




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

8.2.1

Marine Drive Community Council
November 30, 2005

TO: Chairman and Members of Marine Drive Community Council

SUBMITTED BY:



Sean Audas - Development Officer

DATE: November 23, 2005

SUBJECT: Appeal of the Development Officer's decision to refuse an application for
a Variance at 227 Pleasant Drive, Gaetz Brook

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 accessory building at 227 Pleasant Drive, Gaetz Brook.

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned R-A (Residential A) Zone under the Land Use By-Law for Planning Districts 8 & 9.

Existing Use:

A current use of the property is a single unit dwelling. The subject property is rectangular in shape and borders Lake Petpeswick. The house on the property is situated so that an accessory building would have to be located in the front yard. A variance was requested to construct an accessory building 4 (four) feet from the front property line. The accessory building would measure 26' long by 22' deep. The By-law requires that accessory buildings in a R-A Zone be set back 20 feet from the front property line.

Provincial Regulations:

It should also be noted that Planning and Development Services has had recent discussions with the Department and Transportation and Public Works. They have confirmed that they have a required setback for a garage of 5 meters (16 feet).

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 required front yard setback for the R-A Zone is 20 feet. The accessory building is proposed to be located 4 (four) feet from the front lot line.
- All zones in the Plan Area typically have either a 20 or 30 foot setback.
- The setback requirement of 20 feet is indicative of a suburban and rural setting which have larger lots and greater setbacks.
- Reasons for a required setback are for maintenance purposes, such as future expansion of roads, sidewalk construction, signage, drainage issues and snow removal.

- This type of request is generally brought forward when there are 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. While it is agreed that the watercourse setback of twenty-five (25) feet and the side setbacks of eight (8) require the accessory building to be located in the front yard, and the location of the septic field on the property make location of an accessory building the size requested by the applicant a difficulty, it is felt that the majority of the properties in the area face similar challenges.
- A reduction to four (4) feet from the required 20 feet is a substantial request. This is not supported by the Development Officer, because the majority of the setback is being requested to be varied which violates *the intent of the land use by-law*.

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

- This lot is similar in size and shape to other lots in the area. The lots in this area feature on-site septic disposal fields, which present a further challenge in locating accessory buildings.
- The applicant stated at the time of application that the difficulty experienced was general to those in the area, and that if the variance were granted, neighbours' applications could be anticipated.
- The Development Officer feels that *the difficulty experienced is general to the properties in the area*.

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

- Intentional disregard for the requirements of the land use by-law was not a consideration.

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.

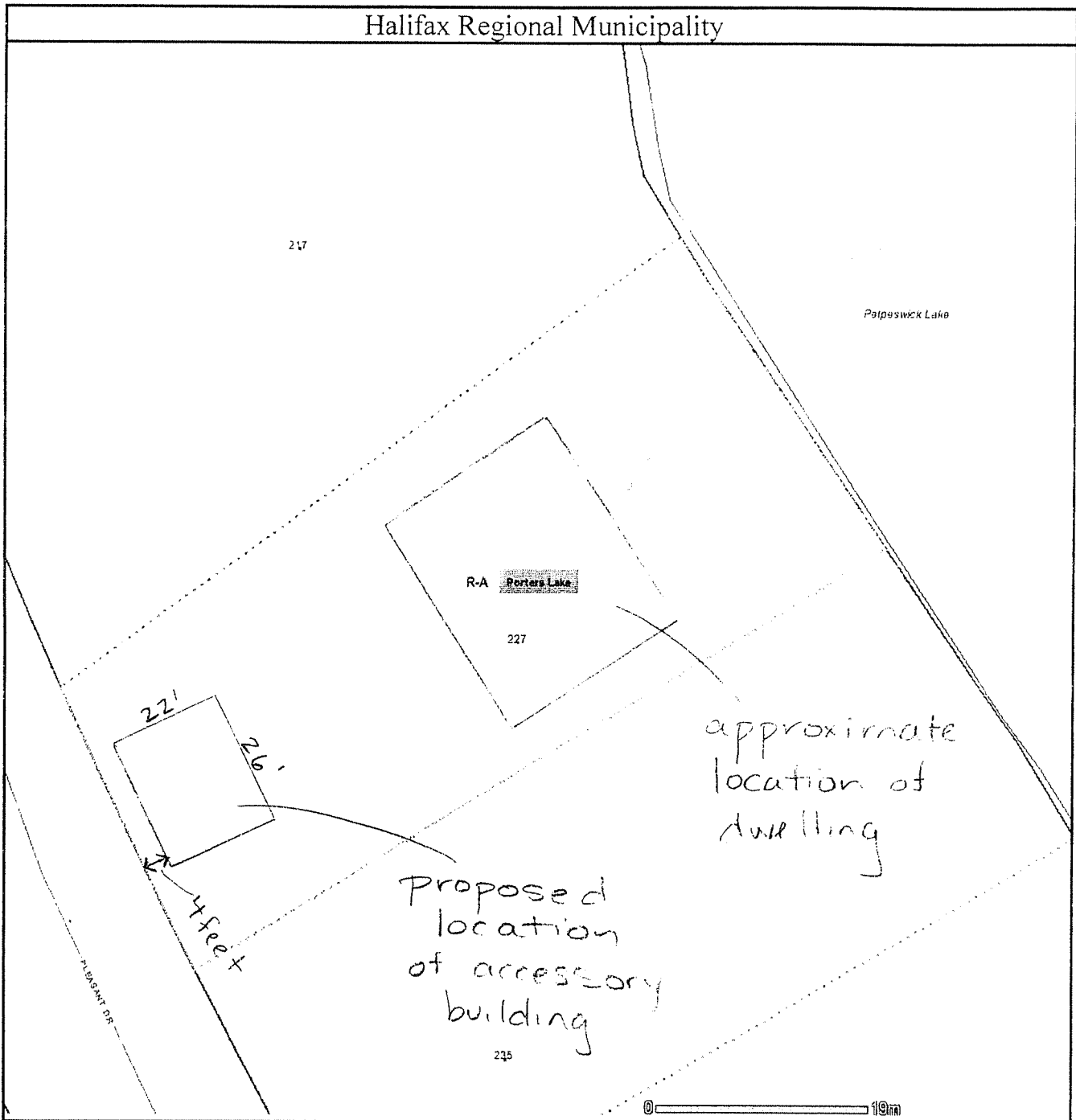
ATTACHMENTS

1. Site plan
2. Location Map
3. Refusal letter
4. 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: Sean Audas, Development Officer (490-4341)



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. User: geoinfo@halifax.ca

- Selected Features
- Civic Numbers
- 2005 Building Permit

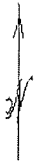
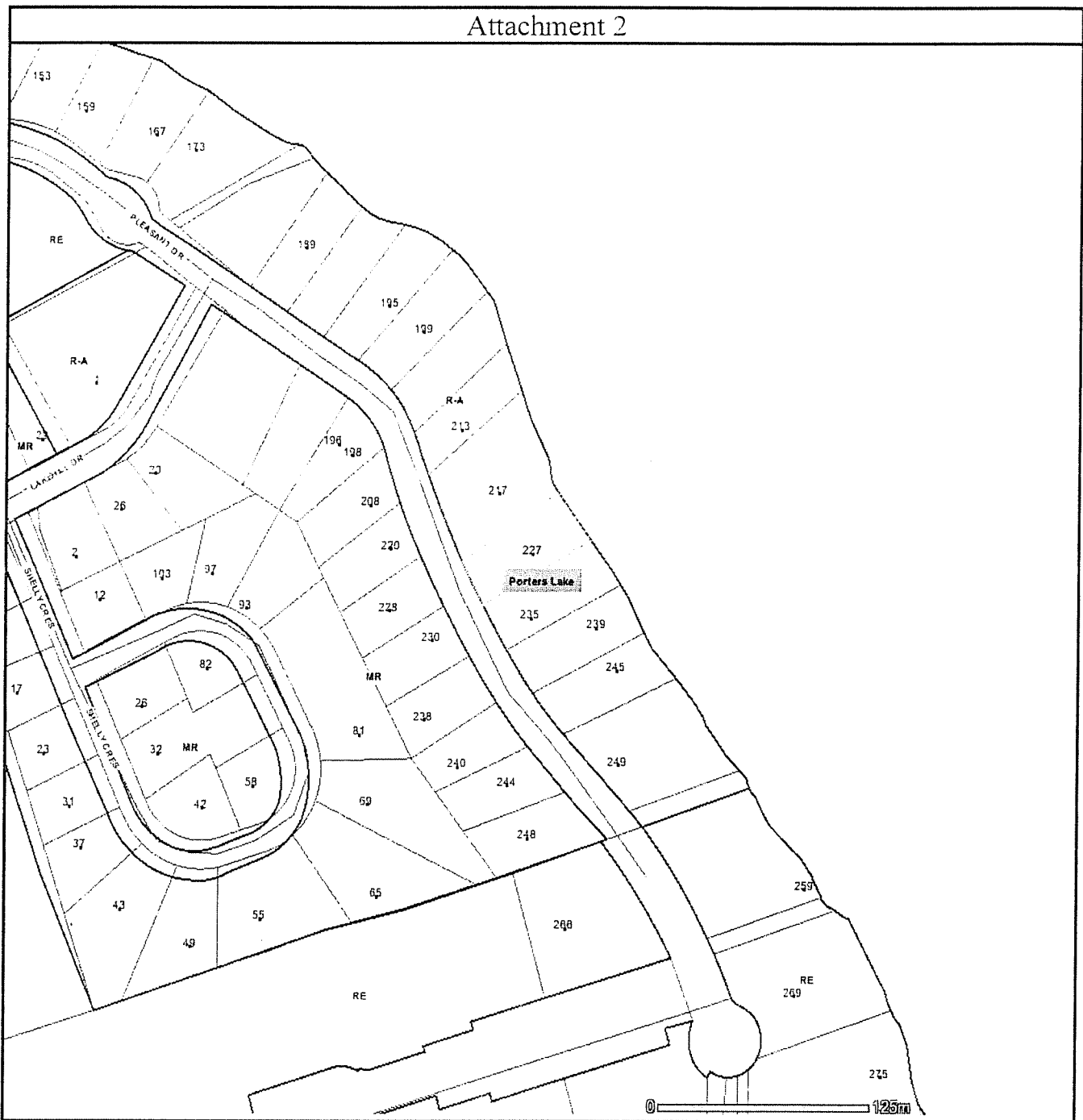
- 2004 Building Permit
- Streets
- Parcels
- Building
- Zoning

Legend

- Plan Areas
- Lakes

*Drawing NOT to Scale

Attachment 2



- Legend**
- Selected Features
 - Parcels
 - Zoning
 - Development Agreement
 - Plan Areas
 - Civic Numbers
 - Streets

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HALIFAX REGIONAL MUNICIPALITY

Planning & Development Services
Eastern District, Alderney Gate Office

PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Telephone: 902-490-4490
Fax: 902-490-4661

October 11, 2005

Mr. Karl Green
227 Pleasant Dr.
Gaetz Brook, NS
B0J 1N0

COPY

Dear Mr. Green:

Re: Case No. 12301 - Variance at 227 Pleasant Dr., Gaetz Brook

This letter is to advise you that your application for a variance to locate an accessory building within twenty (20) feet of the front lot line of the above noted property has been **denied**.

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.**

A site inspection was conducted on September 23, 2005. While this inspection confirmed that the property in question provides some constraints for the construction of an accessory building, it is felt that the constraints are general to some properties in the area. Also a request to vary the setback to four (4) feet from the required twenty (20) feet 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 Community Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Sean Audas, 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 *October 21, 2005*.

If you have any questions or require additional information, please contact this office at (902) 490-4341.

Sincerely,



Sean Audas
Development Officer

cc.

J. Gibson, Municipal Clerk
David Hendsbee, Councillor District 3
Jim Holt, Building Supervisor

Oct 16th, 2005
Sean Audas, Development Officer C/O Municipal Clerk
Halifax Regional Municipality
Development Services- Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

Re: Case No. 12301- Variance at 227 Pleasant Dr, GaetzBrook

This is to let you know I am appealing the decision to disallow a variance on my property on the grounds that the constraints are such that I cannot build a garage without the variance due to location of driveway, pavement and septic. Unlike other properties I do not have a larger lot or the ability to get around to the side. The backyard cannot be used because of distance from the lake issues. In other words the other properties either are larger or have room for their needs without going with in twenty feet of the property line. As far as I know the intent of any bylaw is to prevent anyone from impinging on a neighbors rights or for road widening or sidewalks. This does not apply in my case as a rural dead end street not a passage, and with the lowering of my land to the road I will not be blocking any neighbor's views or getting in the way of future development. This ruling seems arbitrary to reasonable development of my property. As well existing neighbors are far closer then I have proposed as shown by pictures sent to my councilor show with no complaints in the neighborhood and I feel this must be considered as precedence for my right to build. I have proposed building on what is still my land, 36 feet away from the center of the road and seems to be as reasonable a compromise as I could have made and still build. The four feet I allowed off was under pressure because I was informed no one would allow the full variance. I have my building permit in which I drew the building 20 ft from the roads edge and almost built like this if not for a discussion with my excavator. Therefore I am appealing to my councilors to grant me my 20 foot variance for my building permit allowing me the full use of my property so that I may build a garage.

Yours sincerely

Karl Green
827-1212

RECEIVED

OCT 21 2005