



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information ☐	Recommendation ☒	Decision Request ☐	Councillor Activity ☐
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To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____
William Overholt, Development Officer

Date: July 28, 2026

Subject: Appeal of Variance Approval: 532-542 O'Brien Street, Windsor, PID 45054392

LEGISLATIVE AUTHORITY

Municipal Government Act, Section 235 (3) allows for a variance to be granted where the variance does not violate the intent of the land-use by-law and difficulty experienced is not general to properties in the area.

Municipal Government Act, Section 237 (1) allows Council to hear an appeal from the granting or refusal of a variance, and for Council to make any decision that the Development Officer could have made.

RECOMMENDATION

Staff recommend that Council uphold the decision of the Development Officer to grant the variance request by approving the following motion:

...that Council upholds the decision of the Development Officer with regard to the granting of a variance to reduce the rear yard setback distance to property lines for a multi-unit residential building at 532-542 O'Brien Street, Windsor (PID 45054392).

BACKGROUND

Property ☒	Public Opinion ☐	Environment ☐	Social ☐	Economic ☐	Councillor Activity ☐
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A variance application was received on May 9th, 2026, from Morgan Zwicker and La'Dea Roberts for 532-542 O'Brien Street, PID 45054392, requesting a reduction of the rear yard setback. The proposed development is a 10-dwelling unit residential building (Attachment A). The applicant

requested to reduce the rear yard setback from 35 feet (10.7 metres) to 15 feet (4.6 metres). All other aspects of the proposed development will meet the requirements of the Windsor Land Use By-law (LUB).

This property is designated Residential in the Windsor Municipal Planning Strategy (MPS) and is zoned High Density Residential (R-3) in the LUB. The High Density Residential (R-3) zone permits dwellings with up to 12 units as-of-right. The lot is surrounded by other High Density Residential (R-3) zoned lots to the east and south, Medium Density Residential (R-2) to the west, General Commercial (GC) and Highway Commercial (HC) to the north.

The lot is approximately 80 feet (24.4 metres) at the front, and 60 feet (18.3 metres) at the rear. To be able to accommodate a 10-unit building, while complying with the other setback requirements, height requirements, and lot coverage, the building would need to be set back from the front lot line. While the applicant considered having the required parking at the rear of the proposed development, their engineers found that there would not be adequate space for safe and efficient driveway aisles. The proposed site layout places the parking at the front of the structure, leaving the rear of the structure as outdoor recreation space.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance on May 11th, 2026. Once approved notices of approval were sent to property owners within 30 meters of the site by mail outlining their right to appeal the decision within 14 days of receiving the notice. On May 26th, 2026, the Development Officer received notice that a property owner within the notification area appealed the variance approval (Attachment C). When a variance is appealed Council may make any decision the Development Officer could have, which is to either approve or refuse the variance based on the criteria of the Municipal Government Act.

DISCUSSION

Rear Yard Setback Variance Request:

The *Municipal Government Act* sets out the following criteria by which the Development Officer may not grant a variance:

“235 (3) A variance may not be granted where the

- (a) variance violates the intent of the development agreement or land-use by-law;*
- (b) difficulty experienced is general to properties in the area; or*
- (c) difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law”*

For a variance to be granted, the proposed reduced setback must not conflict with any of the above criteria. The Development Officer’s assessment of the proposal relative to each criterion is as follows:

a. Does the proposed variance violate the intent of the land use by-law?

The rear yard setback is the distance of the rear yard to the nearest wall of any building or structure on the lot. As seen in the site plan (Attachment B), the proposed rear yard ranges from 15 feet (4.6 metres) to 22.8 feet (6.9 metres). The purpose of any setback is to create a separation to ensure that development is done in a safe and non-intrusive manner. A 15-foot separation is still a significant buffer to prevent any intrusion from light or sound. The most sound and light intensive uses, the parking lot and entry, are focused at the front and left side of the building. Allowing parking to be at the front will create a less intrusive development, as vehicles will not be driving around the building to reach the parking lot, and there will be no loading from vehicles at the rear.

This reduction in the rear yard does not create a more intrusive or unsafe development for neighboring properties. This layout allows the applicant to meet the Land Use By-law's parking requirements in the front and recreation requirements in the rear yard. The parking requirements state that one parking space must be provided for each unit. The required recreation space ranges from 150 ft² to 400 ft² per unit, depending on how many bedrooms there are in the unit. Recreation use is less intrusive to surrounding properties than a parking lot is and locating the recreation space in the rear yard would reduce the impact on abutting properties compared to having parking in that space.

It is the opinion of the Development Officer that the intent of the rear yard setback is still met.

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

While many of the surrounding properties do have irregular shapes with comparable widths, PID 45054392 is significantly longer. The surrounding lots have a closer length to width ratio, resulting in them being more uniform and suitable to a more typical development setbacks. Additionally, the angle of the lot relative to O'Brien Street provides unique difficulties.

It is the opinion of the Development Officer that the difficulty experienced is not general to properties in the area.

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

There was no intentional disregard for the requirements of the LUB. The applicant submitted a variance application prior to any construction or the issuance of a development permit.

Appellant's Submission:

While the criteria of the *Municipal Government Act* 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 D) for Council's consideration. These points are summarized and staff comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
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<i>"The approved variance reduces the required rear yard setback by 20 feet, representing a reduction of more than 57% from the required setback... A reduction of this magnitude significantly diminishes the separation intended by the by-law and cannot reasonably be characterized as a minor adjustment... In my view, reducing the setback from 35 feet to 15 feet raises legitimate concerns regarding whether the intent of the setback provisions is being maintained."</i>	There is no limit on the amount of reduction that can be granted for a variance in the Windsor Land Use By-law. Additionally, there is no requirement for a variance to be 'minor' in nature under the MGA.
<i>"Reducing the setback from 35 feet to 15 feet will substantially decrease the separation between the proposed 10-unit residential building and neighbouring properties. This raises concerns regarding:</i> <i>• Privacy impacts from a larger residential building located closer to neighbouring yards;</i> <i>• Increased noise and activity associated with a higher-density residential development;</i> <i>• Additional lighting impacts;</i> <i>• Reduced enjoyment of neighbouring properties; and</i> <i>• Reduced separation between existing structures and the proposed development."</i>	The most obnoxious uses associated with residential development, the parking and entry to the building, are proposed to be at the front and left side of the building. The use of the rear yard is to be dedicated to recreation space, resulting in the noise and lighting impacts being minimized. There will still be a 15-foot separation between the proposed development and existing buildings and due to the angle of the building, the rear yard setback will range from 15 feet to 22.8 feet.
<i>"... I question whether accommodating a preferred development layout is sufficient justification for reducing the required rear setback by more than half."</i>	The applicant has been unable to find an alternative site layout which accommodates a 10-unit residential building, while ensuring there is still adequate parking and recreation space. The proposed development has already reduced the number of units from the as-of-right maximum of 12.
<i>"The previous building on the property contained four residential units. The proposed development would increase that density to ten residential units while simultaneously reducing the setback intended to separate the development from neighbouring properties."</i>	As the property is zoned High Density Residential (R-3) in the Windsor Land Use By-law, up to 12 units are permitted as of right. Past development history is not a consideration when granting a variance under the MGA.
<i>... a significant fire previously occurred on this site. Having witnessed that event and the challenges associated with emergency response, I am concerned that reducing the separation distance between the proposed building and neighbouring structures increases the potential impact on adjacent properties should a future emergency occur."</i>	The Manager of Building and Fire Inspection Services was consulted regarding the proposed variance and provided the following comments: "This building would have to meet the NBC limiting distance calculations for the 15 foot setback. Without doing a full plan review, only 16 to 18% openings will be permitted with combustible construction (1-hour rating) and non-combustible cladding. This would meet the

	fire separation requirements to the property line. The NBC allows a closer set back but, the type of construction would be more restrictive.” Additionally, historical fires are not something that can be considered when granting a variance under the MGA.
<i>“Prior to the appeal deadline, I requested access to the site plan, variance application, and building drawings in order to better understand the impacts of the proposal on neighbouring properties.</i> <i>I believe neighbouring property owners should have access to sufficient information to understand the practical implications of a variance decision that directly affects adjacent properties.”</i>	The required information was provided in the appeal letter (Attachment C), as per s. 236 (6) of the MGA which states: <i>“The notice shall</i> <i>(a) describe the variance granted;</i> <i>(b) identify the property where the variance is granted; and</i> <i>(c) set out the right to appeal the decision of the development officer.”</i> Upon further review of the variance application, staff have released the site plan and justification provided by the applicant.

Conclusion:

Staff have reviewed all the relevant information in this variance proposal and appeal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict with the criteria provided by the Municipal Government Act. The matter is now before Council to hear the appeal and render a decision.

NEXT STEPS

The is no higher board of appeal for variances. Councils’ decision will determine whether the development can be permitted as proposed.

If council upholds the Development Officer’s decision to approve the variance a Development Permit will be issued for it as proposed.

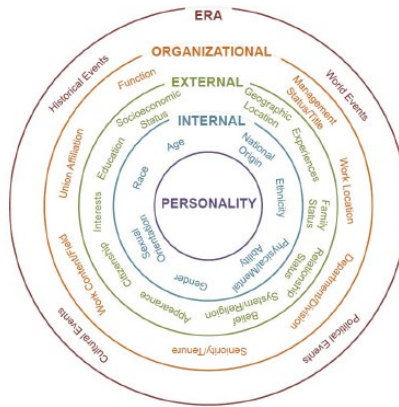
If council overturns the Development Officer’s decision and refuses the variance, the Development Permit will be refused as proposed.

FINANCIAL IMPLICATIONS

There are no financial implications in relation to the filing of this report.

DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY CONSIDERATIONS

Staff reviewed this administrative matter, and no material DEIA impacts were identified.



ALTERNATIVES

In response to this appeal, Council may:

- uphold the Development Officer's decision to approve the variance; or
- overturn the Development Officer's decision and refuse the variance.

ATTACHMENTS

Attachment A: Variance Application for 532-542 O'Brien Street

Attachment B: Proposed Site Plan

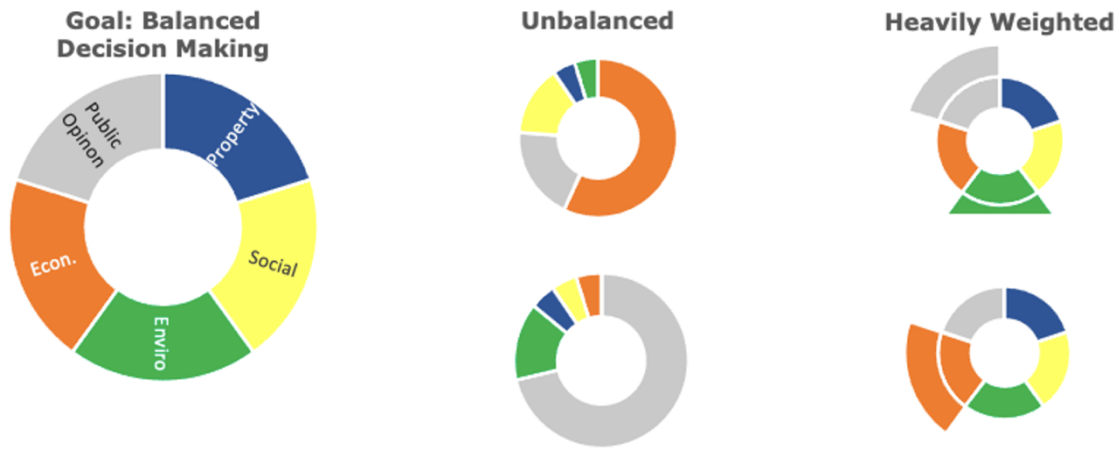
Attachment C: Notice of Variance Approval

Attachment D: Appeal of Variance Approval

CHIEF ADMINISTRATIVE OFFICER REVIEW

(For use if report is from a Councillor. CAO to provide additional comments on background, department/staff responsible and workload, budget, options, preferred strategy. State "Not Applicable" if report is from staff which already incorporates CAO review.)

Council has been provided with a reference taken from the Meeting and Committee Procedural Policy , Appendix C “Decision Making by Council and Committee of the Whole” as a reminder of the principles highlighted for good decision making.



Report Prepared by: _____

William Overholt, Development Officer

Report Reviewed by: _____

Derek Robertson, Manager of Development Control Services

Sara Porier, Director of Planning and Development

Report Approved by: _____

Mark Phillips, Chief Administrative Officer



West Hants
something inspiring awaits

WEST HANTS REGIONAL MUNICIPALITY
P.O. Box 3000, 76 Morison Drive, Windsor, NS B0N 2T0
Planning and Development Department
Phone: 902-798-8391 Ext. 115

APPLICATION FORM FOR VARIANCE

Please note: All information provided is public once a report is prepared.

APPLICANT INFORMATION	OWNER INFORMATION (if different from applicant)
Name:	Name: [REDACTED]
Mailing address:	Mailing address: [REDACTED]
Phone:	Phone: [REDACTED]
Email:	Email: [REDACTED]

PROPERTY INFORMATION	NATURE OF THE VARIANCE REQUESTED (*only considered within the former Town of Windsor)
Civic Address: 532-542 O'Brien Street, Windsor	☐ Reduced front yard
PID: 45054392	☐ Reduced side yard
Present Use of Property: 4-unit dwelling	☒ Reduced rear yard
Intended Use of Property: 10-12 unit dwelling	☐ Lot area
	☐ Percentage of land to be built upon*
	☐ Number of parking and loading spaces*
	☐ Height / Area of sign*
	☐ Floor area of home occupation*
	☐ Height / Area of structure*

EXPLANATION OF PROPOSAL

Please provide a short explanation of your proposal (please use an additional sheet if needed)

I propose to reduce the rear yard requirement to 15ft, which is more consistent with Kentville and Wolfville's R-4 zones to accommodate multi-unit dwellings. This variance would allow a lot design for a new multi-unit dwelling that can meet the other requirements such as parking and amenity area in a safe and reasonable manner, allowing proper flow for traffic and allowing the building to be setback from a busy street for tenant safety.

Please explain why it is not possible to comply with the Land Use By-law (please use an additional sheet if needed)

The lot can accommodate 12-unit residential as-of-right. However, after investigation with a surveyor and engineer, due to the configuration of the land (specifically the narrow width), it becomes impossible to create a reasonably sized building footprint while meeting all other requirements in the land use bylaw. To create a safe and functional parking area at the front of the lot and maintain enough lot area for amenity space and a modest-sized building footprint (for small/economical apartments), the rear yard variance is required.

SIGNATURE (If you are not the property owner, please attach a signed Authorization Statement)

By signing this application, I affirm that the facts set forth are true and complete

Name [REDACTED] Signature [REDACTED] Date 24/04/2026

For office use only: Heritage Property: ☐ Yes ☐ No Non-Profit Organization: ☐ Yes ☐ No

Fee: \$ _____ Date Paid: ____/____/____ Receipt #: _____

For further expansion on the explanation of why it is not possible to comply with the Land Use Bylaw:

Being located in an area that was recently rezoned to R3, we acknowledge there is consideration given to creating housing and would like to provide an avenue to help increase the housing supply. As we worked with engineers to attempt to develop a site plan at this location for a 12-unit building (permitted as-of-right), a few conclusions became evident quickly:

- Due to the narrow width of the lot (approximately 57 feet wide at the narrowest point), locating parking behind the building is not possible while respecting the side yard setbacks for a building as well as creating safe drive aisles in the parking lot
- Respecting the amenity areas and all setbacks, as well as creating parking spaces in front of the building as required in the LUB leaves little room for a building footprint (64'x36' footprint for a 10-unit development; a 12-unit development would be impossibly small)
- Considering the above, the question then turns to the building design within these restrictions. Using the 10-unit (2 bedroom units) example supplied, a 64'x36' building with 3-storeys creates 6912sqft, of which a reasonable estimate would be 15% of this as common areas - stairs, hallways, entry areas etc (1036sqft), leaving under 5900sqft as habitable square footage. This results in unit sizes under 600sqft, which is uncomfortably small for the intended 2-bedroom units.

With a variance granted for a rear yard setback reduced to 15ft, this will allow the site plan to change with the building size increasing slightly and the rear of the building being situated further back on the lot. While respecting all other requirements (i.e. side and front yard setbacks, parking requirements, amenity areas), we are not certain this will allow us to densify to 12 units, but it will allow at least 10 units to be comfortably and safely situated, with enough square footage within the building to house tenants.

SKETCH - 10 Unit

SKETCH SHOWING
PROPOSED PARKING
AND BUILDING ENVELOPE

LANDS CONVEYED TO
LA'DEA GEM ROBERTS &
MORGAN YORK ZWICKER

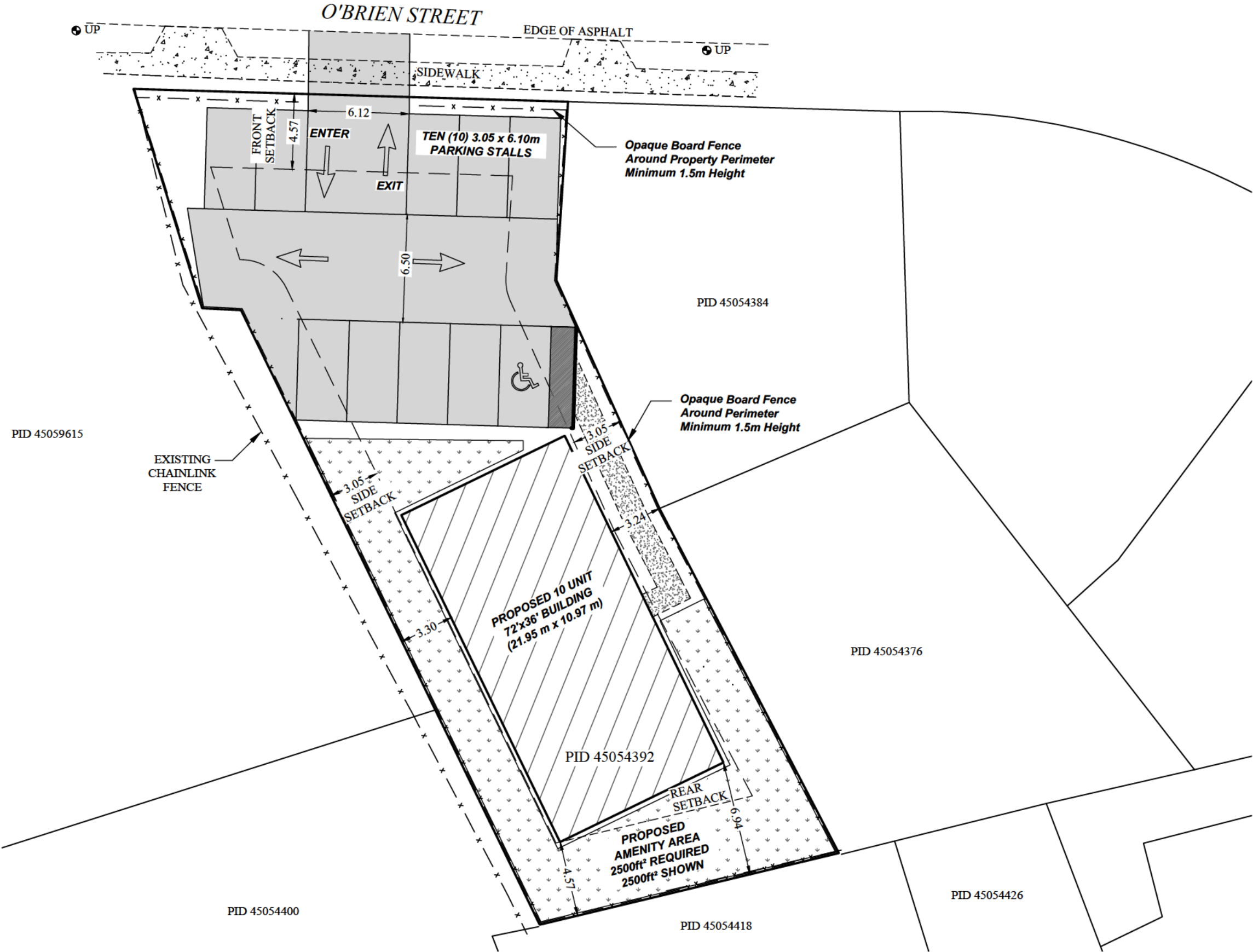
PID 45054392
O'BRIEN STREET
WINDSOR
HANTS COUNTY

SCALE 1:250
DATE: APRIL 21, 2026
PLAN No. 2026-091SK2
REVISED: June 2, 2026
LEGEND

POLE STAKE	PS
ANCHOR STAKE	AS
SURVEY MARKER	SM
IRON PIPE	IP
WITNESS	WIT
FOUND	FD
UTILITY POLE	UP
OVERHEAD WIRES	OHW
NOT TO SCALE	
FIELD MEASUREMENT	F
PLAN MEASUREMENT	P
DEED MEASUREMENT	D
PROPERTY BOUNDARY	

DeWOLFE & MORSE
SURVEYING AND
ENGINEERING LIMITED

PO BOX 520
MIDDLETON
NOVA SCOTIA
B0S 1P0
info@demosl.ca





NOTICE OF VARIANCE

To: ALL PROPERTY OWNERS WITHIN 30 METRES OF THIS VARIANCE

Date: May 11th, 2026

Re: 532-542 O'Brien Street, Windsor, PID 45054392

Dear property owner,

Please be advised the Development Officer has granted a variance to the above-noted property consisting of the following:

- Reduce the required rear yard setback from 35 feet to 15 feet in order to permit a 10-unit residential building, due to the narrow nature of the lot.

Pursuant to Section 236 of the Municipal Government Act, you are being notified of the variance as a property owner within 30 metres of the subject property. You have the right to appeal this decision to the Council of West Hants Regional Municipality. Appeals must be submitted within fourteen (14) days of this notice.

Appeals will be received in writing by the Chief Administrative Officer at 76 Morison Drive, PO Box 3000, Windsor, NS., B0N 2T0.

If you would like more information or have any questions concerning this decision, please contact the Development Officer, William Overholt, at 902-798-8391 Ext. 109.

Yours truly,

William Overholt
Development Officer

May 22, 2026

Chief Administrative Officer

West Hants Regional Municipality
76 Morison Drive
P.O. Box 3000
Windsor, NS B0N 2T0

Re: Appeal of Variance Approval – 532–542 O'Brien Street, Windsor, NS

Dear Chief Administrative Officer,

I am writing to formally appeal the Development Officer's decision to approve a variance reducing the required rear yard setback for the proposed development at 532–542 O'Brien Street from 35 feet to 15 feet.

As an adjacent property owner, I am concerned that the approved variance is excessive and does not adequately protect neighbouring properties or uphold the intent of the setback provisions contained within the applicable Land Use By-law.

1. The Variance is Substantial and Not Minor in Nature

The approved variance reduces the required rear yard setback by 20 feet, representing a reduction of more than 57% from the required setback.

Rear yard setbacks exist to provide adequate separation between developments, protect neighbouring properties, reduce impacts associated with larger buildings, and maintain appropriate buffers between uses. A reduction of this magnitude significantly diminishes the separation intended by the by-law and cannot reasonably be characterized as a minor adjustment.

In my view, reducing the setback from 35 feet to 15 feet raises legitimate concerns regarding whether the intent of the setback provisions is being maintained.

2. Impacts on Neighbouring Properties

My property directly abuts the proposed development site. I have a detached garage and outdoor living space located near the shared property boundary.

Reducing the setback from 35 feet to 15 feet will substantially decrease the separation between the proposed 10-unit residential building and neighbouring properties. This raises concerns regarding:

- Privacy impacts from a larger residential building located closer to neighbouring yards;
- Increased noise and activity associated with a higher-density residential development;
- Additional lighting impacts;
- Reduced enjoyment of neighbouring properties; and

- Reduced separation between existing structures and the proposed development.

The purpose of the rear yard setback requirement is to provide a reasonable buffer between neighbouring properties. The approved variance significantly weakens that buffer.

3. The Variance Appears Intended to Accommodate a Preferred Site Design

Based on information provided by the Development Officer, the variance was approved because the lot is narrow and the applicant wishes to locate parking and outdoor recreation space at the front of the property.

While I appreciate the challenges associated with site design, I question whether accommodating a preferred development layout is sufficient justification for reducing the required rear setback by more than half.

The variance appears to facilitate a particular development configuration rather than address a hardship that would otherwise prevent reasonable use of the property. I respectfully request that Council consider whether the proposed design is driving the variance request rather than the characteristics of the property itself.

4. Increase in Density and Site History

The previous building on the property contained four residential units. The proposed development would increase that density to ten residential units while simultaneously reducing the setback intended to separate the development from neighbouring properties.

This represents a significant increase in intensity of use while reducing the buffer between the development and adjacent property owners.

In addition, a significant fire previously occurred on this site. Having witnessed that event and the challenges associated with emergency response, I am concerned that reducing the separation distance between the proposed building and neighbouring structures increases the potential impact on adjacent properties should a future emergency occur.

My detached garage is located near the shared property boundary and would be among the structures most directly affected by the reduced setback.

While I understand that fire and building code reviews occur during later stages of the approval process, I believe Council should carefully consider whether a reduction of this magnitude is appropriate given the proposed increase in density and proximity to neighbouring properties.

5. Limited Access to Information

Prior to the appeal deadline, I requested access to the site plan, variance application, and building drawings in order to better understand the impacts of the proposal on neighbouring properties.

I was advised that these documents are not available through routine access processes and may require a Freedom of Information and Protection of Privacy (FOIPOP) request. As a result, I have been unable to review the proposed layout, building orientation, or relationship to neighbouring properties before being required to exercise my right of appeal.

I believe neighbouring property owners should have access to sufficient information to understand the practical implications of a variance decision that directly affects adjacent properties.

Request for Relief

For the reasons outlined above, I respectfully request that Council overturn the variance approval and require compliance with the rear yard setback requirements applicable to this property.

Thank you for your consideration of this appeal.

Respectfully submitted

