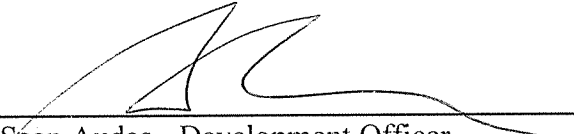


Harbour East Community Council
June 10, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: June 3, 2010

SUBJECT:

- 1) Appeal of the Development Officer's decision to refuse a Variance at 53 Government Wharf Road, Eastern Passage
- 2) Appeal of the Development Officer's decision to approve a Variance at 53 Government Wharf Road, Eastern Passage

ORIGIN

This report deals with an two variance applications. The first variance application request is to reduce the separation distance between the proposed accessory building and the main building. The second variance request is to exceed the lot coverage requirements at 53 Government Wharf Road, Eastern Passage.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to approve the separation distance variance and refuse the lot coverage variance.

BACKGROUND

Zoning:

The property is zoned C-2 (General Business) Zone under the Land Use By-Law for Eastern Passage/Cow Bay.

Existing Use:

The subject property is located at 53 Government Wharf Road which abuts Halifax Harbour at the rear. The existing building, used for fishing equipment storage which is permitted in the C-2 Zone, was damaged by a fire and much of the equipment was destroyed. The owner subsequently erected a pre-fabricated accessory building to store the remaining fishing equipment. This was done without the necessary permit.

Application:

A Variance application was then made requesting a reduction in the required separation distance between the proposed accessory building and the main building (partially destroyed by fire). The Variance requested was to reduce the separation distance setback from 12 feet to 2 feet. This application was approved in accordance with the provisions of the *Halifax Regional Municipality Charter*. An appeal was received and is included in Attachment 5.

A second Variance was required because a survey carried out by the owner determined that the lot was smaller than he had indicated in his application. The lot coverage calculations were checked by the surveyor and it was determined that the lot coverage is 56.3% exceeding the minimum requirement of 50%. The Variance request to exceed the required lot coverage was not approved. The refusal letter was sent to the property owner and this decision was appealed. The appeal letter is included in Attachment 6.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in part 250(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria 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 criteria. 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 ?

Where the Variance request was for two individual requirements of the bylaw and two different decisions were reached the table below outlines a comparison in relation to the requirement of the *Halifax Regional Municipality Charter*.

| A) Separation distance reduction | B) Lot coverage expansion |
|--|--|
| <u>Approved by Development Officer</u> | <u>Refused by the Development Officer</u> |
| A review of the Municipal Planning Strategy does not provide guidance on the intent of the minimum separation distance. The setback is not being entirely reduced and a 2 foot setback is maintained. It is not felt that approving the separation distance variance reduction violates the intent of the Land Use By-law. | The C-2 Zone provides an increased lot coverage requirement from residential properties permitting 50% instead of the 35% for residential uses. Zones that permit greater than 50% lot coverage are the I-1 and I-2 Zone which allow 70% lot coverage. |

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

| A) Separation distance reduction | B) Lot coverage expansion |
|---|---|
| <u>Approved by Development Officer</u> | <u>Refused by the Development Officer</u> |
| The location of the existing building restricts the placement of the accessory building on the lot. There is insufficient land to accommodate a 12 foot separation distance and the practical placement of the building is in the front of the main building. | While the location of the building on the property causes difficulty in the placement of an accessory structure many properties in the area of similar size do not appear to exceed the 50% lot coverage requirement. This lot is of similar size and proportion to other properties on the road and as such the difficulty experienced is general to properties in the area. |

Is the difficulty experienced the result of intentional disregard for the requirements of the Land Use Bylaw?

- The property owner located the accessory building on the lot very quickly because of the fire damage to the main building and the need to safety store his equipment. The property

owner has participated in the Variance process and it is not felt that intentional disregard is a consideration for this application.

One appeal was received from an abutting property owner (Attachment 5). This letter states that the location of this building creates a traffic hazard exiting his property in a vehicle. The accessory building meets the minimum required front yard setback of 4 feet. Also, Development Engineering conducted a safe site stopping distance assessment for this property. It was determined that the current condition is satisfactory.

BUDGET IMPLICATIONS

None.

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 overturn both decisions of the Development Officer and approve the lot coverage variance and refuse the separation distance setback variance.
2. Council could approve both Variance requests which upholds the decision of the Development Officer for separation distance setback and overturns the decision of the Development Officer for the lot coverage. (This is the only alternative that would allow the accessory building to remain in place)
3. Council could refuse both Variance requests which would overturn the Development Officer for the separation distance setback and uphold the Development Officers decision for lot coverage.
4. Council could uphold the Development Officers decision to approve the separation distance variance and refuse the lot coverage variance, this is the recommended alternative.

ATTACHMENTS

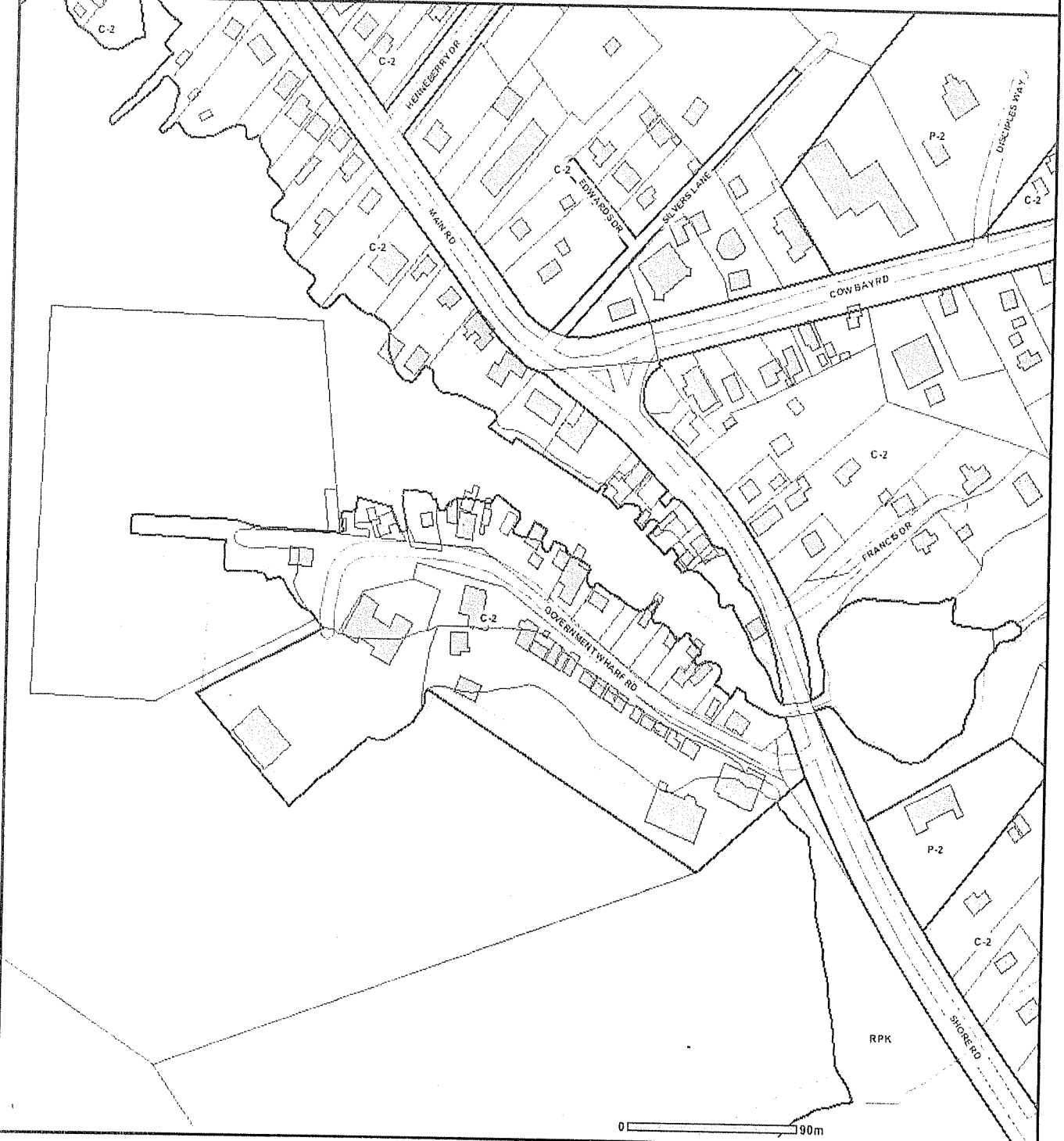
1. Location Map
2. Site Plan
3. Approval Letter
4. Refusal Letter
5. Appeal Letter (59 & 63 Government Wharf Road)
6. Appeal Letter (applicant)

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: Sean Audas, Development Officer (490-4341)

Report Approved by: Sharon Bond, Manager Subdivision and Land Use Compliance (490-4800)

Government Wharf Rd

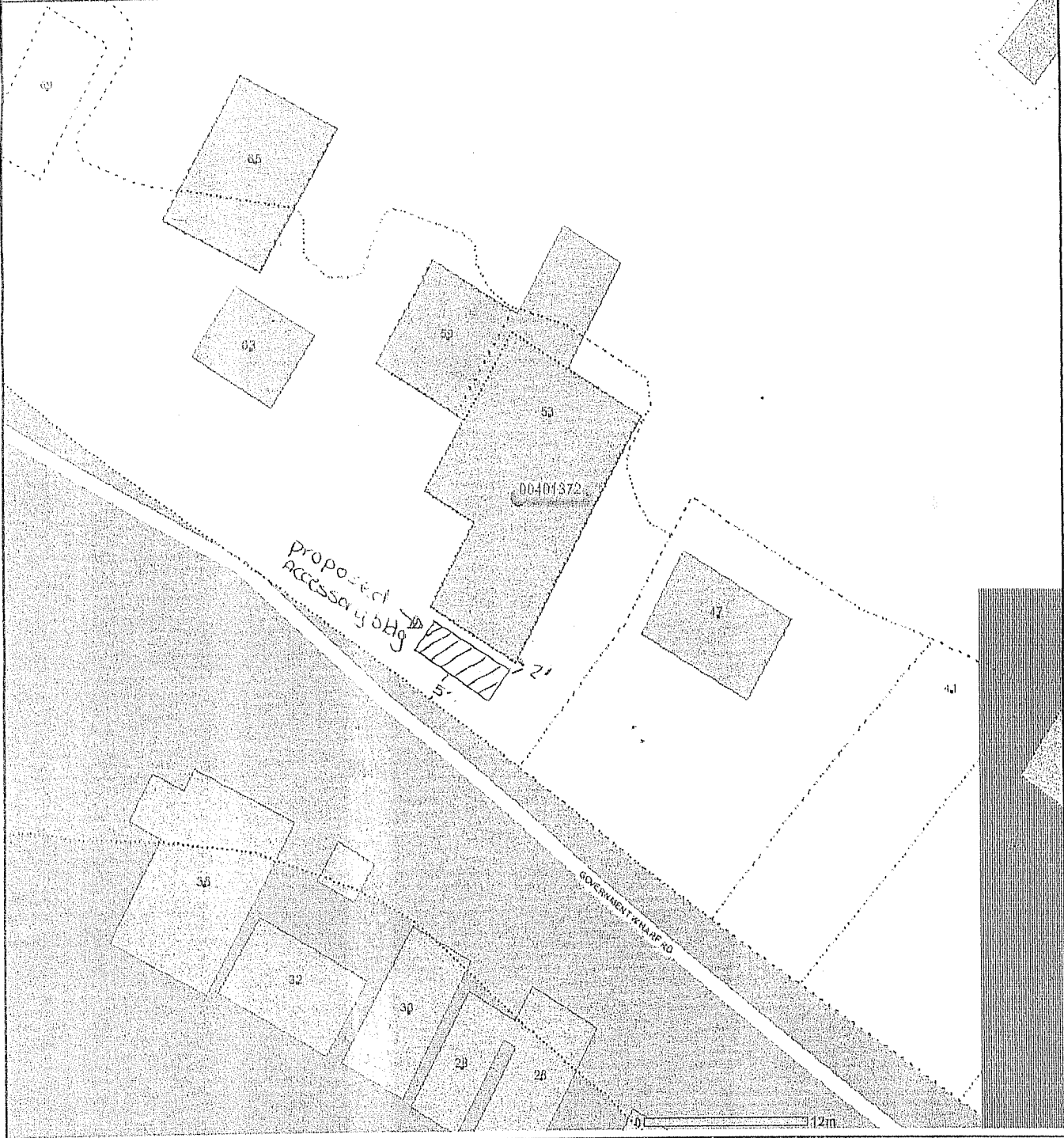


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This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

Halifax Regional Municipality



HALIFAX REGIONAL MUNICIPALITY

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March 1, 2010

Dear Sir or Madame:

Re: Case No. 15934 Variance at 53 Government Wharf Road, Eastern Passage, Nova Scotia.

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variance as per requirements of the Halifax Regional Municipality Charter Act, Section 236.

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the land use bylaw as follows:

| | |
|---------------------------------|--|
| Location: | 53 Government Wharf Road, Eastern Passage, Nova Scotia |
| Property Owner: | Stephen Purdy |
| Project proposal: | Construction of an Accessory Building |
| Required (i.e setback): | 12 feet from the main building |
| Approved (i.e. setback): | 2 feet from the main building |

Pursuant to Section 251 of the Halifax Regional Municipality Charter Act, assessed property owners within 30 meters of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before March 18, 2010., and address your appeal to:

**Municipal Clerk,
c/o Sean Audas, Development Officer, Halifax Regional Municipality,
Planning and Development - Eastern Region,
P.O. Box 1749, Halifax, N.S.
B3J 3A5.**

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY, THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require clarification of any of the above, please call Laura Walsh - Development Technician at (902) 490-4462.

Yours truly,

A handwritten signature in black ink, appearing to be "Sean Audas", written over a horizontal line.

Sean Audas; Development Officer
Halifax Regional Municipality

copy to: Councillor Jackie Barkhouse , District 8
Cathy Mellett - Acting Municipal Clerk.

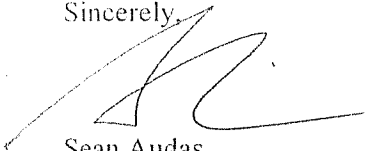
the grounds of the appeal, and be directed to:

**Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - *Eastern Region*
P.O. Box 1749
Halifax, NS B3J 3A5**

Your appeal must be filed on or before *May 28, 2010*

If you have any questions or require additional information, please contact this office at *490-4490*

Sincerely,



Sean Audas
Development Officer

cc.

Cathy Mellett - Acting Municipal Clerk
Councillor Jackie Barkhouse, District 8



PLANNING & DEVELOPMENT SERVICES, EASTERN REGION

May 10, 2010

Stephen Purdy
388 Dyke Road
Eastern Passage, NS
B3G 1K4

Dear Mr Purdy

RE: Application for Variance 15934 - 53 Government Wharf Road, Eastern Passage, Nova Scotia

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for **Eastern Passage/ Cow Bay** as follows:

Location: 53 Government Wharf Road, Eastern Passage
Project Proposal: Construction of an accessory building
Variance Requested: Increase in lot coverage of 56.3%

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

No variance shall be granted where:

(a) the variance violates the intent of the Land Use Bylaw; and

(b) the difficulty experienced is general to properties in the area

Most Lots do not exceed the maximum lot coverage requirement of 50%. The proposed lot coverage of 53 Government Wharf Road are requesting a lot coverage of 56.3%

(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 granting the variance violates the intention of the Eastern Passage/Cow Bay Land Use By law and therefore your variance has been refused.

Pursuant to Section 251(4) 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

ATTACHMENT 5

Att: Laura Walsh

From: Terry Morash
465-1023

P.O. Box 119
Eastern Passage NS, B3G 1M4

12 March 2010

Planning and Development - Eastern Region,
P.O. Box 1749, Halifax, N.S. B3J 3A5

Mr. Sean Audas, Development Officer, HRM

This correspondence is in response to your letter of 1 March 2010, regarding Case No. 15934 Variance at 53 Government Wharf Rd., Eastern Passage, NS. In that letter you stated that anyone within 30 meters of the subject property had the right to appeal before 18 March.

I own a property at civic address 59 & 63 Govt. Wharf Rd., bordering # 53 Govt. Wharf Rd. I have several issues with the construction (or placement) of an "accessory building" at the proposed location. However my main concern is that the subject building (already there before any approval) makes it hazardous for me to exit my property. There is frequently a steady stream of traffic out Govt. Wharf Rd. and I must blindly edge out onto the road before I can see what is coming. This has already caused several near misses and will surely lead to an accident at some point.

[REDACTED]

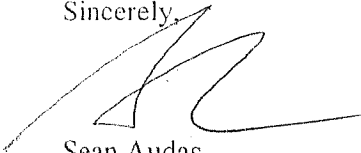
the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before *May 28, 2010*

If you have any questions or require additional information, please contact this office at *490-4490*

Sincerely,



Sean Audas
Development Officer

cc.

Cathy Mellett - Acting Municipal Clerk
Councillor Jackie Barkhouse, District 8

May 15/2010

I wish to file an appeal.

