


**Harbour East Community Council**  
**April 5, 2012**

**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**   
Brad Anguish, Director, Community and Recreation Services

**DATE:** March 12, 2012

**SUBJECT:** Case 17477: Appeal of Variance Refusal, 17 Ainslie Cres., Eastern Passage

**ORIGIN**

Appeal of the Development Officer's decision to refuse a variance request.

**RECOMMENDATION**

It is recommended that Council uphold the Development Officer's decision to refuse the variance at 17 Ainslie Crescent, Eastern Passage.

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**BACKGROUND**

The subject property at 17 Ainslie Crescent, Eastern Passage, is zoned R-2, Two Unit Dwelling Zone, under the Land Use By-Law for Eastern Passage/Cow Bay. The current authorized use of the property is a single unit dwelling in a semi-detached building.

In December 2011, a variance application was received to construct a 12' x 20' detached, single car garage within the required flankage yard. The variance request was refused by the Development Officer on January 9, 2012 (see Attachment A) based on non-compliance with the Zone requirements as follows:

	<u>Required</u>	<u>Proposed</u>
Minimum Flankage Yard:	20 feet <sup>1</sup>	1 foot, 4 inches
Minimum Building Separation Distance:	8 feet	7.5 feet

An appeal of the refusal by the owner (see Attachment B) was received on January 19, 2012. In his appeal letter, the owner states that he believes the required building setback should not be applicable to his property because it is not a corner lot as defined in the land use by-law. He reasons that this is because the lot is not located at the intersection of, or abutting two or more streets but, rather, a single street which curves around the lot. Staff's interpretation of the by-law is that the lot does, in fact, abut a street on two of its sides, regardless of the geometry of the street, and it is a corner lot as intended by the by-law and the flankage yard building setback applies.

**DISCUSSION**

The *Halifax Regional Municipality Charter* sets out the following criteria by which the Development Officer may not grant variances to the 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; or*
- (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law.*

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<sup>1</sup> This distance was incorrectly stated as 30 feet on the variance refusal letter but was subsequently corrected with the owner via a telephone conversation.

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In order to be approved, a 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?**

In April 1995, the Land Use Bylaw for Eastern Passage/Cow Bay was amended to increase the lot area, frontage and building setback requirements for R-2 zoned properties. The corresponding Municipal Planning Strategy states "*This is intended to reduce the bulkier appearance of such dwelling types and to provide more space for parking and other amenities*". The By-law, however, provides a relaxation of these requirements for existing lots. For such properties, a minimum lot area of 3,000 square feet per dwelling unit, a minimum lot frontage of 30 feet, and 20 foot minimum front and flankage yards are required. For reference, excerpts from the By-law relative to the current R-2 lot standards as well as definitions pertaining to corner lot and flankage yards are included in Attachment C.

The lot at 17 Ainslie Crescent was created in August 1987 and therefore, the less restrictive requirements apply. Accordingly, there is less land area to accommodate buildings on the lot. The requested flankage yard reduction is significant and would violate the intent of the Land Use By-law to provide adequate open yards between buildings and the abutting street.

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

The lots in this block were all created on the same plan of subdivision dated January 7, 1987.

During a site visit in early January 2012, the neighbouring properties were examined to determine whether a variance would be required for similar proposals. Based on staff's observations, it was determined that the difficulty experienced is not only general to properties in the area but also to most semi-detached dwelling lots in all of Eastern Passage.

**3. Is the difficulty experienced the result of intentional disregard for the requirements of the land use bylaw?**

The difficulty experienced is not a result of intentional disregard.

**Conclusion**

In summary, staff has reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined that the proposal does not meet the intent of the land use by-law and the difficulty experienced is general to properties in the area.

**BUDGET IMPLICATIONS**

None.

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**FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

**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 the variance request has been appealed, a hearing is held by Community Council to provide the opportunity for the Council members to hear from the applicant and assessed land owners within 30 metres of the subject property.

**ALTERNATIVES**

1. Council may uphold the decision of the Development Officer to refuse the variance request.
2. Council may overturn the decision of the Development Officer and allow the variance request.

**ATTACHMENTS**

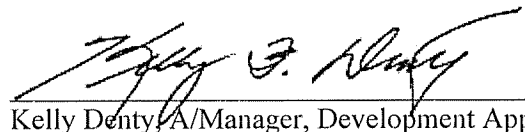
Map 1:	Site Plan
Map 2:	Location Map
Attachment A:	Variance Refusal letter
Attachment B:	Applicant's Letter of Appeal
Attachment C:	Excerpts from the Eastern Passage/Cow Bay Land Use By-law

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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Brenda Seymour, Development Technician, 490-3328 and  
Andrew Faulkner, Development Officer, 490-4341

Report Approved by:

  
Kelly Denty, A/Manager, Development Approvals, 490-4800

**Attachment C**  
**Excerpts from the Eastern Passage/Cow Bay Land Use By-law**

**Definitions:**

**Corner Lot** means a lot situated at the intersection of, and abutting on, two or more streets.

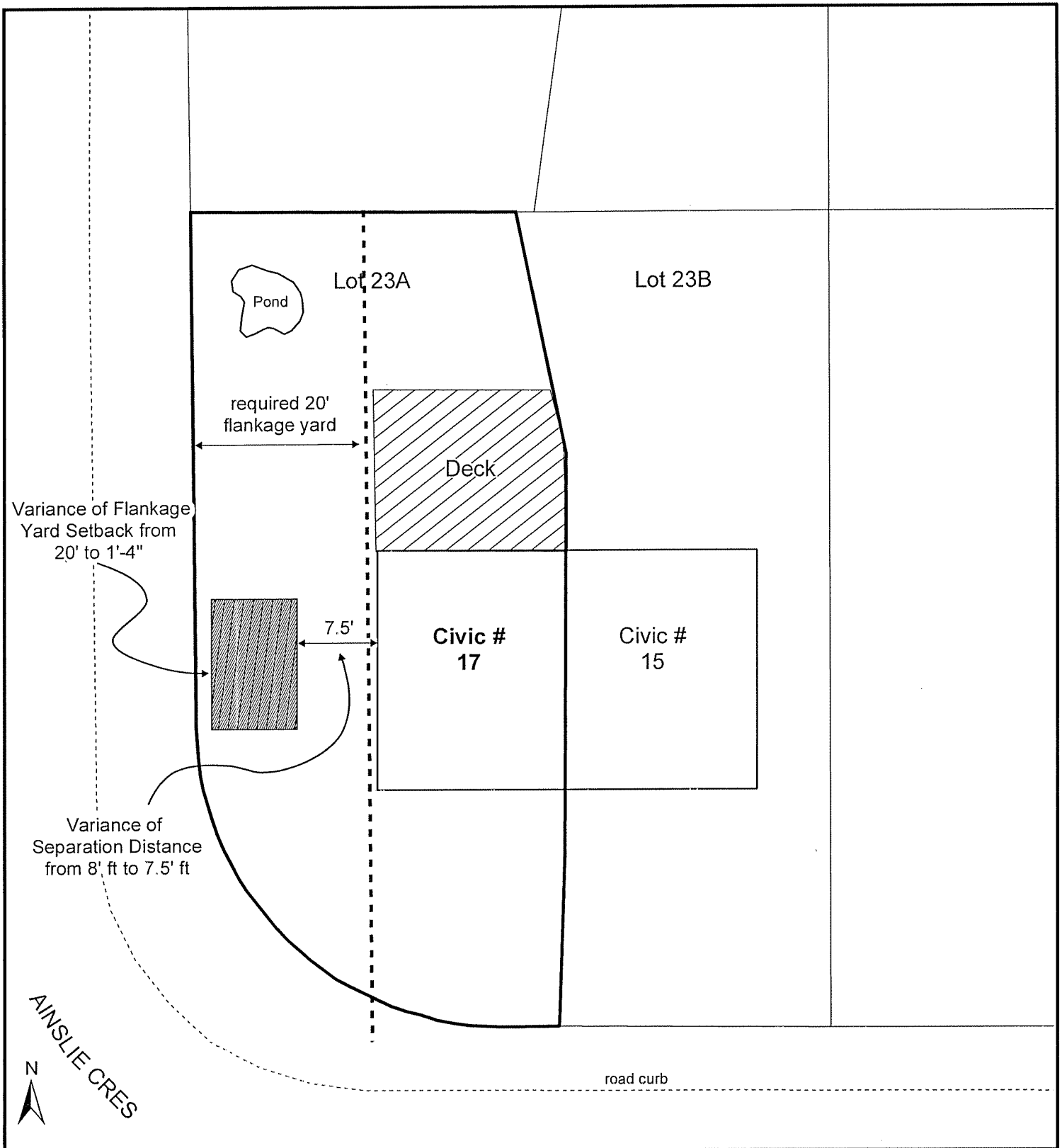
**Front Lot Line** means the line dividing the lot from the street or from the unlisted travelled way; and in the case of a corner lot - the shorter boundary line abutting the street shall be deemed to be the front lot line and the longer boundary line abutting the street shall be deemed to be the flankage lot line; and where such lot lines are of equal length, the front lot line shall be either of the lot lines and the other lot line shall be the flankage lot line; boundaries dividing the lot from a street shall be deemed to be the front lot line.

**Flankage Lot Line** means a side lot line which abuts the street on a corner lot.

**Flankage Yard** means the side yard of a corner lot, which side yard abuts a street, and "required flankage yard" or "minimum flankage yard" means the minimum side yard required by this By-law where such yard abuts a street.


**R-2 Zone Requirements: Residential Uses**

	<b>1995 – present lots</b>	<b>Pre 1995 lots</b>
Minimum Lot Area	3,500 square feet per dwelling unit	3,000 square feet per dwelling unit
Minimum Frontage	35 feet per unit	30 feet per unit
Minimum Front or Flankage Yard	30 feet	20 feet
Minimum Rear or Side Yard	10 feet or 0.0 feet from the side being common with another dwelling unit	8 feet or 0.0 feet from the side being common with another dwelling unit
Maximum Lot Coverage	35 percent	35 percent



Map 1  
Site Plan

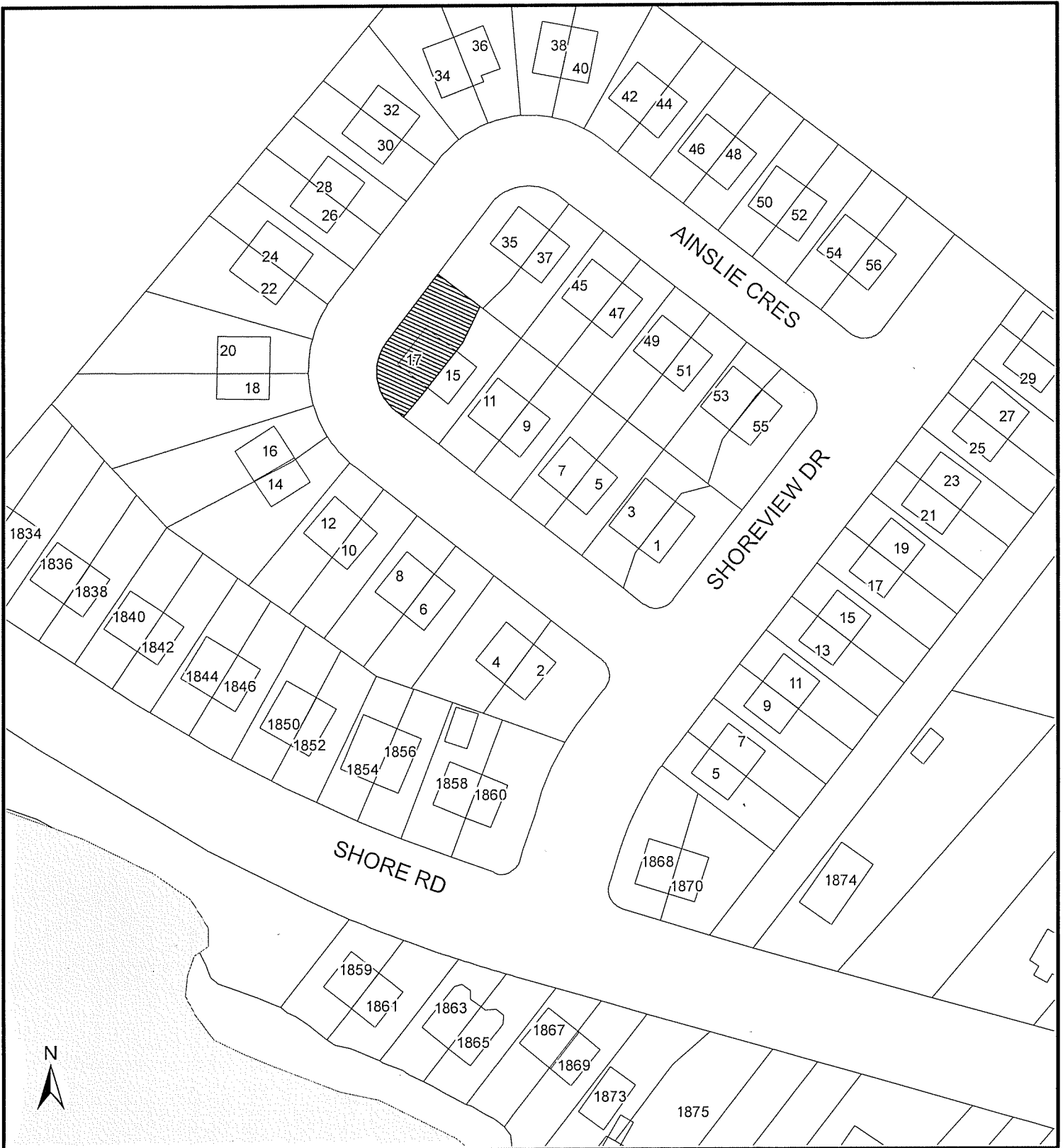


 Subject Property



17 Ainslie Crescent  
Eastern Passage

HRM does not guarantee the accuracy of any base map information on this plan.



Map 2  
Location Map



Subject Property



Community Development & Recreation  
Development Services

HRM does not guarantee the accuracy of any base map information on this plan.



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

January 9, 2012

Robert Richmond  
17 Ainslie Crescent  
Eastern Passage, Nova Scotia  
B3G 1G7

Dear Mr. Richmond,

**Re: Variance Application No. 17477  
Property at 17 Ainslie Crescent, Eastern Passage**

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

<b>Location:</b>	17 Ainslie Crescent, Eastern Passage
<b>Project Proposal:</b>	To construct a detached garage
<b>Variance Requested:</b>	Vary flanking yard setback from 30 ft. to 1 ft. 4 in. Vary setback between buildings from 8 ft. to 7.5 ft.

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

**No variance shall be granted where:**

- (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 the variance (a) violates the intent of the Land Use Bylaw; and (b) the difficulty experienced is general to properties in the area, therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter Act**, 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:

..../2



Page 2  
January 9<sup>th</sup>, 2012  
Robert Richmond

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

Your appeal must be filed on or before *January 19th, 2012*.

If you have any questions or require additional information, you may contact Brenda Seymour at 490-3328.

Sincerely,



Andrew Faulkner  
Development Officer

cc Cathy Mellett, Municipal Clerk  
Councilor Jackie Barkhouse (District 8)

Attachment B

Rob Richmond  
17 Ainslie Crescent  
Eastern Passage, NS  
B3G 1G7

January 19, 2012

Andrew Faulkner, Development Officer  
c/o Municipal Clerk  
Halifax Regional Municipality  
Development Services – Eastern Region  
P.O. Box 1749  
Halifax, NS B3J 3A5

RECEIVED

JAN 19 2012

CEM

Re: Variance application No. 17477

Dear: Andrew Faulkner,

Please accept this letter of appeal based on the following grounds:

It is my understanding that this variance was rejected based on the required 30' setback specific to a corner lot.

Section 2.31 of The Land Use By-law defines at corner lot as:

(a) Corner Lot means a lot situated at the intersection of, and abutting on, two or more streets.

The property at 17 Ainslie Crescent is located on the inside curve of a crescent. This lot is not situated at an intersection or abutting two or more streets.

A crescent, by definition, has two corners and two curved sides.

I submit that this property is not on a 'corner lot' as defined by the Land Use By-law and should not be subject to such conditions. It would also appear that the builder did not have to observe a 30' setback when constructing our home.

During the site visit to 17 Ainslie Crescent, the city engineer indicated that he had no issues with the proposed location as it did not affect the site line distance. See attachment #1.

The proposed location would recognize an 11' distance from the structure to the curb at the side yard and a 36' distance from the front of the structure to the curb in the front yard.

The proposed accessory building will not affect neighbours or aesthetics as it will be behind an existing fence line.

Safety would not be a concern as the current driveway would be utilized to exit the property.

I have verified with Nova Scotia Power that the structure will not affect power lines, see attachment #2.

I have verified with the Halifax Water Commission that the structure will not affect water facilities, see attachment #3.

Future street widening on Ainslie Crescent would seem highly unlikely as this is a mature developed neighbourhood. The street is bordered by a school, a pathway and other developed streets leaving no room for future development consideration.

I believe this variance is a unique request as not many properties share this position on a crescent and may not have a desire for an accessory building in the proposed location.

I have included pictures to help define the proposed location, see attachment #4 and #5.

In summary, I maintain my request to build the accessory building on the side yard of 17 Ainslie Crescent and ask for your consideration of the above points. I ask that the variance request reflect:

Vary side lot line from 4 ft. to 1ft. 4 in. (curb setback would be 11 ft.)

Vary setback between buildings from 8 ft. to 7.5ft.

Kind regards

A handwritten signature in black ink, appearing to read 'Rob Richmond', written over a horizontal line.

Rob Richmond

# Attachment # 1

**Robert Richmond**

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**From:** Brenda Seymour [seymoub@halifax.ca]  
**Sent:** January 13, 2012 3:37 PM  
**To:** Robert Richmond  
**Cc:** Andrew Faulkner; Rod Wright  
**Subject:** Re: 17 Ainslie Crescent variance

Hi Robert,

In response to your telephone message received today. There were no written comments in reference to the site visit made at your property last week.

The Engineering Technician comments were in reference to the site line distance. He did not foresee an issue with that. He also looked at your option of a second driveway in the rear of the property and thought this might be a possibility.

Thanks and have a good day.

Brenda

Brenda Seymour, CDT  
Development Technician  
HRM Planning & Development Services  
Eastern Regions  
[seymoub@halifax.ca](mailto:seymoub@halifax.ca)  
902-490-3328

Power Services Safe Clearance Report

No. 66954

Project Name \_\_\_\_\_ Date Yr. Mth. Day Time 12/01/11

Project Location 17 Anslie Cres - Eastern Passage

Type of Project

Initial Visit [x] Follow-up [ ] Telephone [ ] Other [ ]

Overhead System [x] Underground System [ ] Construction Presently Underway [ ] Yes [ ] No [ ] Proposed Start Date Yr. Mth. Day

COMMENTS/INSTRUCTIONS/SKETCH

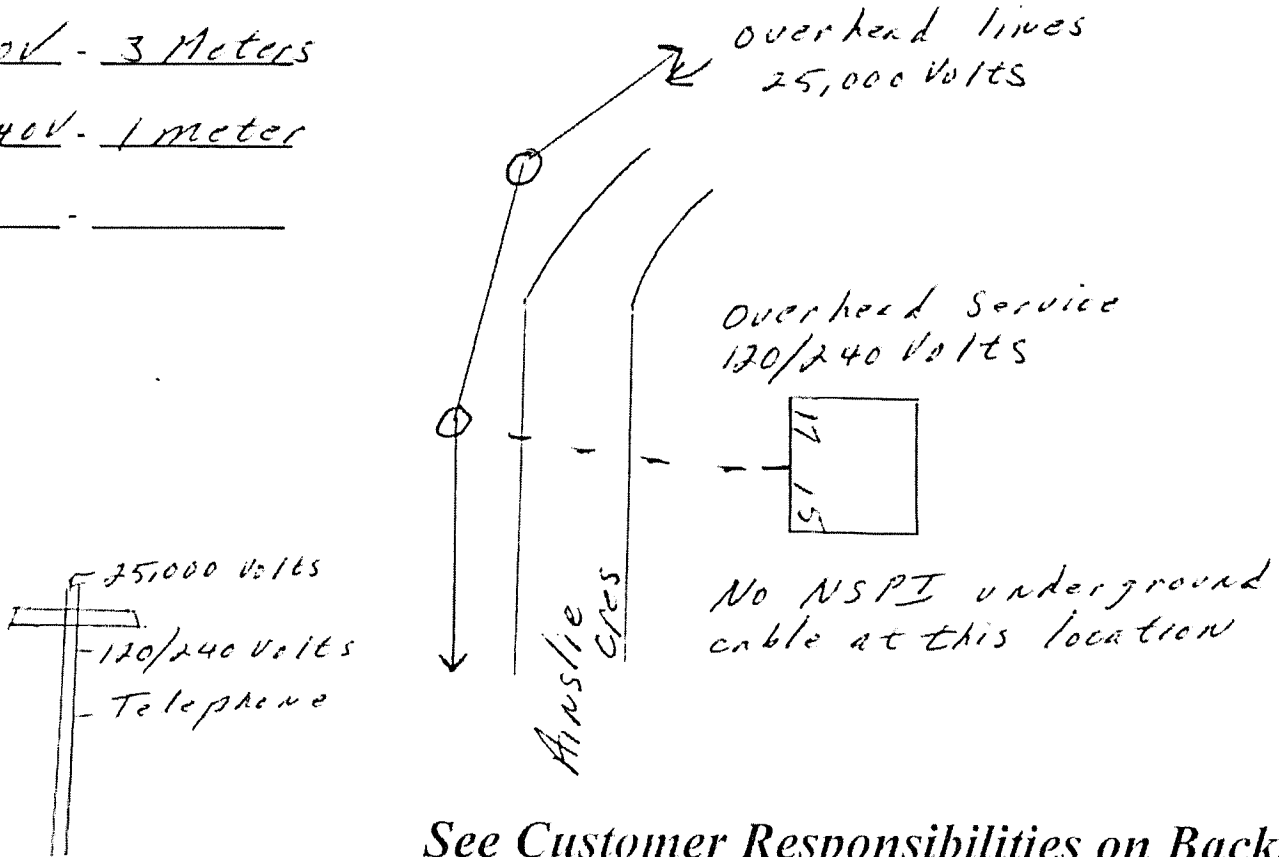
Note: All NSPI plant voltages located within customer's job site must be identified below.

Voltage Present: Safe distance:

25,000V - 3 Meters

120/240V - 1 meter

\_\_\_\_\_



See Customer Responsibilities on Back.

N.S. Power Representative

Name: Bruce Kennedy

Position:

District:

Signature: [Signature]

Date: Jan 17/12

Customer Representative

Name:

Position:

Firm's Name:

Firm's Address:

Telephone No.:

Fax No:

Involvement of Firm to Project [ ] Owner [ ] Consultant [ ] Gen. Cont. [ ] Sub-Cont. [ ] Other

Signature: [Signature]

I am authorized to represent Customer on this project

Date:

Attachment #3

Thanks Dave!

**FAX**

To: Dave  
HFX water commission

From: Rob Richmond

Re: Locate request

Date: Jan 13, 2012

Fax: 490-6933

Pages: 2 (Including this cover page)

Urgent     For Review     Please Comment     Please Reply

Please accept the following request and details to perform a 'locate' service at 17 Ainslie Crescent, Eastern Passage.

We are preparing to dig in the side yard of the house and want to confirm that we will not potentially damage current facilities or affect facilities in the future.

We intend to build a separate garage inside the property line in this location. Attached is the plot plan showing the location (lot 23A).

Please contact me with any questions

Thanks,

Rob

405-5840 (home)

456-0525 (cell)

405-6228 (fax)

\* Is it possible to get something in writing (HWC letter head) showing that there is not water utilities on the side property?

\*

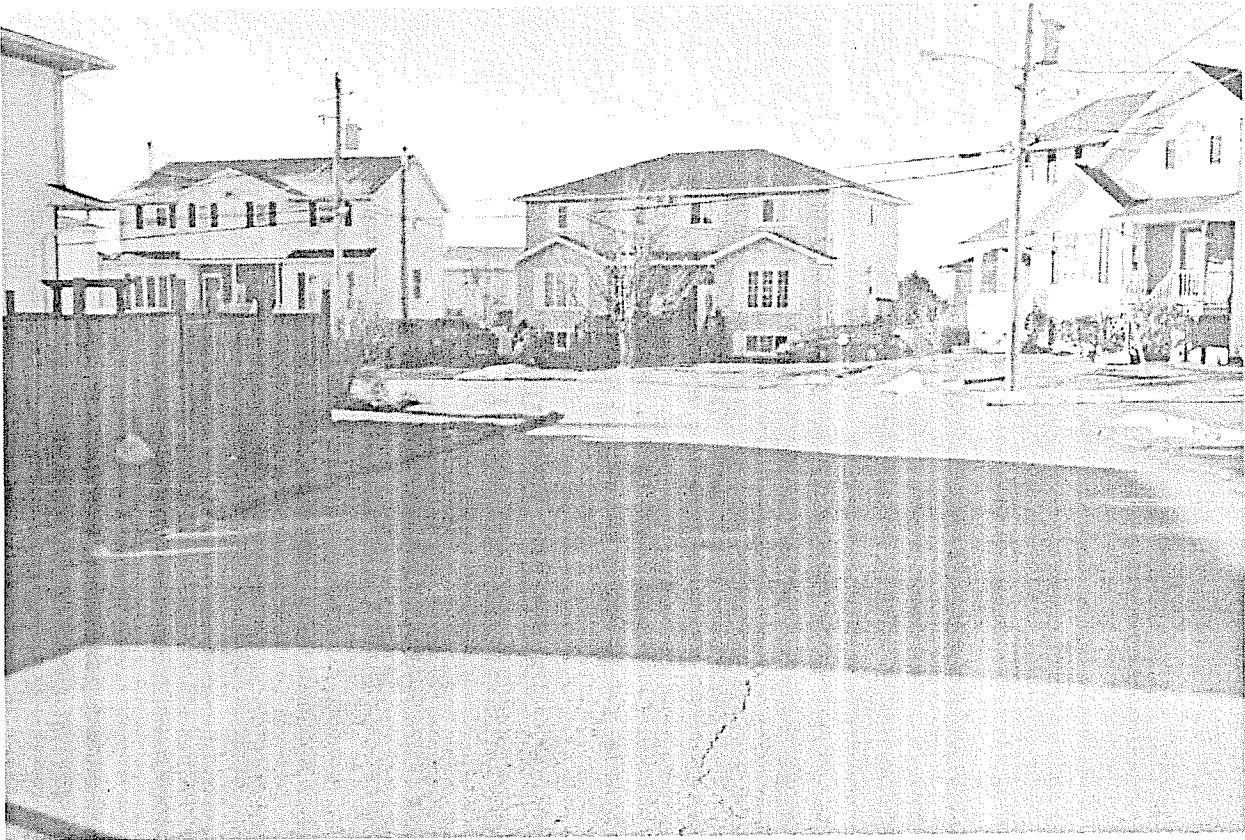
Jan. 16/11.

Checked

M.C.H.V.

Received verbal OK. wanting to this in writing. PR





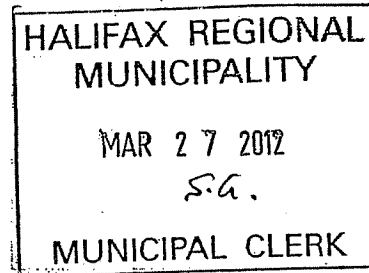




PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

*cc: Jennifer Weagle - HECC*

March 26, 2012



Robert Richmond  
17 Ainslie Crescent  
Eastern Passage, Nova Scotia  
B3G 1G7

Dear Mr. Richmond;

**Re: Variance Application No. 17477  
Property at 17 Ainslie Crescent, Eastern Passage**

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This is to confirm that your appeal of the above variance application has been received by this office.

Your objection may be presented to the Harbour East Community Council on Thursday April 5th, 2012 at 6:00 p.m. at Council Chambers, 90 Alderney Dr, Dartmouth.

Should you require further information, please do not hesitate to contact Brenda Seymour at 490-3328.

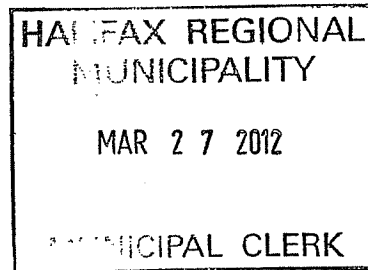
Sincerely,

Andrew Faulkner  
Development Officer

cc Cathy Mellett, Municipal Clerk  
Councilor Jackie Barkhouse (District 8)



PO Box 1749  
Halifax; Nova Scotia  
B3J 3A5 Canada



March 26, 2012

Dear Assessed Owner:

Re: **Variance Application No. 17477**  
**Property at 17 Ainslie Crescent, Eastern Passage**

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 Section 251(5) of the Halifax Regional Municipality Charter.

This will advise that the Development Officer for the Halifax Regional Municipality has refused a request for a variance from the requirements of the Land Use Bylaw for *Halifax Peninsula Land Use Bylaw* as follows:

**Location:** 17 Ainslie Crescent, Eastern Passage  
**Project Proposal:** To construct a detached garage  
**Variance Requested:** Vary flanking yard setback from 30 ft. to 1 ft. 4 in.  
Vary setback between buildings from 8 ft. to 7.5 ft.

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

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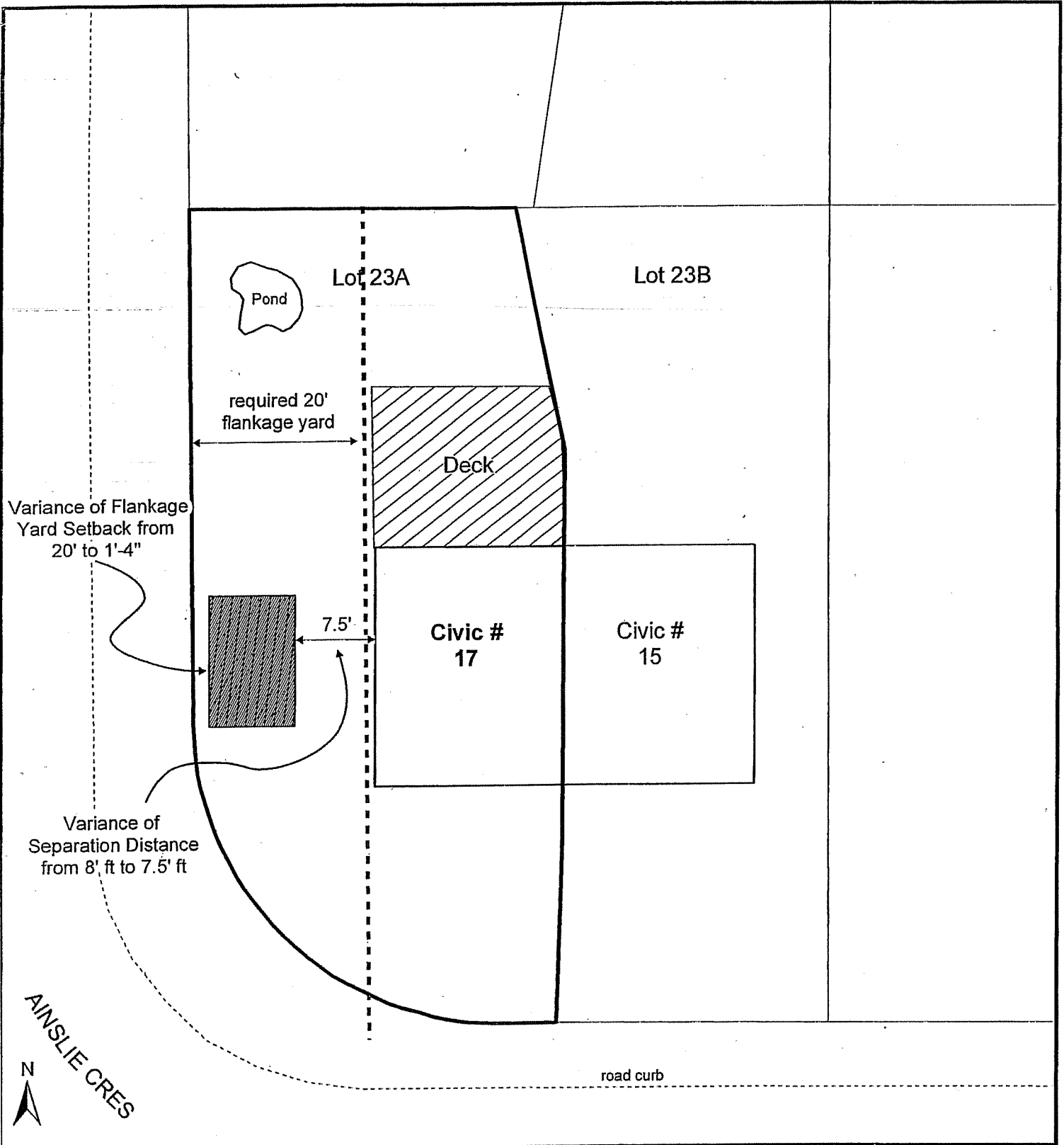
The applicant has appealed the Development Officer's refusal of the application for variance.

The appeal will be heard by the Harbour East Community Council on Thursday April 5th, 2012 at 6:00 p.m. at Council Chambers, 90 Alderney Dr, Dartmouth.

Sincerely,

Andrew Faulkner  
Development Officer

cc Cathy Mellett, Municipal Clerk  
Councilor Jackie Barkhouse (District 8)



Map 1  
Site Plan

17 Ainslie Crescent  
Eastern Passage

 Subject Property



HRM does not guarantee the accuracy of any base map information on this plan.