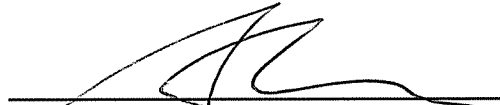


8.2.1

Marine Drive Community Council
August 10, 2005

TO: Chairman and Members of Marine Drive Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: August 3, 2005

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a Variance at 30 Stella Drive, Head of Chezzetcook

STAFF REPORT

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance of the front yard setback of a proposed car port for a carwash at 30 Stella Drive (formerly 5321 Highway 7), Head of Chezzetcook.

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned RE (Rural Enterprise) Zone under the Land Use By-Law for Planning District 8 & 9.

Existing Use:

A current use of the property is an Enviro Depot. The subject property is a pie shaped lot, between Highway 7 and Stella Drive, near the intersection of Highway 207. The building is situated 30 feet from both Highway 7 and Stella Drive. A variance was requested for an addition to the existing building to construct an addition (car port) at 0 (zero) feet from the street line - Stella Drive. The addition would measure 35' long by 30' deep. The By-law requires that buildings in a RE Zone be setback 30 feet from the street line.

DISCUSSION

The *Municipal Government Act* sets out criteria in part 235(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 ?

- The Land Use Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The setback from the street line required for the RE Zone is 30 feet. The addition would be located at the street line and reduce the setback to 0 (zero) feet.
- All zones in the Plan Area typically have either a 20 or 30 foot setback. The reason for the setback is to ensure a separation distance from the street.
- The setback requirement of 30 feet is indicative of a suburban and rural setting which have larger lots and greater setbacks.
- Additional reasons for a required setback are for maintenance purposes, such as future expansion of roads, sidewalk construction, signage, drainage issues and snow removal.
- A reduction to zero (0) feet from the required 30 feet is a substantial request. This is not supported by the Development Officer, because the entire setback is being requested to be varied.

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

- This lot is located between two highways which makes it narrow with very little room for future expansion of the existing building.
- The Development Officer feels that *the difficulty experienced is not general to the properties in the area.*
- This is normally grounds to grant a variance, however the applicant has requested that the total setback distance be varied, which is not supported by the Development Officer.

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

- Granting a variance to reduce the setback from the 30 feet to zero (0) feet is a substantial request.
- This type of request is not generally brought forward unless there are some extenuating circumstances or difficulty with the property, such as a wider road right of way, steep slope, rock outcrop or other physical constraints with the property.
- The Development Officer feels that a entire reduction of the required setback *results in intentional disregard for the requirements of the land use by-law.*

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined to be contrary to the provisions of the Municipal Government Act.

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

There are no implications on the Financial Management Policies/Business.

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 allow the variance request.

ATTACHMENTS

1. Site plan
2. Location Map
3. Refusal letter

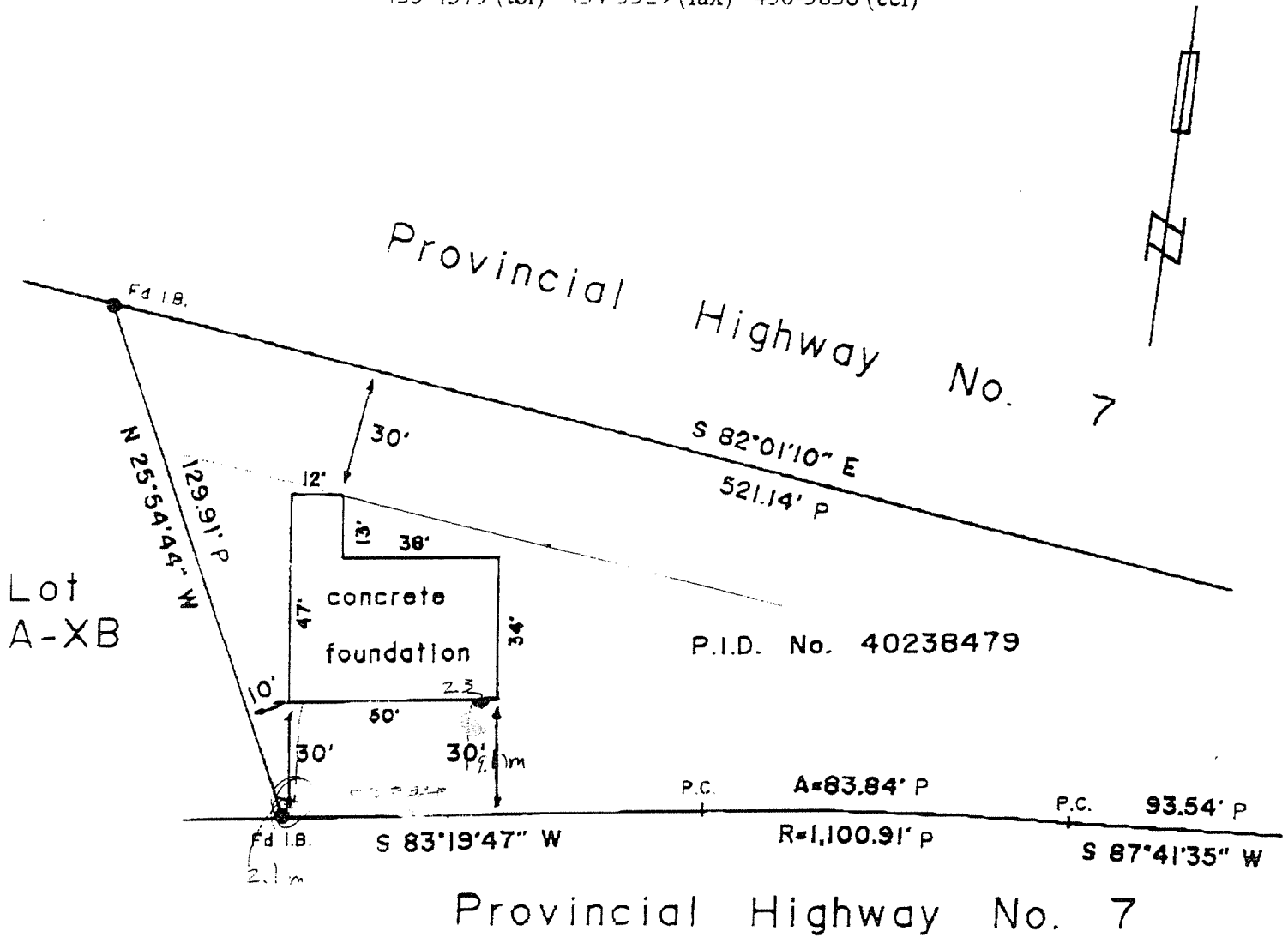
INFORMATION BLOCK

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: Sean Audas, Development Officer (490-4341)

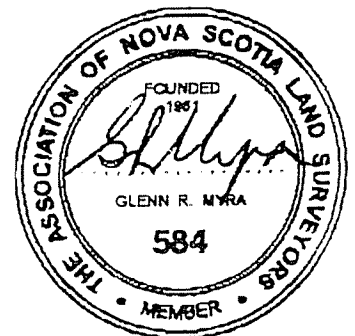
SURVEYOR'S LOCATION CERTIFICATE

G. R. Myra Land Surveying Limited
1 Carman's Drive, Lawrencetown, Nova Scotia, B2Z 1C7
435-4379 (tel) 434-3529 (fax) 456-5836 (cel)



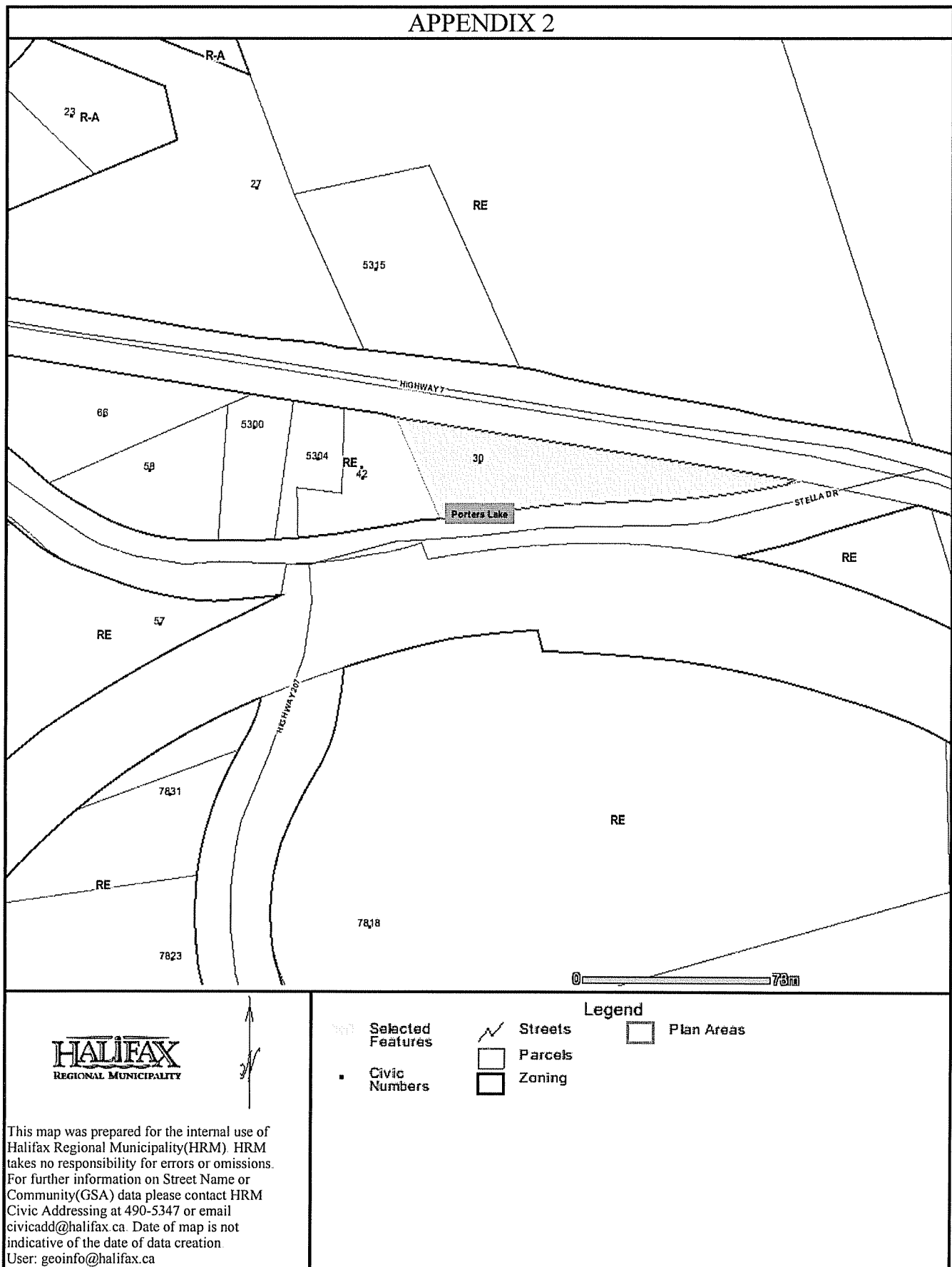
scale: 1 inch = 40 feet

issued to: Gerard Dugas
concerning: Lands of the estate of James Bonang
Provincial Highway No. 7, West Chezzetcook
Halifax County, Nova Scotia



See the plan of survey of lands of the estate of James Bonang, dated March 20th, 1997, by G. R. Myra, N.S.L.S..

This Surveyor's Location Certificate shall not be used for boundary definition or as a reference document for the



PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

June 08, 2005

Mr. Gerard Dugas
3011479 N.S. LTD.
RR 1, Site 4, Box 14
Head of Chezzetcook, NS B0J 1N0

Dear Mr. Dugas

RE: Application for Minor Variance - 5321 Highway 7, Head of Chezzetcook, NS PID - 40238479

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 *Planning District 8 & 9* as follows:

Location: 5321 Highway 7, Head of Chezzetcook, NS
Project Proposal: Construct car port roof over cement pad.
Required Setback: 30 feet from street line
Variance Requested: 0 feet to street line from of Highway 7

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 the variance violates the intent of the Land Use By-law.

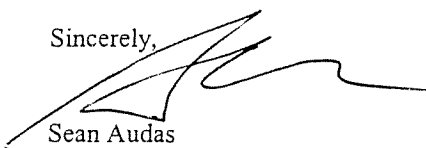
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

Your appeal must be filed on or before June 26, 2005.

If you have any questions or require additional information, please contact this office at 490-4341.

Sincerely,


Sean Audas
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor David Hensbee, District 3