



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Peninsula Community Council**  
**July 10, 2006**

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a horizontal line.

Andrew Faulkner - Development Officer

**DATE:** July 10, 2006

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application  
for a variance - 6025 Lady Hammond Road, Halifax

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**ORIGIN**

Pursuant to Section 236(4) of the Municipal Government Act any person served notice of a refusal of a variance may appeal the decision of the Development Officer to the Municipal Council.

This report deals with an appeal of the Development Officer's decision to refuse an application for a variance from the requirements of the land use bylaw for property at 6025 Lady Hammond Road, Halifax

**RECOMMENDATION**

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

## **BACKGROUND**

The subject property is zoned C-2A (Minor Commercial Zone) under the Halifax Peninsula Land Use By-law, with a Special Building Line (front yard setback) of 25 feet.

On March 22, 2006 an Occupancy Permit was issued to “Occupy Portion of Ground Floor as a Restaurant, “Metro Pizza”.

On March 28, 2006 an “Order to Comply” was issued to the owner of Metro Pizza to stop work on construction of a deck immediately in front of restaurant. The owner advised that he had made enquiries about deck construction and was told that a permit was not needed if the deck was less than twenty-four inches in height. However, there was no reference in that conversation of the commercial use of the deck, which would have necessitated a permit in all cases.

The C-2A (Minor Commercial) Zone for the Halifax Peninsula Land Use Bylaw does not have a front yard setback requirement for commercial uses, however, there is a twenty-five (25) foot Special Building Line along this portion of Lady Hammond Road. The Special Building Line prohibits all construction within the setback.

On May 3, 2006 Cesar Saleh of W.M Fares & Associates made a variance application on behalf of the owners of this property to permit construction to zero lot line within the 25 foot setback line. This application was denied by the Development Officer and notification in accordance with the Municipal Government Act was sent to the property owners. (refusal letter attached).

An appeal of the refusal was received on June 6, 2006.(appeal letter attached.)

## **DISCUSSION**

The *Municipal Government Act* sets out guidelines under which the Development Officer may not 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.

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

The existing building is already located within the Special Building Line with a front lot line setback of only 7.5 feet. The C-2A zone permits a zero lot line setback on all sides including the street and the existing building complies with the general zone setbacks. The existing building is situated within the 25 foot Special Building Line and should there be land expropriation to widen the street, it is likely the entire structure and many on adjoining parcels would have to be removed.

Construction Services have advised that there is no intent to widen the street within current street development plans. However, changes in traffic patterns are difficult to predict and it could be needed sooner than anticipated.

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

The difficulty experienced is general to the properties in this area in that the Special Building Line setback is in effect along the entire face of this street from Robie Street to its end at Kempt Road. As can

be seen on the location map, many adjacent properties have encroachments within the Special Building Line and are subject to the same difficulty.

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

Although not intentional, there has been a disregard for the requirements of the by-law as the deck was constructed without the necessary permits.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was denied as the construction was initiated without a permit.

**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. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

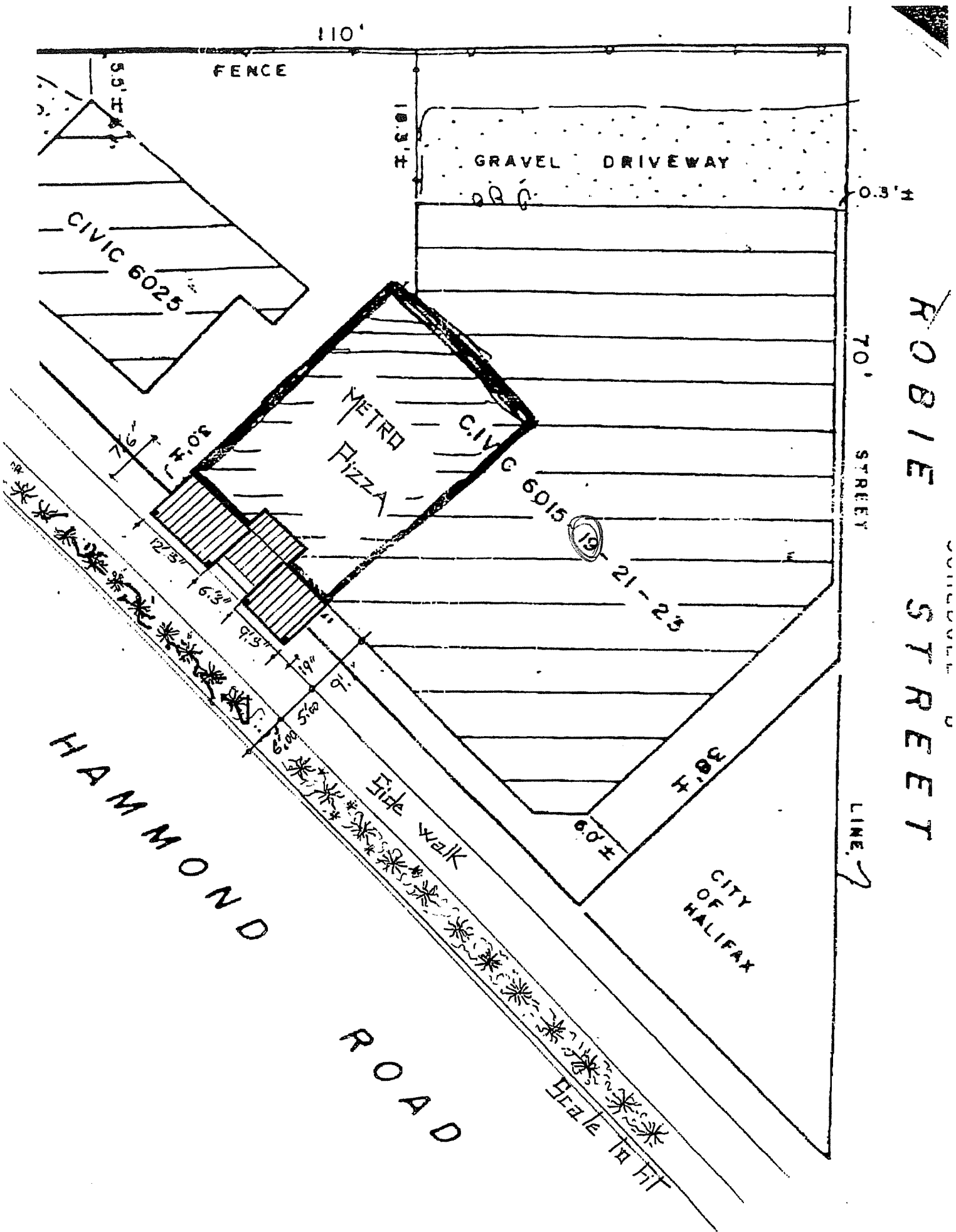
**ATTACHMENTS**

1. Site plan
2. Refusal letter
3. Location plan
4. Special Building Line map extract
3. Appellant 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: Andrew Faulkner, Development Officer



ROBIE STREET

CONDUIT



6021 Lodey Hammond Ave  
March 28/06 Deck in front of  
store

Alan Glendon

*June 22, 2006*

Dear Sir/Madam:

**RE: Application for Variance -6023 Lady Hammond Road, Halifax**

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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 as follows:

**Location:** 6023 Lady Hammond Road, Halifax  
**Project Proposal:** construct a deck at the front of the building for "Metro Pizza"  
**Variance Requested:** reduce Special Building Line setback from 25 feet to 0 feet

Section 235(3) of the **Municipal Government Act** states that:

**No variance shall be granted where the difficulty experienced is general to properties in the area.**

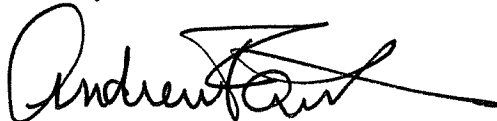
It is the opinion of the Development Officer that the variance violates the intent of the Land use Bylaw in that the requirement for a Special Building Line setback is in place to provide for the future widening of streets.

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

The appeal will be heard by the Peninsula Community Council on **July 10, 2006 in the Council Chambers at 1841 Argyle Street, City Hall**. The Council meeting will commence at 7:00 pm. Council's consideration of this item includes public participation which allows property owners within 30 m of the subject property to speak or make written submissions with respect to this proposal.

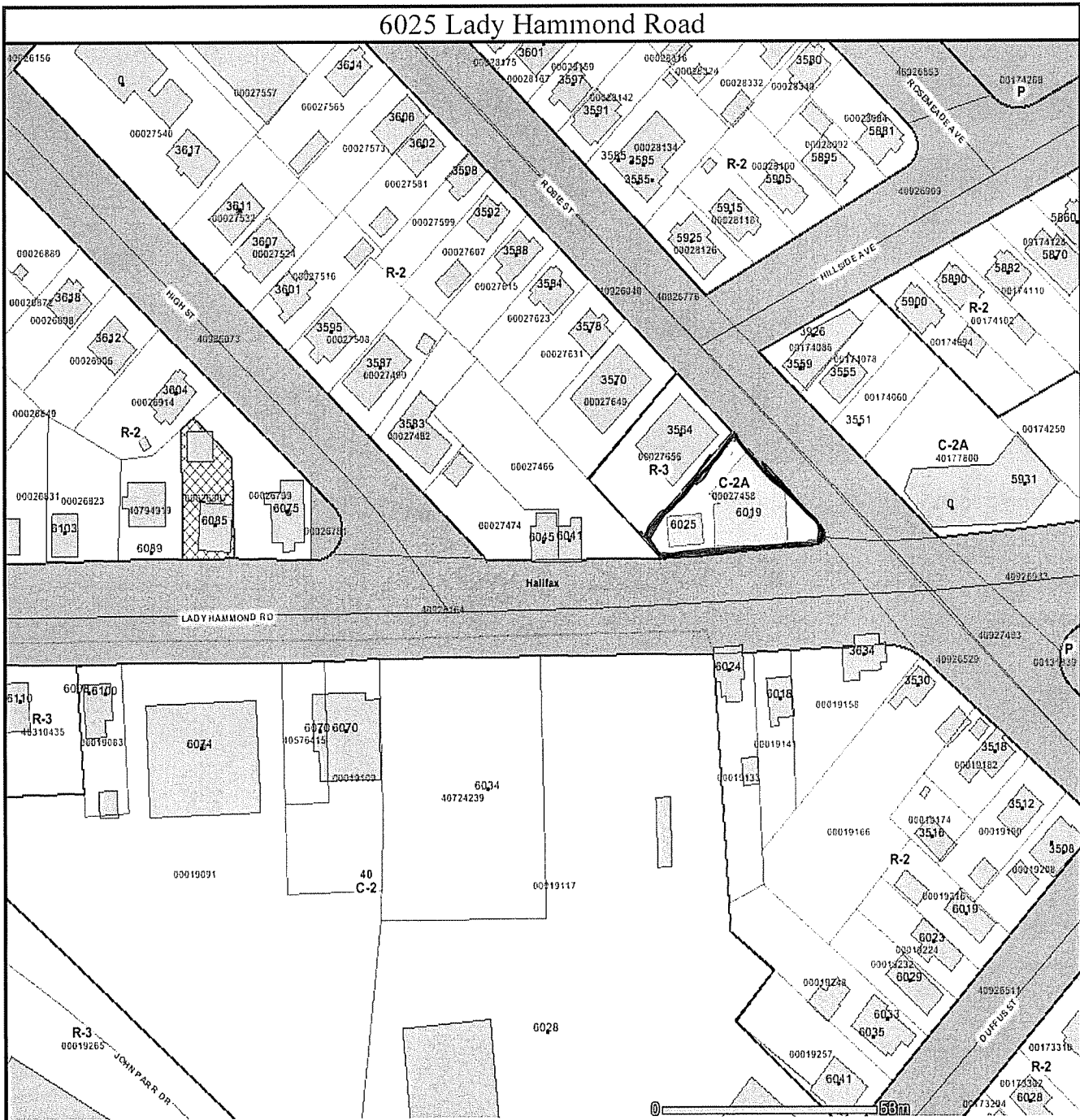
If you have any questions or require additional information, please contact this office at 490-5660.

Sincerely,

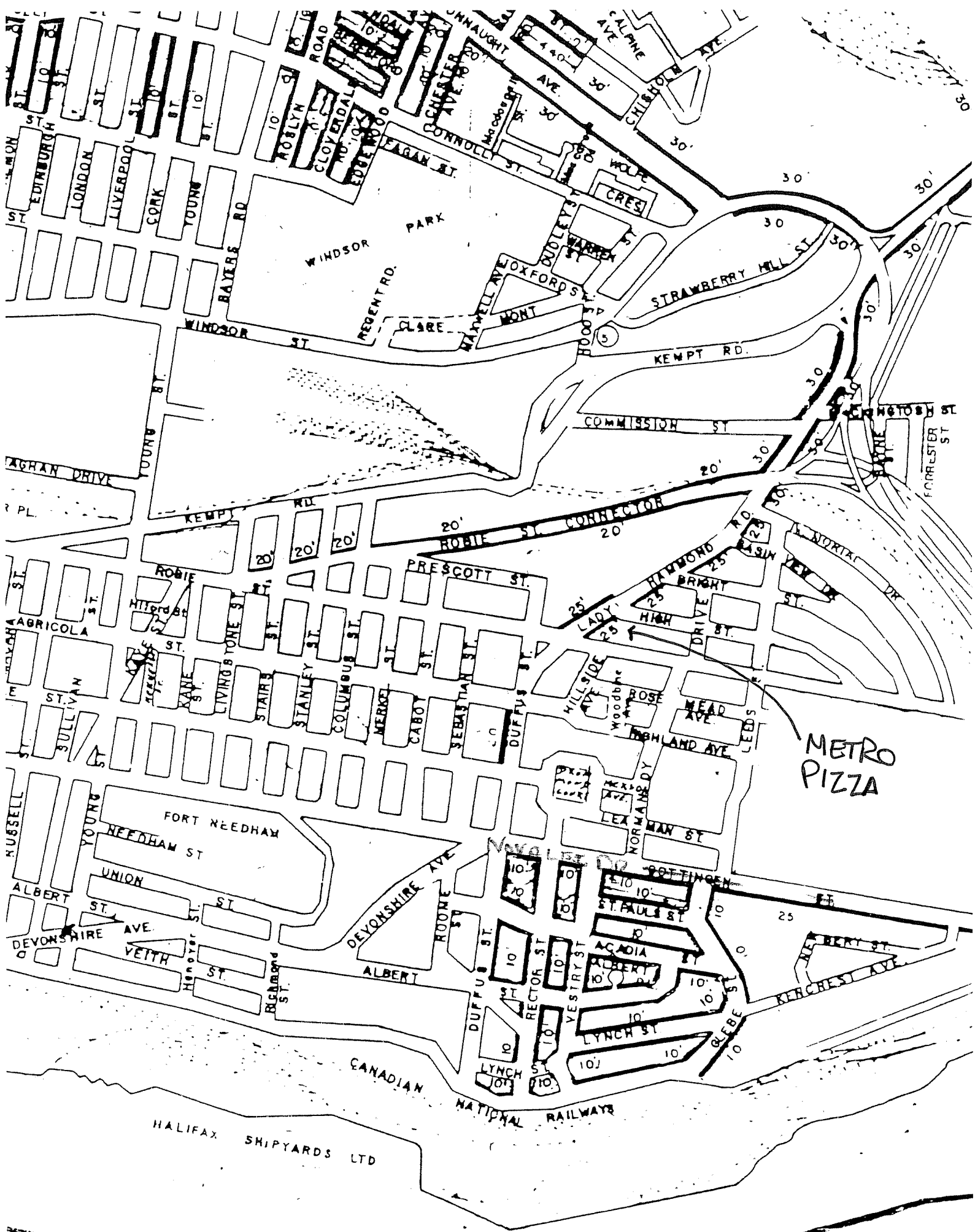


Andrew Faulkner,  
Development Officer

cc. Jan Gibson, Municipal Clerk  
Councillor Patrick Murphy, District 11



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](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation. User: [geoinfo@halifax.ca](mailto:geoinfo@halifax.ca)



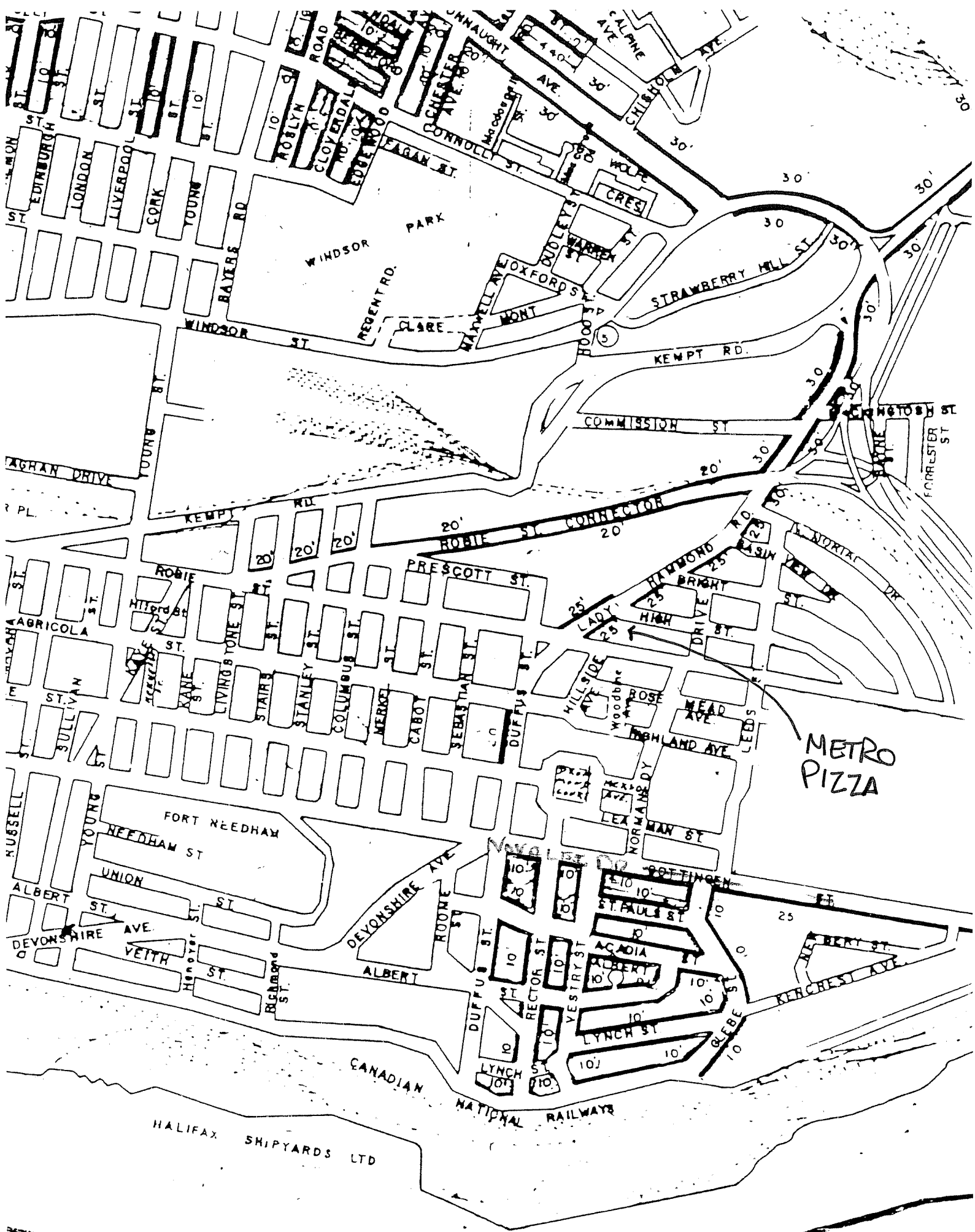
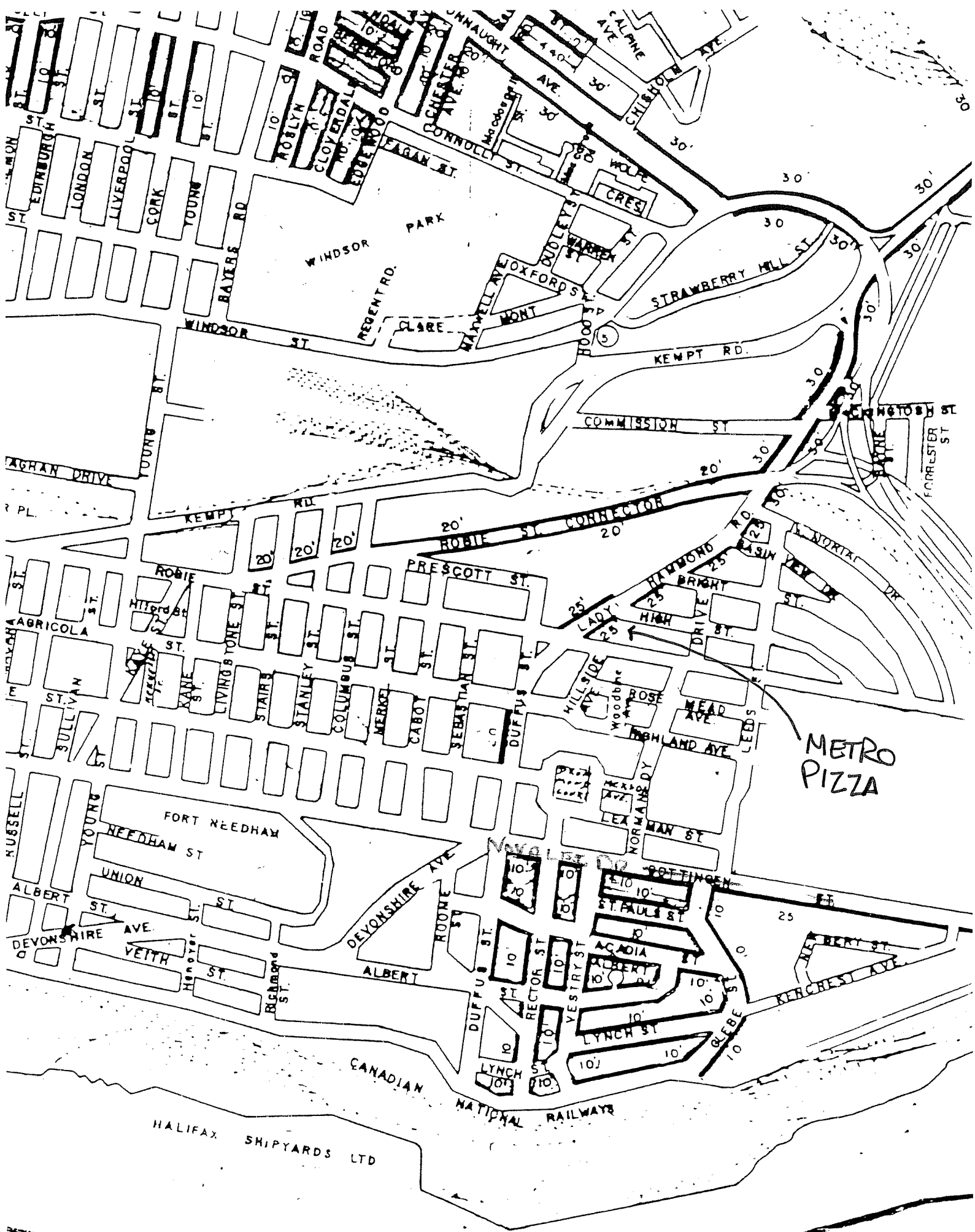
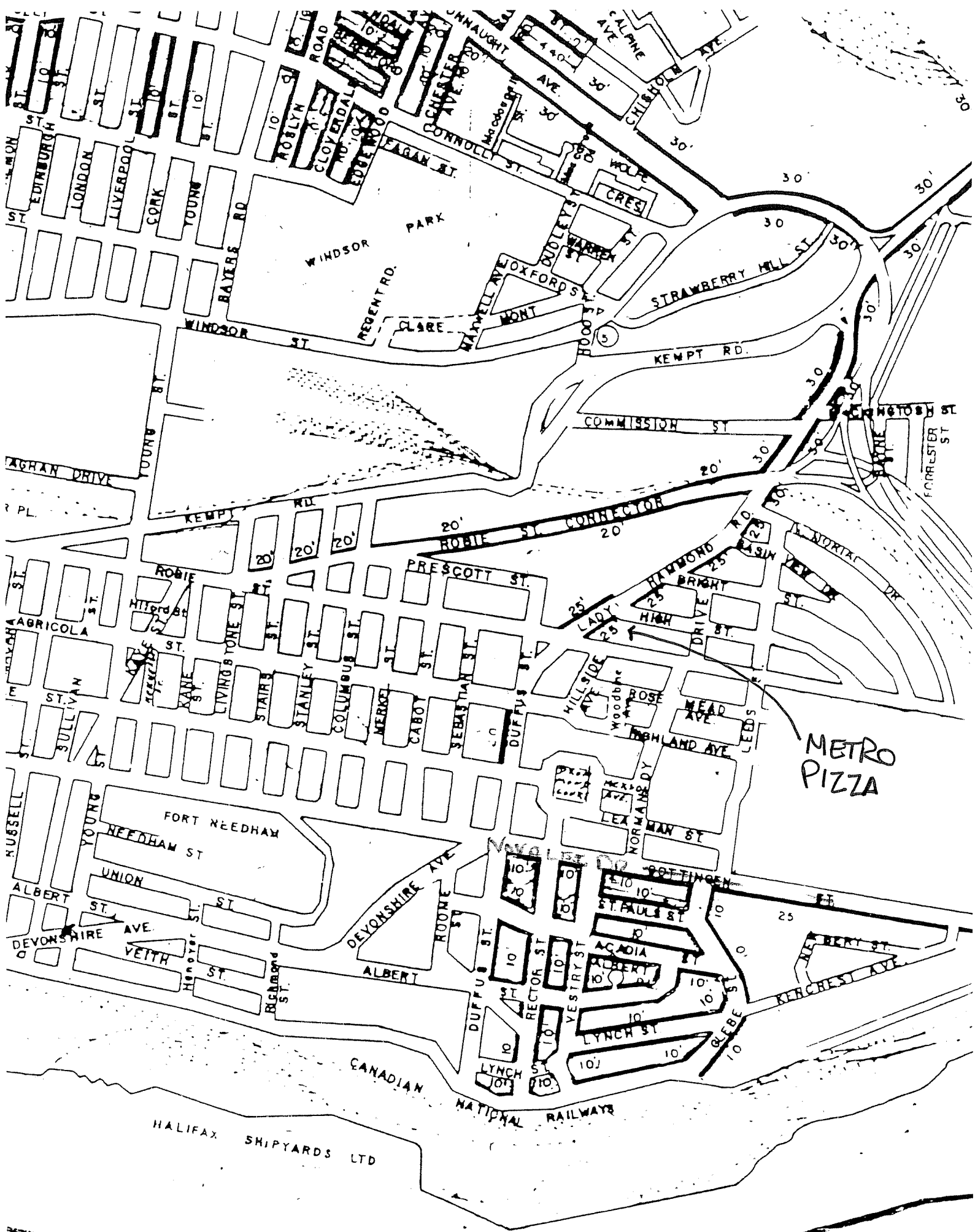
WINDSOR PARK

STRAWBERRY HILL ST

METRO PIZZA

CANADIAN NATIONAL RAILWAYS

HALIFAX SHIPYARDS LTD







Architecture, Engineering, Project Management & Development

480 Parkland Drive, Suite 205  
Halifax, Nova Scotia B3S 1P9

Tel: (902) 457-6676  
Fax: (902) 457-4686

June 6, 2006

Andrew Faulkner, Development Officer  
Halifax Regional Municipality  
6960 Mumford Road  
Halifax, NS  
B3J 3A5

**Re: Application for Minor Variance 12976 – at civic 6025 Lady Hammond Road,  
Halifax**

Dear Mr. Faulkner,

Please accept the following as our appeal on your decision to deny a minor variance at the subject site, to enable a deck at the front of the building.

We understand that the decision was based on the deck intruding on the 25' Special Building Setback. We are appealing your decision based on the following grounds:

1. The Special Building Setback was introduced in 1975 for potential widening of Lady Hammond Road. A considerable time has lapsed and this has not taken place, and there is no indication that this widening is going to happen in the foreseeable future.
2. The building structure, without the balcony, already intrudes 17.5' into the 25' setback. This renders the 7.5' deep deck insignificant, should the widening of Lady Hammond Road ever proceed.
3. The front deck is important for the survival of our small business.
4. Similar applications (decks to side walks) are looked upon favorably in other parts of the city.

5. The owner did inquire at HRM for necessary permits for this small deck, and it was deemed that a building permit is not required. Moreover, while the deck was being built, and as per the instruction of HRM staff, the client dismantled the deck and rebuilt it again, allowing a foot and a half set back from the side-walk for ease of snow removal.
6. The deck is already built. It would be a waste to demolish it at this time. If the widening of Lady Hammond Road ever proceeds, the client agrees to demolish it at his expense.

Yours truly,



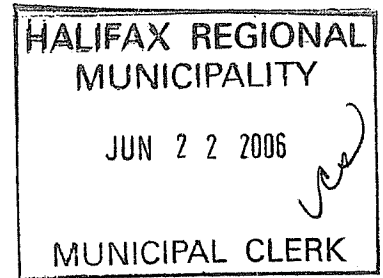
Cesar Saleh, P.Eng.

W. M. Fares and Associates Inc.

cc Jennifer Weagle.



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



June 23, 2006

Cesar Saleh, P. Eng  
W.M.Fares & Associates Inc  
480 Parkland Drive, Suite 205  
Halifax, NS  
B3S 1P9

Dear Mr. Saleh:

**RE: Variance Application 12976 - 6025 Lady Hammond Road, Halifax**

The appeal of the Development Officer's decision to refuse the above application for a variance will be presented to Peninsula Community Council on Monday, July 10, 2006, at 7:00 p.m. in the Council Chambers at City Hall, 1841 Argyle Street, Halifax.

Should you require further information, please do not hesitate to contact this office at **490-4402**.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

**Andrew Faulkner**  
Development Officer

cc: *Jan Gibson, Municipal*  
*Councillor Patrick Murphy, District 11*

*June 22, 2006*

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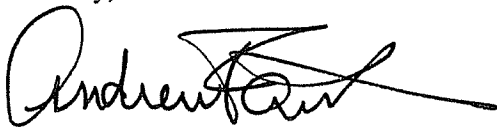
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Sincerely,



Andrew Faulkner,  
Development Officer

cc. Jan Gibson, Municipal Clerk  
Councillor Patrick Murphy, District 11

