



P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 8.2.2**  
**Halifax and West Community Council**  
**June 17, 2014**

**TO:** Chair and Members of Halifax and West Community Council

Original Signed

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

**DATE:** May 20, 2014

**SUBJECT:** **Case 19074: Appeal of Variance Approval – 6618 Regent Road,  
Halifax**

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**ORIGIN**

Appeal of the Development Officer's decision to approve a request for variances.

**LEGISLATIVE AUTHORITY**

*HRM Charter; Part VIII, Planning and Development*

**RECOMMENDATION**

The question before Halifax and West Community Council is whether to allow or deny the appeal before them.

**BACKGROUND**

Variance requests have been submitted for the property at 6618 Regent Road (Map 1) to reduce the front yard setback and the rear yard setback (Map 2) to accommodate construction of a 10' x 12' rear deck and a 4' x 8' front porch (Attachment B). In order to facilitate this project, two variances have been requested to relax the minimum required front and rear yard setbacks. The property is currently vacant and is proposed to be developed with a single unit dwelling.

**Site Details:**

**Zoning:** R-2 (General Residential Zone) under the Halifax Peninsula Land Use By-law

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Minimum front yard</b>	15 feet	9 feet
<b>Minimum rear yard</b>	20 feet	18.5 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment A) and notified the neighbouring property owners (Map 1). This decision was appealed by the owners of 3318 Connaught Avenue (Attachment C). The matter is now before Halifax and West Community Council for decision.

**DISCUSSION**

**Development Officer's Assessment of Variance Request:**

In hearing a variance appeal, Community 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*. As such, the *HRM 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”*

In order 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. Do the proposed variances violate the intent of the land use by-law?**

It is the Development Officer's opinion that this proposal does not violate the intent of the Land Use By-Law.

The intention of the setbacks is to provide appropriate separations between the building and the street and other neighbouring properties, as well as to allow for other practical amenities on the property such as parking and open space areas. The requested variances to the rear and front yard are minor in nature and will continue to maintain the intent of the land use by-law.

The requested reduction to the front yard reduction amounts to a 40% reduction for a minor feature (steps and a porch). The proposal is consistent with existing structures that are currently maintaining a similar setback on an adjacent property.

Under the Halifax Peninsula Land Use By-law, the rear yard setback is calculated as the mean of the distance between the rear wall of the building and the rear lot line, rather than as a minimum straight line distance. As part of his proposal, the property owner has proposed to construct a 10 ft. by 12 ft. deck attached to the rear wall of the new dwelling. A rear yard of 15 feet was identified in the variance approval letter (Attachment A), however, a re-calculation of the setback has identified that the resulting mean rear yard would actually be 18.5 feet. A reduction of 1.5 feet in the rear yard setback is reasonably consistent with the intent of the Land Use By-law to address compatibility and usage concerns on the property.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The difficulty experienced is not general to the properties in the area. This is the only vacant lot in the neighbourhood and it is shallower in depth than all but the adjacent lot to the east.

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

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case in this request. The applicant has applied for a variance prior to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the approval of the variance requests.

Appellant's Appeal:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the applicant has raised no points in their letter of appeal) for Council's consideration (Attachment A).

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were approved as it was determined that the proposal does not conflict with the statutory criteria for refusal provided by the *HRM Charter*. The matter is now before Halifax and West Community Council to hear the appeal and render a decision.

**FINANCIAL IMPLICATIONS**

There are no financial implications related to these variances.

**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 and all the appellant(s) to speak.

**ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications.

**ALTERNATIVES**

1. Halifax and West Community Council may deny the appeal and uphold the decision of the Development Officer to approve the variances.
2. Halifax and West Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variances.

**ATTACHMENTS**

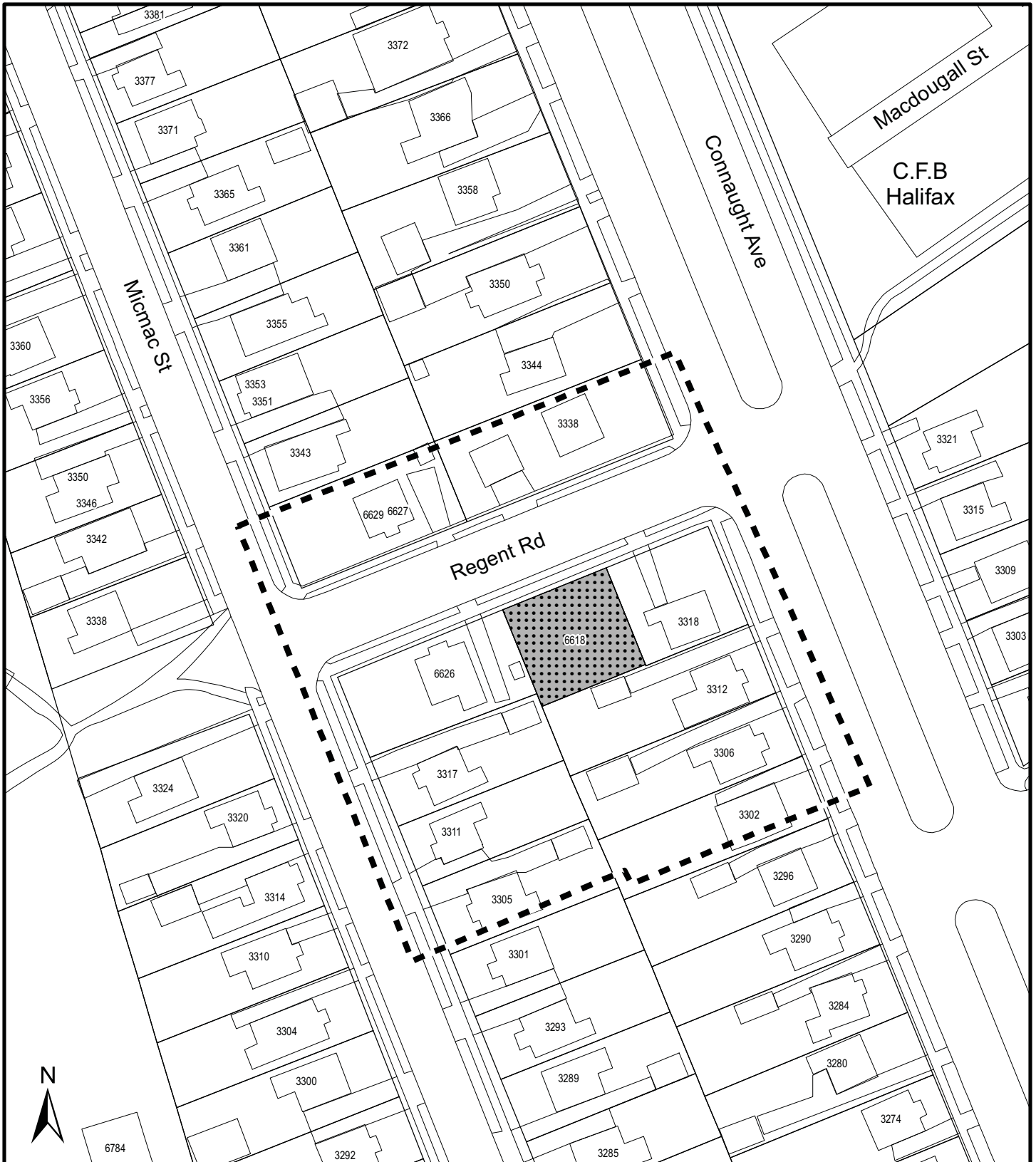
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Approval Letter
Attachment B	Elevation plans
Attachment C	Letter of Appeal

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, 490-3244  
Sean Audas, Development Officer, 490-4402  
Original Signed

Report Approved by:  Kelly Denty, Manager, Development Approvals, 490-4800

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**Map 1 - Notification Area**

6618 Regent Road  
Halifax



Subject Property



Notification Area

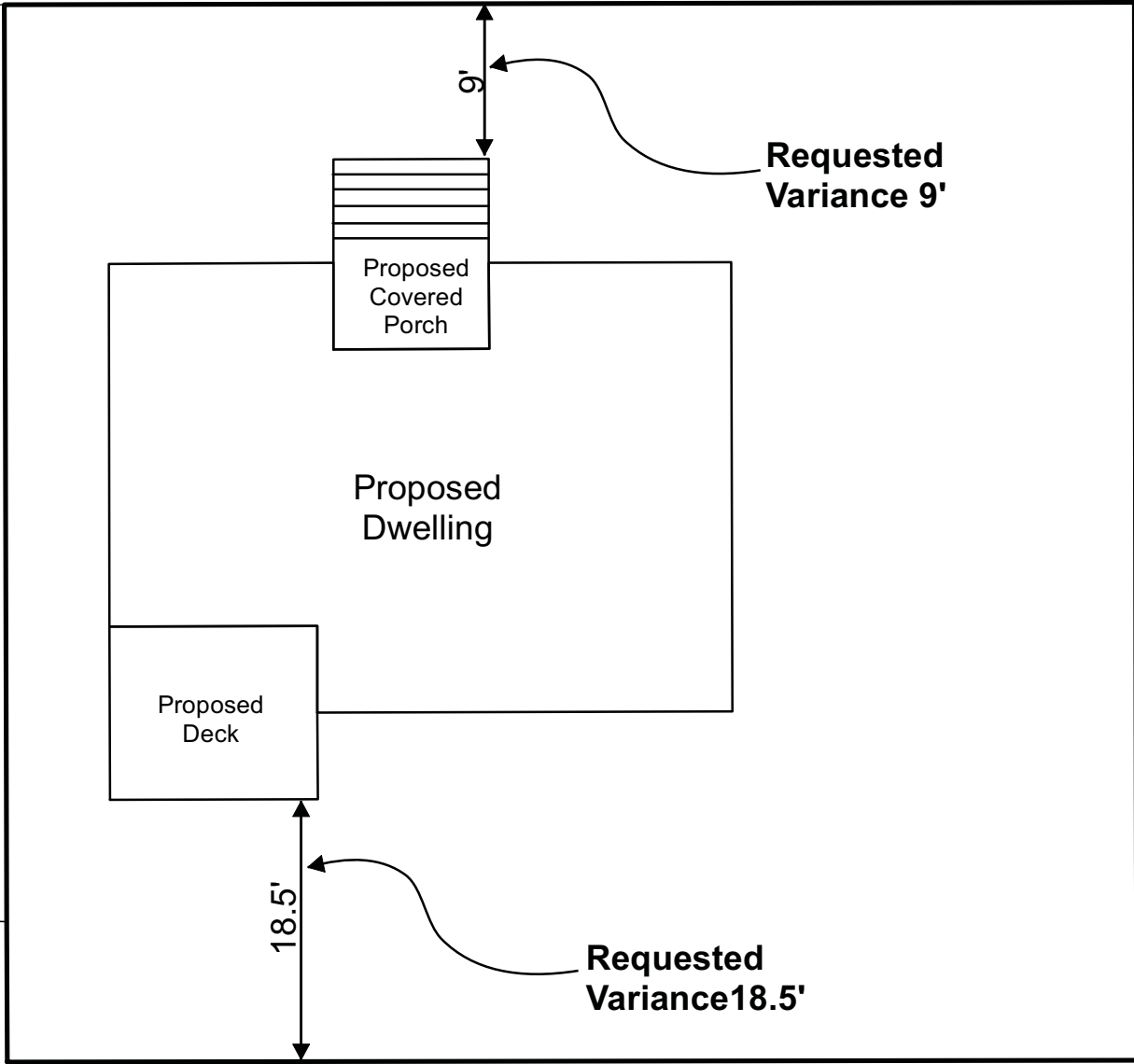


HRM does not guarantee the accuracy of any representation on this plan.

Regent Road

Curb

Sidewalk



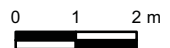
**Requested Variance 9'**

**Requested Variance 18.5'**



**Map 2 - Site Plan**

6618 Regent Street  
Halifax



HRM does not guarantee the accuracy of any representation on this plan.

Ben and Sarah Trask  
3318 Connaught Avenue  
Halifax, Nova Scotia  
B3L 3B3  
February 19, 2014

Sean Audas  
Development Officer  
Halifax Regional Municipality  
Development Services – *Western Region*  
P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5

Mr. Audas,

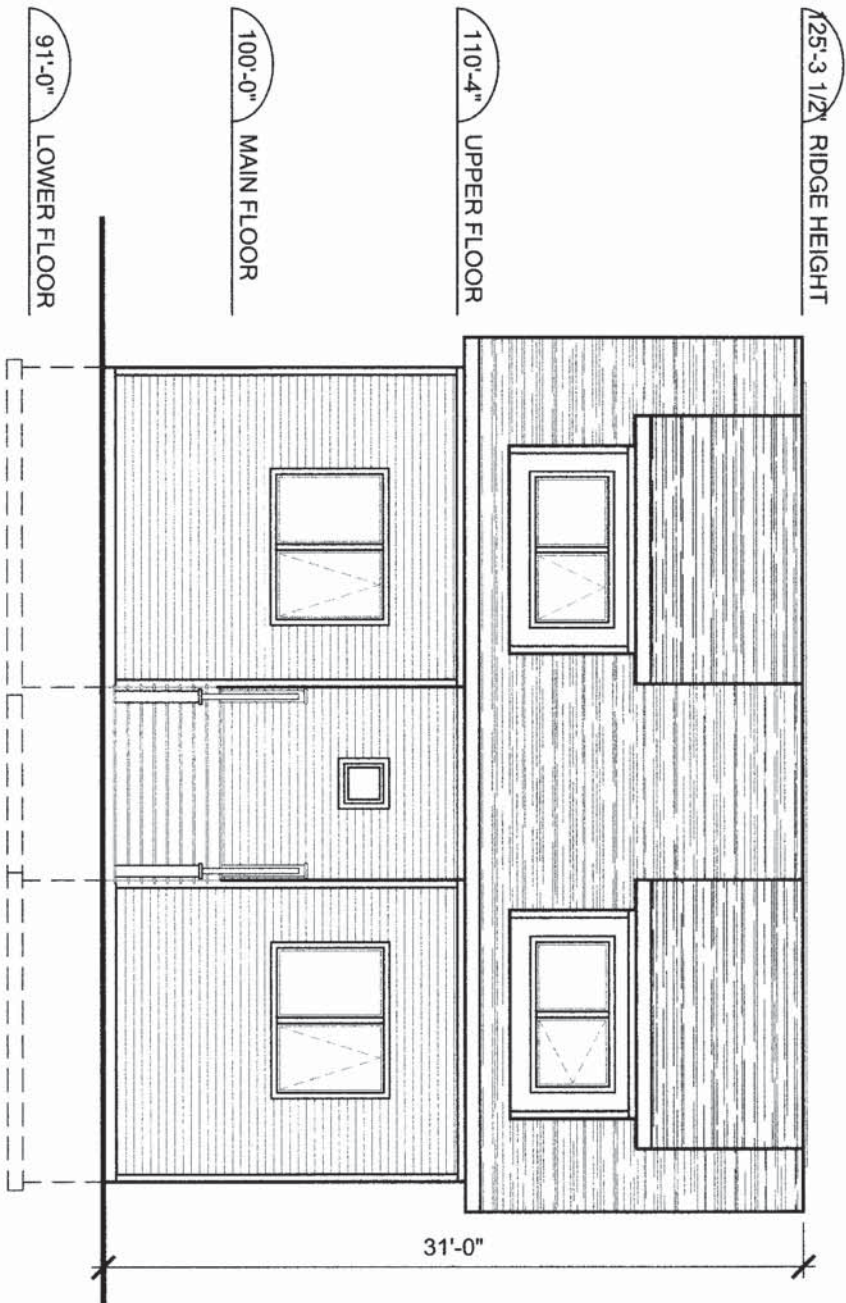
This letter is in response to the notification we received on February 10<sup>th</sup>, 2014 in regards to case 19074, dated February 4<sup>th</sup>, 2014. We currently own the property at 3318 Connaught Avenue, adjacent to civic address 6618 Regent Road. We would like to exercise our right to appeal the decision of the Development Officer in regards to the variance referenced in the letter. As we have not yet been able to view the elevation drawings for the proposed building our basis for appeal is not fully formed. I have been informed by a representative of City Council that I do not at this time have to outline my reasons.

Regards,

Original Signed

Ben and Sarah Trask





1  
A-201b NORTH ELEVATION  
SCALE: 1/8" = 1'-0"

**CARPENTER'S UNION**  
PROPOSED CONSTRUCTION  
REGENT STREET, HALIFAX

REVISIONS				DRAWING		DATE
NO.	REVISION NAME	DATE	NO.	DESCRIPTION	SCALE	DRAWING NO.
1	ISSUED FOR CONSTRUCTION	7/20/08			1/8" = 1'-0"	A-201B

**MZA**  
MICHAEL  
APIER  
ARCHITECTURE

NORTH ELEVATION

APRIL / 08

A-201B





P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

February 4, 2014

Mr. Ron MacDonald  
Council Carpenters Education Centre Inc  
1000 Sackville Drive  
Lower Sackville, NS  
B4E 1S4

Dear Mr. MacDonald:

**RE: Case 19074 at civic 6618 Regent Road, Halifax, NS**

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

<b>Location:</b>	<b>6618 Regent Road, Halifax</b>
<b>Project Proposal:</b>	<b>construct a single unit dwelling with covered front porch &amp; rear deck</b>
<b>Minimum front yard required</b>	<b>15 feet</b>
<b>Approved front yard</b>	<b>9' for front steps</b>
<b>Minimum rear yard required</b>	<b>20' feet</b>
<b>Approved rear yard</b>	<b>15 feet to rear deck</b>

In accordance with Section 251 of the **Halifax Regional Municipal Charter**, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before February 21, 2014

**No permits will be issued until the appeal period has expired and any appeals disposed of.**

If you have any questions or require additional information, please contact Liz Scott at 490-4409.

Sincerely,

Original Signed

Sean Audas  
Development Officer

cc. Cathy Mellett, Municipal Clerk  
Councillor Linda Mosher, District 9

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**COMMUNITY & RECREATION SERVICES – DEVELOPMENT APPROVALS**

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