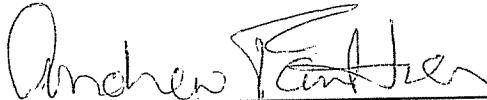




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
September 14, 2009

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: August 27, 2009

SUBJECT: Appeal of the Development Officer's decision to refuse a variance - 78 Hebridean Drive, Herring Cove, NS

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the rear and side lot line requirements of the Planning District 5 (Chebucto Peninsula) Land Use bylaw to permit the conversion of an accessory building to a single unit dwelling.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

The subject property is located at 78 Hebridean Drive, Herring Cove (see location map). The property is zoned HCR (Herring Cove Residential) under the Planning District 5 (Chebucto Peninsula) Land Use Bylaw.

A preliminary subdivision assessment letter dated July 25, 2007 indicates that the proposed subdivision of the existing dwelling and the existing accessory building into two separate lots appears to meet the Regional Subdivision Bylaw requirements. Final subdivision approval is still required prior to any future approval(s) for development and building permit(s). On June 22, 2009, Mr. Taussig applied for a development permit to convert the existing accessory building to a single unit dwelling. The setbacks for the proposed single unit dwelling do not meet the rear and side (right) lot line setback requirements of the land use bylaw.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw?

The purpose of the 8 feet rear and side lot line separation is to ensure that there is adequate space between main buildings abutting properties. This lot line separation is relaxed to 4 feet for accessory buildings. Accessory buildings are not for human habitation and therefor are less intrusive to abutting properties. The proposed conversion with reduced minimum setbacks to the lot line will have an impact to abutting properties. The proposed variance does violate the intent of the land use by-law.

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

The difficulty experienced is general to the properties in the area. There are a great number of accessory buildings constructed with the relaxed minimum lot line setback of 4 feet in this neighbourhood. With the completion of the new sewer and water service laterals, many property owners may also have the ability to subdivide their lots and convert an existing accessory building into a dwelling unit. The difficulty experienced by the current applicant will therefor be the same for other property owners in the area. The alternative will be to demolish or relocate the converted building to meet the residential setback requirements.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

There is no intentional disregard for the requirements of the land use by-law.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and grant the variance.

ATTACHMENTS

1. Location Map
2. Development Permit Application Site Plan
3. Preliminary Subdivision Application Site Plan
4. Applicant's Appeal Letter
5. Copies of names and addresses of assessed owners (30 metres) in support of the applicant's proposed variance.

INFORMATION BLOCK

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

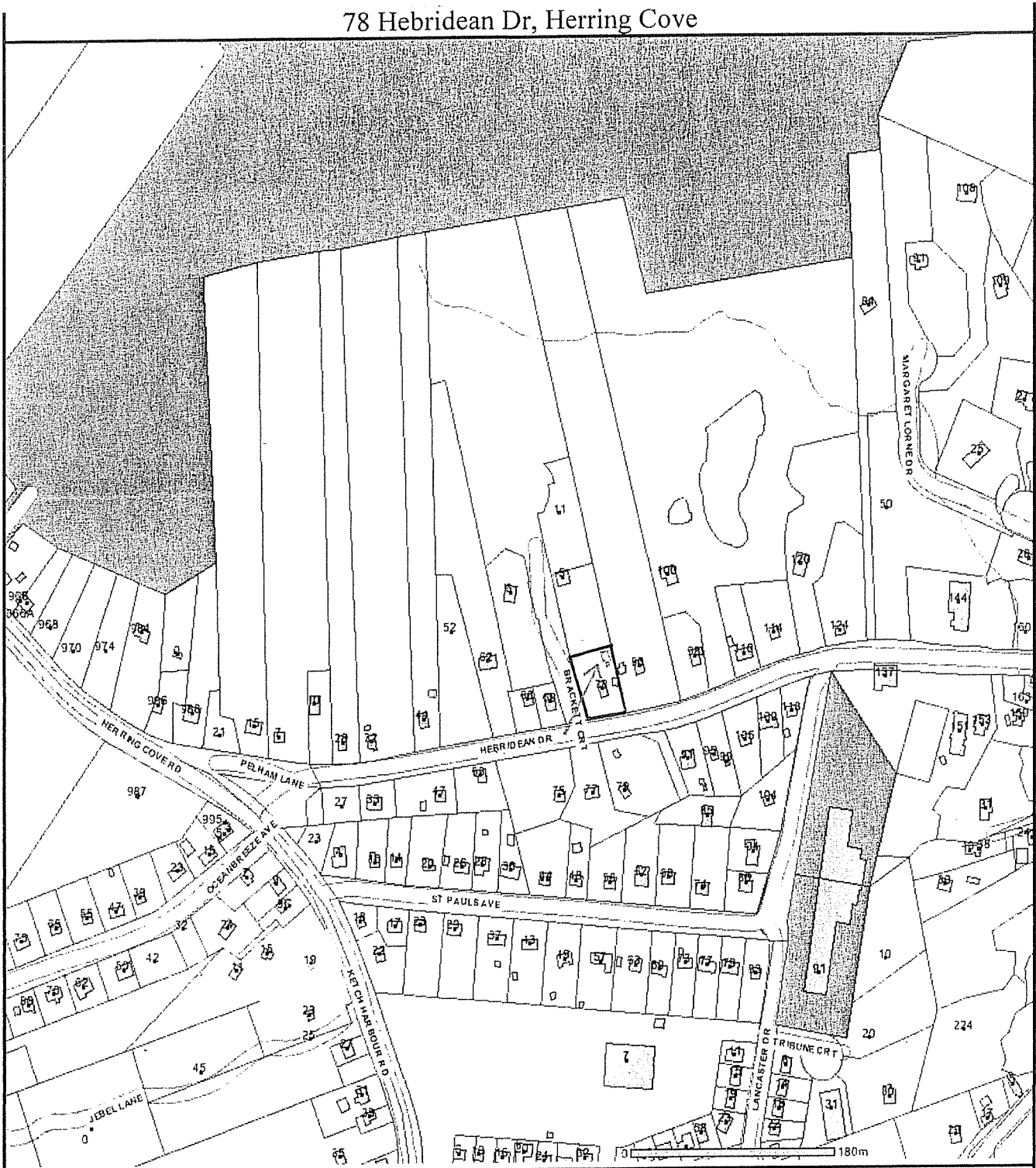
Report Prepared by: Andrew Faulkner - Development Officer (490-4402)

DATE: July 14, 2009

SUBJECT: Development Officer's refusal of a variance application - conversion of an accessory building to a single unit dwelling at 87 Hebridean Drive, Herring Cove.

LOCATION MAP

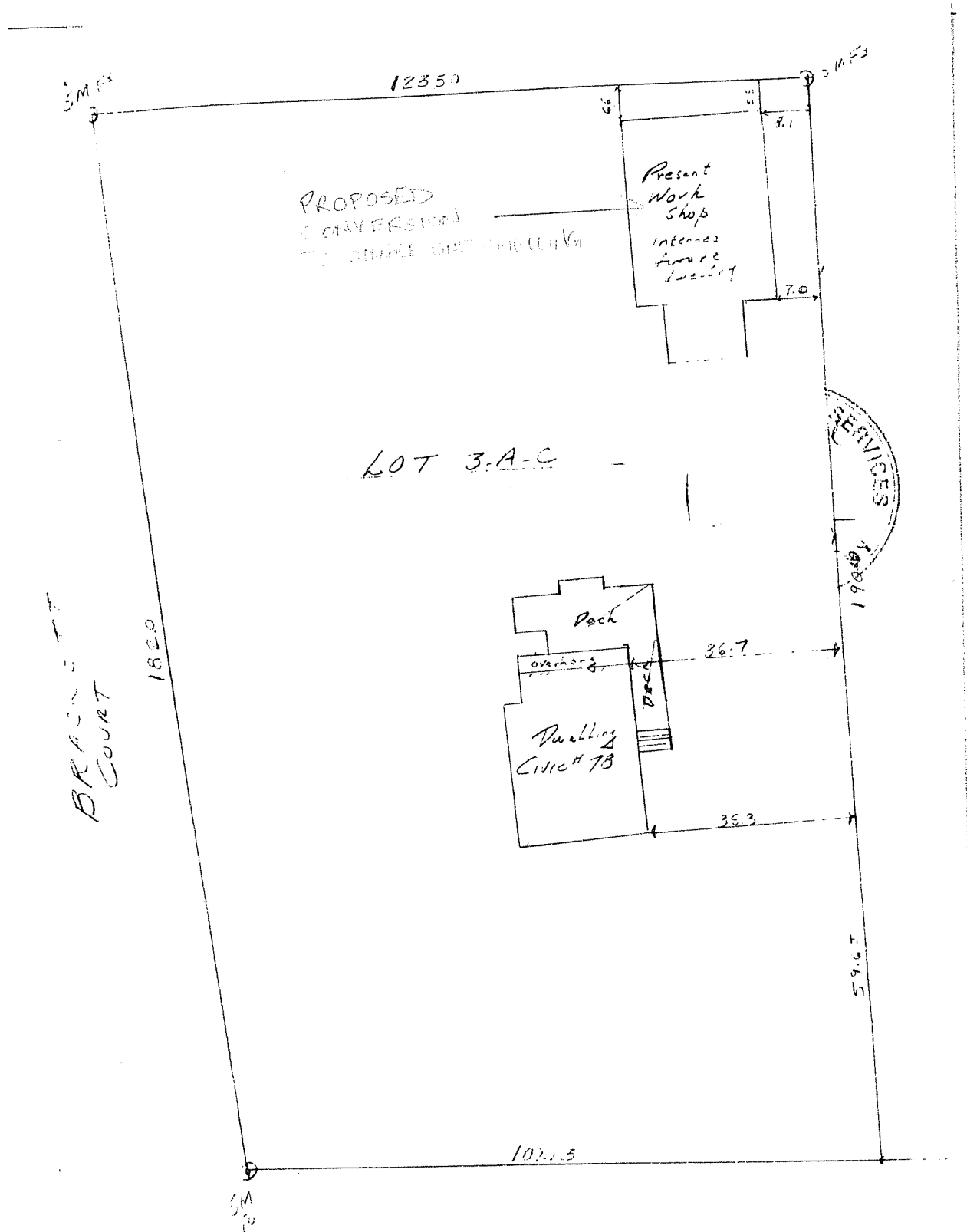
78 Hebridean Dr, Herring Cove



DATE: July 14, 2009

SUBJECT: Development Officer's refusal of a variance application - conversion of an accessory building to a single unit dwelling at 87 Hebridean Drive, Herring Cove.

DEVELOPMENT PERMIT APPLICATION (101099) - SITE PLAN

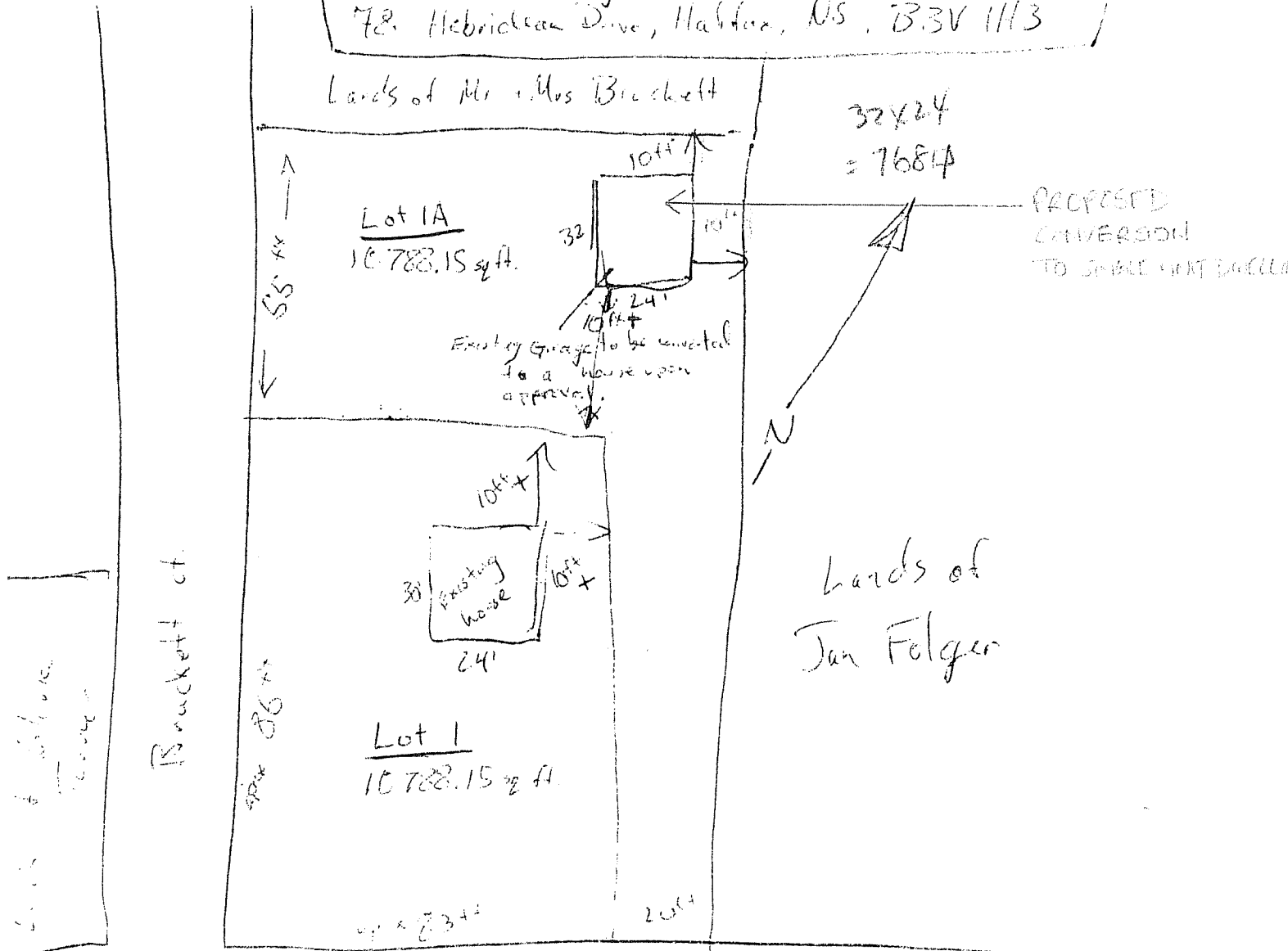


DATE: July 14, 2009

SUBJECT: Development Officer's refusal of a variance application - conversion of an accessory building to a single unit dwelling at 87 Hebridean Drive, Herring Cove.

PRELIMINARY SUBDIVISION APPLICATION (13943) - SITE PLAN

Preliminary Subdivision Plan June 25, 2009
LOT 1 &
Showing Lot 1A, A subdivision of lands of
Elton Kilbride, Peggy Kilbride, Amy Kilbride,
and Noel Taussig.
78 Hebridean Drive, Halifax, NS. B3V 1H3



DATE: July 14, 2009

SUBJECT: Development Officer's refusal of a variance application - conversion of an accessory building to a single unit dwelling at 87 Hebridean Drive, Herring Cove.

APPLICANT'S APPEAL LETTER

Dear Mr Faulkner,

In reference to variance application #15454 - 78 Hebridean Dr, Halifax.

We would like to appeal the refusal of this application... I understand that the next step will be to present our case to community counsel...

I would like to inform you of a few details surrounding our property and the building in question... **We already have city water and sewer in the building;** when Herring Cove got services last summer it was determined by counsel that it was better to install the services while the street was dug up rather than have to dig up and repair the street again. **We also have the support of all of our neighbors** on the matter of the setback variance. **We will be subdividing;** we have already determined that our lot is big enough, and our preliminary application has been approved.

Thank you for your time, Noel Taussig
78 Hebridean Dr.
(H) 405-0008
(W) 442-0300

DATE: July 14, 2009

SUBJECT: Development Officer's refusal of a variance application - conversion of an accessory building to a single unit dwelling at 87 Hebridean Drive, Herring Cove.

COPIES OF NAMES AND ADDRESSES OF ASSESSED OWNERS (30 metres) IN SUPPORT OF THE APPLICANT'S PROPOSED VARIANCE

The property owners of 78 Hebridean Dr, Amy Kilbride, Noel Taussig, Eldon Kilbride and Peggy Kilbride are looking to subdivide.

The owners wish to convert an existing secondary building into a residence on the proposed second lot. This building sits less than the required 8 feet, (for a residence,) from the property line, at the shortest point it is 5.5 feet from the line.

We the undersigned are in support of a variance being granted on this matter.

Property owners within one hundred feet of 78 Hebridean Dr.

Name: HEATHER GLADWIN Date: JUNE 2 '09

Address: 75 Hebridean Dr. Herring Cove N.S.

Signature Heather Gladwin

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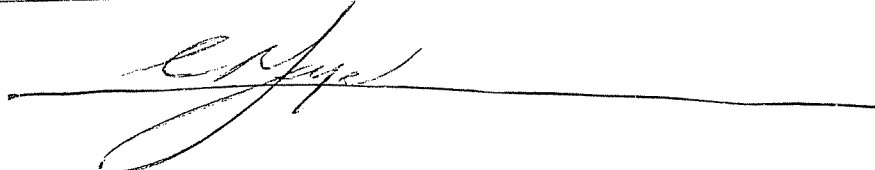
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We the undersigned are in support of a variance being granted on this matter.

Property owners within one hundred feet of 78 Hebridean Dr.

Name: COLIN LYK Date: 30/05/07.

Address: 77 HEBRIDEAN DR.

Signature 

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Property owners within one hundred feet of 78 Hebridean Dr.

Name: TERRY POWELL Date: 29 May 09
← Not assessed owners.

Address: 78 - HEBRIDEAN DR

Signature T Powell

PID. 40077732

Assessed as ... Ina Patricia Probert

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Property owners within one hundred feet of 78 Hebridean Dr.

Name: Adrian & Jan Edwards Date: _____

Address: 86 Hebridean Drive, Hemming Cove, BBV 1H3

Signature Adrian Edwards Jan Edwards

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We the undersigned are in support of a variance being granted on this matter.

Property owners within one hundred feet of 78 Hebridean Dr.

Name: Kim Brackett Date: May 31, 2009

Address: S Brackett Court, Heron's Cove NS B3V 1H3

Signature Danny Brackett

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We the undersigned are in support of a variance being granted on this matter.

Property owners within one hundred feet of 78 Hebridean Dr.

Name: Rod Smith Date: May 30/09

Address: 6 Braekett Ct. Herring Cove, NS

Signature RJ Smith