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Item No. 10.2.1
Harbour East - Marine Drive Community Council
October 30, 2023

TO: Chair and Members of Harbour East - Marine Drive Community Council

-Original Signed-

SUBMITTED BY:

Erin MacIntyre, Director of Development Services

DATE: October 24, 2023

SUBJECT: **Case VAR-2023-00781: Appeal of Variance Approval – 410 Ponderosa Drive, Lake Echo**

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;
 - (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's **approval** of the appeal will result in **refusal** of the variance.

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

Staff recommend that Harbour East – Marine Drive Community Council **deny the appeal**.

BACKGROUND

A variance request has been submitted for 410 Ponderosa Drive in Lake Echo to authorize an existing accessory structure that is located within the minimum 20-foot front yard setback (Map 2 and Attachment A). This structure was in existence prior to the current property owner's purchase of the property. The accessory structure is used as a detached garage accessory to the home. The building meets all other requirements of the Land Use By-law.

Site Details:

Zoning

The property is zoned R-1 (Single Unit Dwelling) under the Planning District 8 & 9 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 Front Yard Setback	20.0 feet	5.2 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 the matter is now before the members of 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 approve the request for a 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;*
- (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 help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. Regarding access and safety, the distance between the neighboring properties and the side property line are such that there is no cause for concern. The existing accessory structure meets all other requirements of the Land Use By-Law. The reduction to the front yard setback does not impact the access or safety, as there is a natural vegetative barrier between the structure and the right-of-way (Attachment A). The variance does not violate the intent of the Land Use By-Law.

2. Is the difficulty experienced general to properties in the area?

The difficulty experienced is not general to other properties in the area. 410 Ponderosa Drive was created through the subdivision process in 1970, predating the adoption of the Planning District 8 & 9 Land Use By-Law in 1984. Given its approval prior to the application of the current regulations, it does not meet the minimum lot area requirements of the R-1 Zone as set out in the Land Use By-Law, making it an existing undersized lot. The property abuts Lake Echo, and when the home was constructed, the on-site septic system was placed between the dwelling and the public street, to provide the greatest distance possible between the watercourse and septic system. The accessory structure was sited within the required front yard setback to avoid interference with the on-site septic. There is no other available site on the property for the accessory building, due to the lot's size, the location of the dwelling and septic system on the property, and its abutment of Lake Echo.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

Although there are no records on file for the garage, the structure existed on the property prior to the current owner purchasing the land and has been there for a number of years. When the property owner applied for a permit in order to connect power to the garage, they became aware that the structure was located within the front yard. Given that the siting of the structure was prior to the applicant's ownership of the property, it is clear that the difficulties are not a result of the intentional disregard of the requirements of the land use by-law.

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
<i>There are vehicles parked on the street now which impede passage. If there is no room to park his vehicles now, it will be impossible if a garage is built.</i>	This variance requests approval of a setback closer to the front property line than is currently permitted, which has no impact on passage of vehicles within the public street. No additional structures are proposed to be built on the property, thus keeping the current lot coverage and available parking area the same. Parking within the public street is regulated by the Provincial <i>Motor Vehicle Act</i> , and any complaints about parking in the street should be directed to 311 to be investigated.

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

The HRM costs associated with processing this application can be accommodated with the approved 2023/24 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 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 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 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:	Location and Notification Area
Map 2:	Site Plan
Attachment A:	Building Photo
Attachment B:	Variance Approval Notice
Attachment C:	Letter of Appeal from Abutter

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.

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