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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
January 26, 2009

TO: Chairman and Members of Western Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: January 12, 2009

SUBJECT: Appeal of the Development Officer's decision to deny an application for a
Variance #14949 - 1264 St. Margaret's Bay Road Street,

ORIGIN

This report deals with an appeal of the Development Officer's decision to deny a variance from the requirements of the Timberlea, Lakeside, Beechville Land Use Bylaw to construct an industrial building on a parcel that currently contains an industrial building.

RECOMMENDATION

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

BACKGROUND

The above noted application proposes to construct an industrial building on a parcel that contains an existing industrial building. This property is regulated under the *Timberlea, Lakeside, Beechville Land Use By-Law* and is currently zoned I-1 (Light Industry). The I-1 zone allows for more than one building on a parcel. The zone requires a minimum lot frontage of 60 feet; a minimum lot size of 6000 square feet; a front yard setback of 50 feet; and side yards from residential zone of 50 feet and other industrial zoned lots of 15 feet.

On September 16, 2008 an application was made to construct a commercial building at 1264 St. Margaret's Bay Road. Upon review it was determined that rear, left, and right side yards were deficient. A refusal letter was sent. September 19, 2008 a variance application was received and upon review, the Development Officer refused the variance and sent notification. An appeal was received on November 10, 2008. Subsequently, a notice was sent to neighbours within the 30 meter buffer zone regarding the refusal of the variance.

It can be noted that most of the surrounding parcels are zoned I-1 along the south side of the St. Margaret's Bay Road. The neighbouring property that is zoned R-1 has the potential to be used as an access point for future residential development to the south of the parcel in question. The property boundary on the east and south both require a 50 foot setback between the residential zone and the industrial zone.

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.

The proposal does not meet the following requirements:

minimum left side yard requirement; 50 feet; proposed 16 feet
minimum rear yard requirement of 50 feet; proposed 30 feet
minimum right yard requirement of 15 feet; proposed 4 feet

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

In this Land Use Bylaw, concern is given to established industrial areas and the effect that these have on existing and potential residential uses.

The Development Officer believes that further reduction of setback requirements to allow an industrial building without proper buffers in this location would violate the intent of the bylaw.

If the parcel now zoned R-1 were developed in the future and a residence were placed near this property line, there may not be sufficient buffer for noise, dust, etc. It can also be noted that this is an existing pocket of light industrial and that another building will intensify the industrial use in the area.

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

The left side yard setback, rear yard setback, and right yard setback proposed for this property do not meet the requirements for an industrial building situated next to a residential zone in the Timberlea, Lakeside and Beachville area. Regarding the properties in the buffer area that are zoned industrial - 1254 St. Margaret's Bay Road is able to meet setback requirements. A nearby property at 1268 St. Margaret's Bay Road was granted a variance to correct deficiencies for setbacks on an existing building in 2007. The existing building located at 1262 is also located very near to the property boundary. This is based on zoning mapping, (see Location Plan). Out of the 4 properties in the buffer area 3 have difficulty meeting the setbacks. *Therefore, the difficulty experienced is general to the properties in the area.*

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

There has been no intentional disregard for the requirements of the land use bylaw.

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 deny the variance.
2. Council could overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

1. Location Plan
2. Notification Letter
3. Site Plan
4. Elevation Plan
5. Appeal Letter

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: Connie Sexton - Development Technician (490-4338)

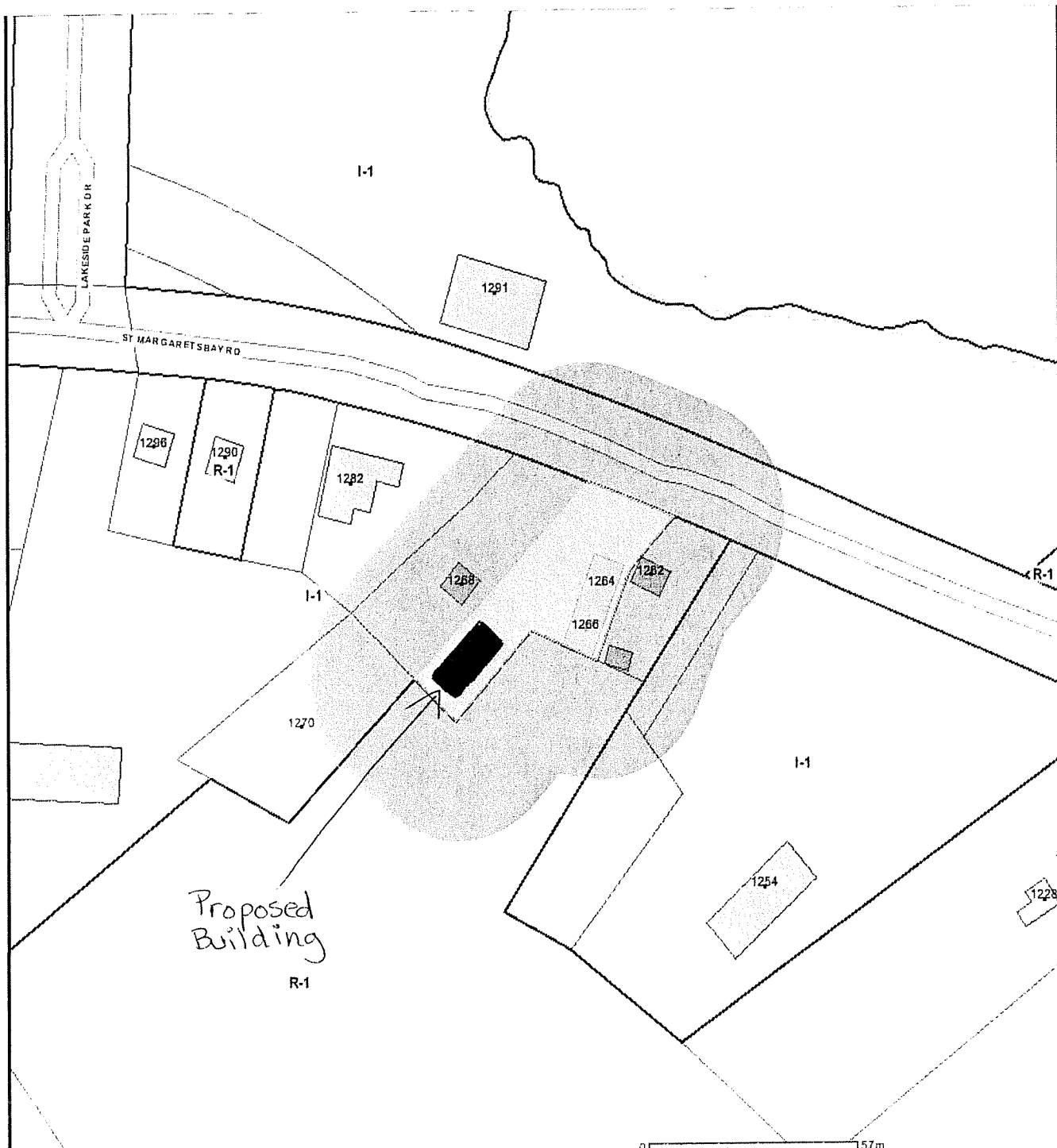
1.

DATE: January 26, 2009

SUBJECT: Variance Application #14949
1264 St. Margaret's Bay Road

LOCATION PLAN:

To vary: Rear yard set-back from 50 feet to 30 feet
Left yard set-back from 50 feet to 16 feet
Right yard set-back from 15 feet to 4 feet





PLANNING & DEVELOPMENT SERVICES-WESTERN
6960 Mumford Rd
PO Box 1749
HALIFAX NS B3J 3A5
Ph. (902) 490-5650 Fax: (902) 490-4645
COMMUNITY DEVELOPMENT

2.

November 14, 2008

Dear Assessed Owner:

Re: Variance Application No. 14949 -1264 St. Margaret's Bay Road

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 Municipal Government Act, Section 236.

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:	1264 St. Margaret's Bay Road
Project Proposal:	Add a new industrial building to property with an existing industrial building
Variance Requested:	Vary left side yard from 50 feet to 16 feet
	Vary rear yard from 50 feet to 30 feet
	Vary right side yard from 15 feet to 4 feet

Section 235(3) of the **Municipal Government 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 (a) the variance violates the intent of the Land Use Bylaw and (b) the difficulty experienced is general to properties in the area.

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

The appeal will be heard by the Western Community Council at the Keshen Goodman Library, 330 Lacewood Drive, November 27, 2008; at 7:00 p.m.

If you have any questions or require additional information, please contact Connie Sexton, Development Technician at 490-4338.

Sincerely,

Andrew Faulkner
Development Officer

cc. Melody Campbell
Julia Horncastle, Acting Municipal Clerk
Councillor Reg Rankin

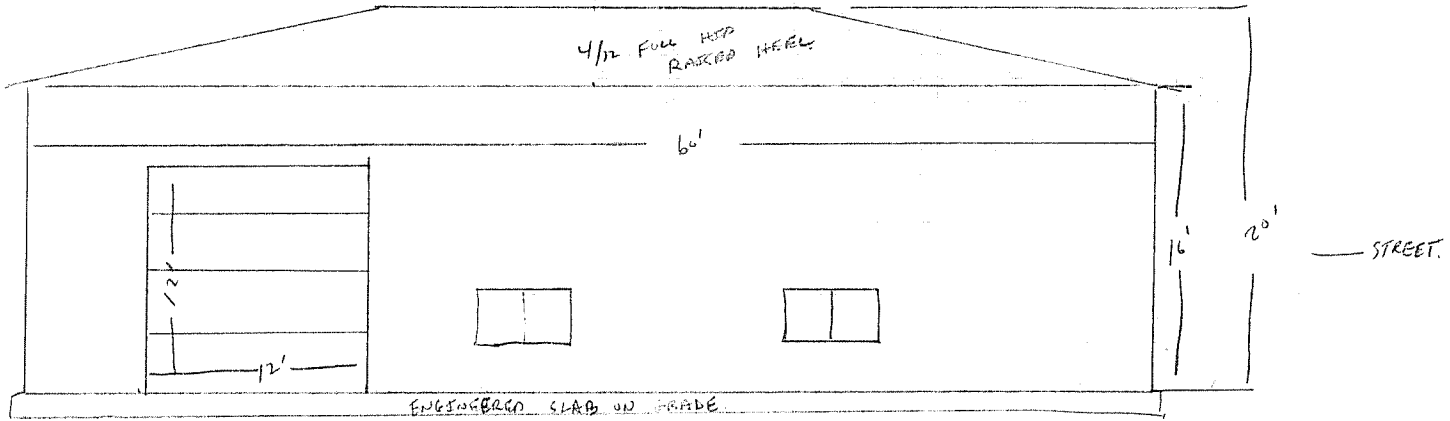
ADDRESS1	ADDRESS2	POST_CDE	CIVIC
400 STE CROIX AVE	QC	L6Y 5S5	1291
392 BROOKSIDE RD	BROOKSIDE NS	B3T 1T3	1264
392 BROOKSIDE RD	HATCHET LAKE NS	B3T 1T3	1268
392 BROOKSIDE RD	HATCHET LAKE NS	B3T 1T3	1270
PO BOX 1749	HALIFAX NS	B3J 3A5	1300
281 HOLDOM AVE 222	BURNABY BC	V5B 3T9	1262
1282 ST MARGARETS BAY RD	BEECHVILLE NS	B3T 1A7	1282
	LAKESIDE NS	B3T 1M6	1254
	LAKESIDE NS	B3T 1M6	n/a
700 WINDMILL RD	DARTMOUTH NS	B3B 1T3	n/a
n/a	n/a	n/a	n/a

mailed
nov. 14/08
C.

Side Elevation Plan

4

1264 ST MARGARETS BAY ROAD



LEFT SIDE ELEVATION

Appeal Letter

5.

POPE'S GENERAL CONTRACTING CO.LTD.

1270 ST. MARGARET'S BAY ROAD
HALIFAX NOVA SCOTIA
B3T-1A7

TEL: 876-3733
FAX: 876-2573

TO MUNICIPAL CLERK
C/O ANDREW FAULKNER, DEVELOPMENT OFFICER
HALIFAX REGIONAL MUNICIPALITY
DEVELOPMENT SERVICES-WESTERN REGION
P.O. BOX 1749 HALIFAX NOVA SCOTIA
B3J-3A5

RECEIVED
NOV 10 2008

DEAR MR. FAULKNER:

RE: VARIANCE #14949- 1264 ST.MARGARETS BAY ROAD HALIFAX NOVA SCOTIA

I WOULD LIKE TO APPEAL THE DECISION NOT TO ALLOW THE VARIANCE FOR PID #40049892 AS THE SHAPE AND SIZE OF THIS I-1 LOT WILL NOT ALLOW FOR A BUILDING ANYWHERE ON THIS PROPERTY WITH THE REQUIRED SETBACKS MAKING THE REMAINDER OF THE LAND USELESS.

THE SIZE OF THE PROPERTY IS +/- 16000 SQ FEET WITH 1 BUILDING 30 FT X 80 FT (2400 SQ FT) FRONT LEFT SIDE IS 4.9' SETBACK/REAR LEFT SIDE IS 2' SETBACK/REAR LEFT IS 3.2' SETBACK/REAR RIGHT IS 2.3' SETBACK/ THE PROPOSED BUILDING WOULD BE 30 X 60(1800 SQ FT) WITH LEFT SETBACK OF 16 FT/REAR SETBACK OF 30 FT AND RIGHT SETBACK OF 4 FT /MAKING THE PROPOSED BUILDING TO HAVE LARGER SETBACKS FROM NEIGHBOURING PROPERTIES AND ONLY COVERING 4200 SQ FT OF 16000 SQ FOOT LOT/APPROX 26 % OF TOTAL LAND.

I HAVE SPOKEN TO THE OWNERS OF LOT G-2-A AND LOT G-2 WHICH ARE THE LEFT AND REAR SIDES OF THE PROPERTY AND THEY HAVE NO OBJECTIONS AND THE RIGHT SIDE PROPERTY BELONGS TO ME.

THIS NEW BUILDING WOULD BE SETBACK FROM THE ROAD 122 FEET UTILIZING THE BALANCE OF THE PROPERTY AND COVERING ONLY 26% OF THE TOTAL LAND WITH PLENTY OF PARKING AND GREEN AREA LEFT.

SINCERELY, FRED POPE

