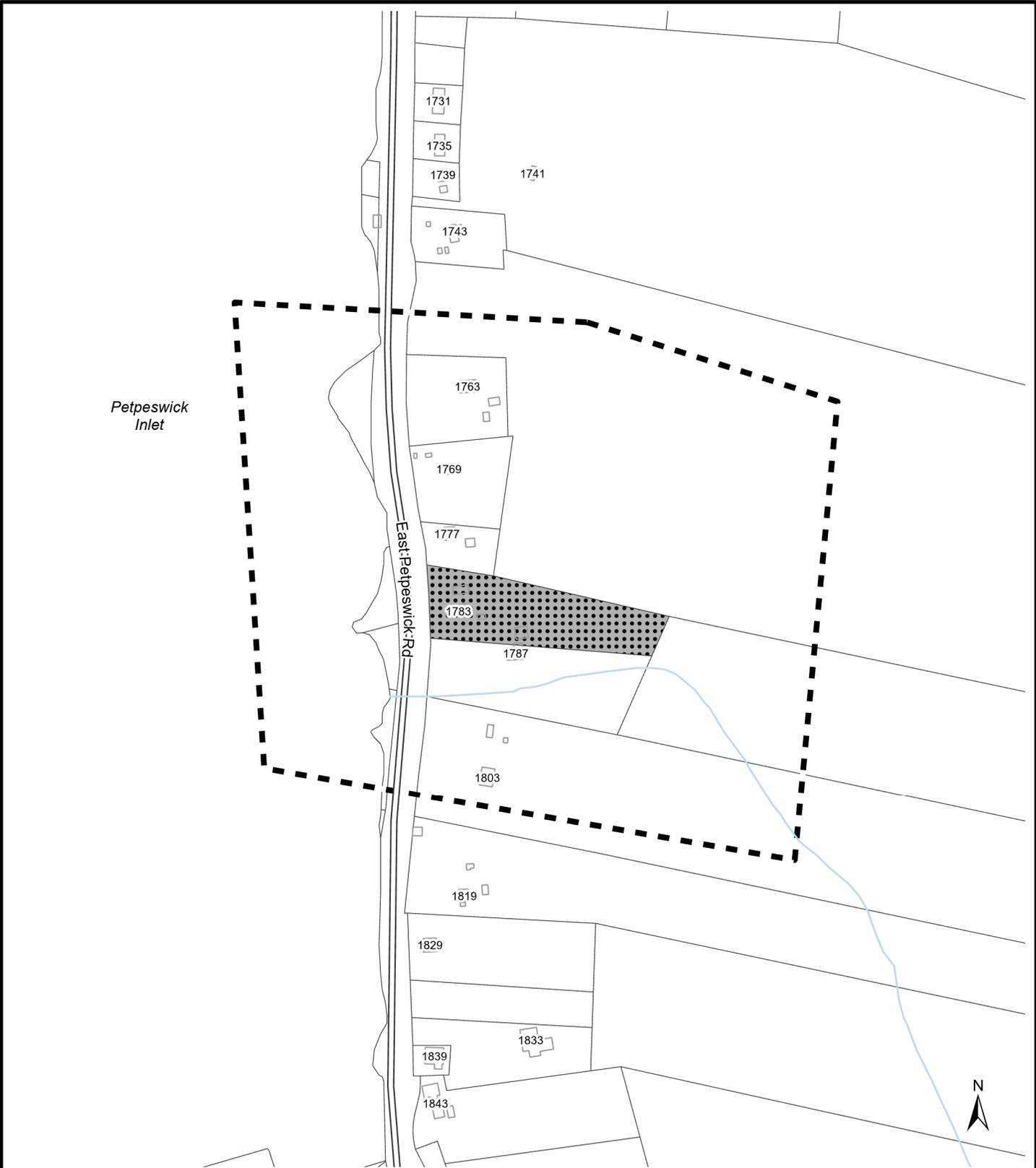
1. Denial of the appeal motion would result in the refusal of the variance. This would uphold the Development Officer's decision, and this is staff's recommended alternative.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Officer.

ATTACHMENTS

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

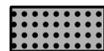
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Victoria Evans, Planner I, 902-223-3042
Peter Nightingale, Principal Planner/Development Officer, 902-719-9478



Map 1 - Notification Area

1783 East Petpeswick Rd,
East Petpeswick

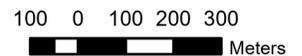


Subject Property

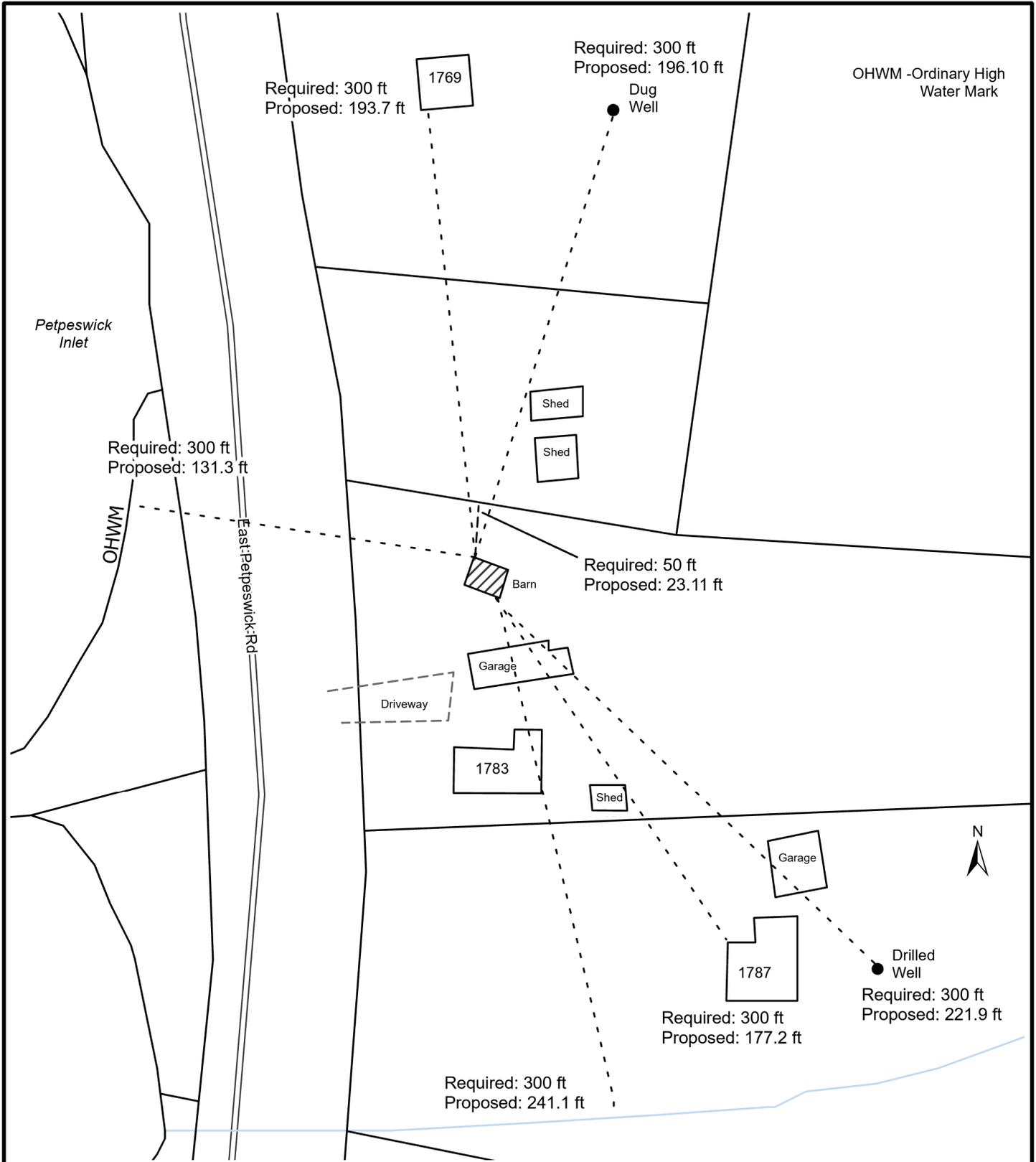


Notification Area

HALIFAX

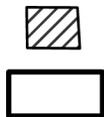


The accuracy of any representation on this plan is not guaranteed.



Map 2 - Site Plan

1783 East Petpeswick Rd,
East Petpeswick



Barn Structure
Subject Property

HALIFAX



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

December 1, 2022

Robin Clayton
[REDACTED]

Sent via email: [REDACTED]

Dear Robin Clayton:

RE: VARIANCE APPLICATION #24105, 1783 East Petpeswick Rd, East Petpeswick, PID 40404857

This will advise that I have refused your request for a variance from the requirements of the Eastern Shore (West) Land Use Bylaw as follows:

Location: 1783 East Petpeswick Rd, East Petpeswick, PID 40404857
Project Proposal: Reduction of required setbacks/separation distances to permit agricultural use within a structure

Land Use Bylaw Regulation (Section 7.10)	Requirement	Proposed
Minimum Left Side Setback	50 feet (15.24 metres)	23 feet 11 inches (7.3 metres)
Minimum Setback from Watercourse or Waterbody	300 feet (91.26 metres)	131 feet 3 inches (40 metres)
Minimum Setback from residential dwellings or potable water supply	300 feet (91.26 metres)	193 feet 7 inches (59 metres) to dwelling at 1769 East Petpeswick Rd
	300 feet (91.26 metres)	177 feet 2 inches (54 metres) to dwelling at 1787 East Petpeswick Rd
	300 feet (91.26 metres)	196 feet 10 inches (60 metres) to well at 1769 East Petpeswick Rd
	300 feet (91.26 metres)	221 feet 9 inches (67.6 metres) to well at East Petpeswick Rd

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 the variance violates the intent of the land use bylaw.

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
P.O. Box 1749
Halifax, NS B3J 3A5
clerks@halifax.ca**

Your appeal must be filed on or before **Monday, December 12, 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 Victoria Evans, Planner I, at 902-223-3042 or evansv@halifax.ca.

Sincerely,

Original Signed

Peter Nightingale, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Office of the Municipal Clerk- clerks@halifax.ca
Councillor David Hendsbee

Attachment B – Letter of Appeal

From: Robin200 Clayton [REDACTED]
Sent: Friday, December 9, 2022 12:21 PM
To: Office, Clerks <clerks@halifax.ca>
Subject: [External Email] Variance Appeal #24105

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

Municipal Clerk
Halifax Regional Municipality
Development Services
P.O. Box 1749
Halifax, NS B3J 3A5

December 9, 2022

Regarding: Appeal of the Decision for Variance Application #24105, 183 East Petpeswick Road, East Petpeswick, PID #40404857

Proposal: Reduction of required setback/separation distances to permit agricultural use within a structure

Dear Marine Drive-Harbour East Community Council:

I am writing to appeal the decision of the Development Officer denying my request for a variance to continue boarding a horse on my property as I have been doing since 2015.

I worked with horses 30 years ago. After my wife died in 2013, I started working at a farm in Gaetz Brook, where I met Angel. Angel is a registered Tennessee Walker who the owner rescued. She had never been ridden. (I broke her to saddle after I brought her to my home.) When the owner asked if I would like to buy her, I couldn't say no.

I was not aware of any zoning restrictions regarding keeping horses on my rural property. Boarding horses with other people is far more expensive than I could ever afford. So in order to keep Angel, I built a small corral, and a little barn next to my house. I spend several hours with her every day. I walk and ride her up and down East Petpeswick, where she has become a great favorite with parents and children. (Since the possibility of being forced to move her off the property arose, more than 7,000 people have signed a Change.org petition to let her stay.)

<https://www.change.org/p/residents-of-musquodoboit-harbour-east-petpeswick-help-us-keep-angel-here>

I understand that the setback for the barn is too small. The barn is a small structure, and I can move it away from the left side to provide the required 50-foot minimum setback.

The location is less than the required 300 feet from the wells on the two abutting properties at 1769 East Petpeswick and 1787 East Petpeswick. But my property and the two abutting properties are on the side of a steep hill, and both the abutting wells are quite a bit higher than the location of the barn. Neither property owner has ever spoken with me about any contamination problems with their wells. Given that my property is downhill from these two wells, the likelihood of contamination is lower than if we were all on the same level. So I believe that a relaxation of the 300-foot requirement would not violate the intent of the ordinance to protect these water sources.

In addition, I am now removing all solid waste and spoiled hay from the area and distributing the material with my tractor to neighbors along the road who use it for their gardens. Well-rotted manure supplies critical amounts of nitrogen to the soil. In addition to reducing any possibility of contaminating the abutting wells, this process also reduces the possibility of contaminating the inlet that lies across the road from my property.

I appreciate your consideration of the particulars of this request. People have been keeping animals along East Petpeswick Road for centuries. There've been horses at other locations along the road recently.

Please send me a reply email so that I know you received this letter within the deadline.

Thank you,

Robin Clayton

