

8.2.1

Western Region Community Council  
September 26, 2005

**TO:** Chairman and Members of Western Region Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** September 19, 2005

**SUBJECT:** Appeal of the Development Officer's decision to approve an application  
for a variance - 642 Ketch Harbour Road, Portuguese Cove

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to approve an application for a variance from the requirements of the land use bylaw for property at 642 Ketch Harbour Road, Portuguese Cove

**RECOMMENDATION**

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

**BACKGROUND**

**Existing Use:**

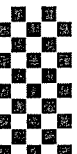
This property is currently developed with a single family dwelling

**Zoning:**

This property is zoned R-1 Single Family Dwelling Zone for Planning District 5 Land Use By-law

**History:**

This property was developed in the early 1970's as a single family dwelling.



## **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 bylaw requires 20,000 square foot lots with 100 feet of frontage in the R-1 Zone. The subject lot has only 71 feet of frontage, with an area of 23,000 square feet. The septic field is located at the rear of the house and a driveway and drainage ditch are to the left. The proposed garage and sunroom are situated in an area that will not interfere with existing drainage patterns or the existing septic field.

The bylaw is intended to provide adequate area for on-site sewage disposal and siting the addition as proposed does not violate the intent of the land use bylaw.

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

Lots in the immediate area range in size from a half acre to one and a half acres. Frontages and lot widths vary from 70 to 100 feet plus.

The difficulty experienced is not general to properties in the area.

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

There is no intentional disregard of the land use bylaw.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was approved.

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

**ATTACHMENTS**

1. Site plan
2. Approval letter
3. Appellant letters

**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

# SURVEYOR'S LOCATION CERTIFICATE

ATLANTIC OCEAN



NOTE

CURRENT TITLE DOCUMENTS INDICATE NO EASEMENTS OR RIGHTS OF WAY WITH RESPECT TO THE POSITION OF OVERHEAD WIRES, UTILITY POLES, GUY WIRES, OR UNDERGROUND SERVICES.

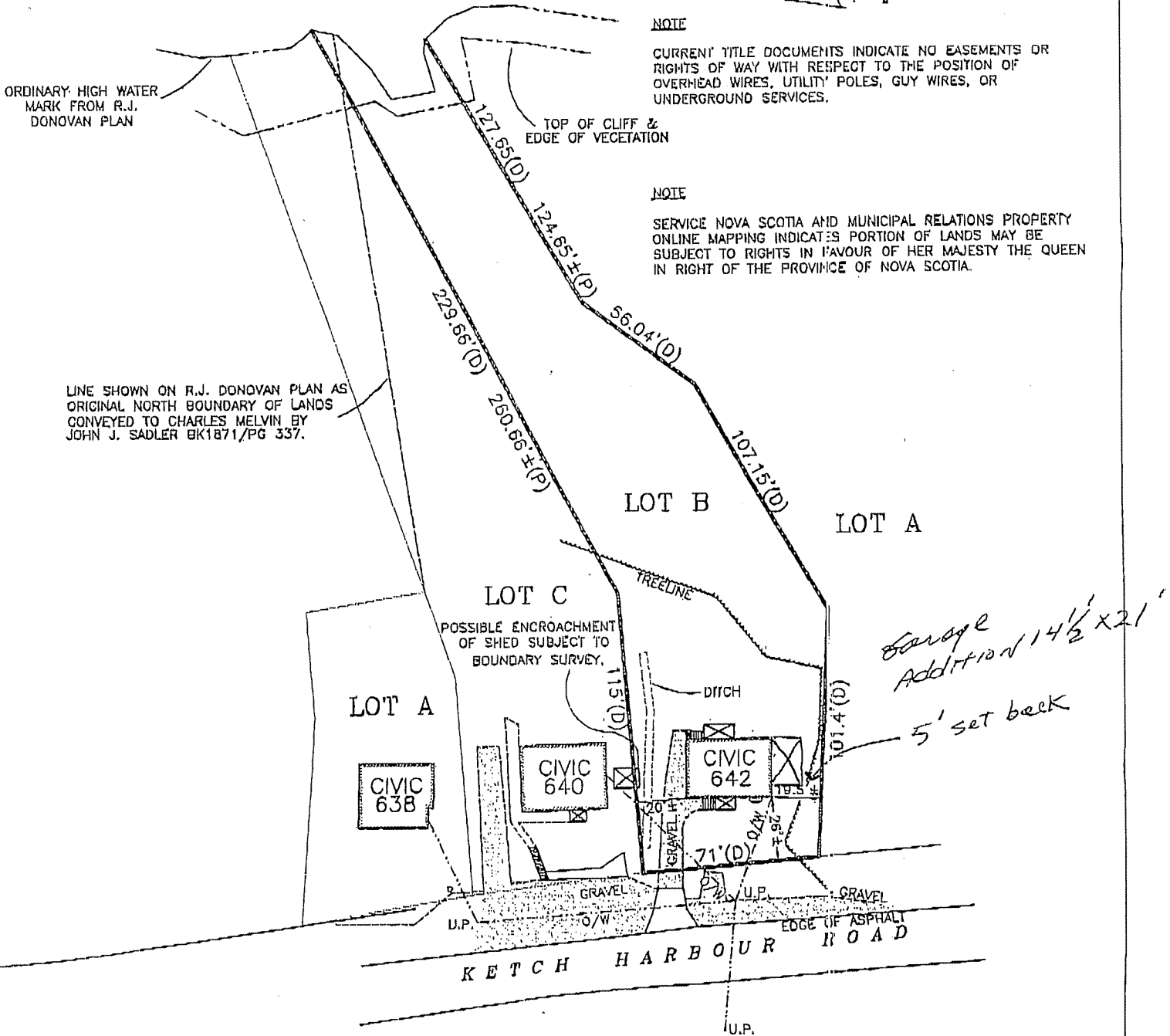
NOTE

SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS PROPERTY ONLINE MAPPING INDICATES PORTION OF LANDS MAY BE SUBJECT TO RIGHTS IN FAVOUR OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA.

ORDINARY HIGH WATER MARK FROM R.J. DONOVAN PLAN

TOP OF CLIFF & EDGE OF VEGETATION

LINE SHOWN ON R.J. DONOVAN PLAN AS ORIGINAL NORTH BOUNDARY OF LANDS CONVEYED TO CHARLES MELVIN BY JOHN J. SADLER BK1871/Pg 337.



SCALE: 1"=60'

⊙ = SURVEY MARKER FOUND   ○ = IRON BAR/PIPE FOUND  
 (D) = DEED DISTANCE   (P) = PLAN DISTANCE   (M) = MEASURED DISTANCE   O/W = OVERHEAD WIRES   U.P. = UTILITY POLE

August 26, 2005

Dear Sir or Madam:

**RE: Case No 12206 - Variance at Civic No. 642 Ketch Harbour Road, Portuguese Cove**

This will advise you that as the Development Officer for the Halifax Regional Municipality I have approved a request for a variance from the requirements of the Land Use Bylaw for Planning District 5 as follows:

<b>Location:</b>	<b>642 Ketch Harbour Road</b>
<b>Project Proposal:</b>	<b>To construct an attached garage</b>
<b>Minimum sideyard:</b>	<b>8 feet</b>
<b>Approved Variance:</b>	<b>reduce to 5 feet</b>

In accordance with Section 236 of the **Municipal Government Act**, all assessed owners of property within 100 feet of 642 Ketch Harbour Road have been notified of this variance. As one of these property owners you have the right to appeal the decision of the Development officer to the Municipal Council. An appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

**Notice of the appeal must be filed on or before September 13, 2005**

Please note, this does not preclude further construction on this property provided the proposed construction does not require a minor variance.

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

Sincerely,



**Andrew Faulkner**  
Development Officer

cc. Jan Gibson, Municipal Clerk  
Councillor Steven Adams, District 18

645 Ketch Harbour Road  
Portuguese Cove, N. S.  
B3V 1K1

September 9, 2005

Municipal Clerk  
c/o Andrew Faulkner  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, N. S. B3J 3A5

Dear Andrew:

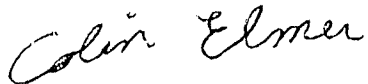
**RE: Case No.12206-Variance at Civic No. 642 Ketch Harbour Rd, Portuguese Cove**

I am writing in response to the letter received dated August 26, 2005 regarding variance to the above named property.

The only appeal that we have in this matter is the height of the proposed garage or any other construction does not exceed the height that would constrict our view of the ocean. Any height above that which already exists would constrict our view.

Thank you for our consideration in this matter. If you need to contact us for further information, please call us at 868-1319.

Sincerely,



Colin Elmer

**Christine Ulan**  
14 Briar Place  
Halifax, NS B3M 2X2  
(902) 443-4334

**Patricia Ulan**  
1B, 305 – 26<sup>th</sup> Street East  
Saskatoon, SK S7K 0L9  
(306) 664-8526

September 12, 2005

**Halifax Regional Municipality**  
c/o Andrew Faulkner, Development Officer  
P.O. Box 1749  
Halifax, Nova Scotia B3J 3A5

HAND DELIVERED

**Attention: Municipal Clerk**

Dear Sir or Madam:

**Re: Case No. 12206**  
**– Variance at Civic No. 642 Ketch Harbour Road, Portuguese Cove**

We, the owners of the property at 644 Ketch Harbour Road, Portuguese Cove, hereby appeal the request for a variance from the requirements of the Land Use Bylaw for Planning District 5 as made by the owners of 642 Ketch Harbour Road, Portuguese Cove.

Section 236 of the *Municipal Government Act* requires that all affected owners be contacted about such a variance request. There is not another owner who is as affected as we are. The consent given by any other owner within 100 feet adversely affects our potential land usage and enjoyment of our personal property.

Our property at 644 Ketch Harbour Road is currently vacant land. That is not the anticipated future of the property, nor is there the ability to foresee the usage of the land. We do know, however, that the property is very narrow in the area pertinent to this request and we expect that the loss of 3 feet will be noticed in the future.

On the issue of variance, paragraph 6.26(a) of the Land Use Bylaw states as follows:

6.26(a) Notwithstanding the general requirements set out for each zone in this Bylaw, the Development Officer may grant a variance from the minimum lot area and frontage, the minimum yard dimensions, and the area of land that may be built upon, provided there is *no intentional disregard for this Bylaw or for the intent of the Bylaw and the difficulty is not general to the area.* [emphasis ours]

We believe that encroaching on the eight foot minimum sideyard is in disregard of the intent of the Bylaw. Intruding three feet into the eight feet allocated is a 37.5% loss of distance, and nearly 20% of the total sixteen feet allocated by Bylaw. This is too substantial for us to accept. A loss of one foot would not be as noticeable; three feet is too great.

The information in the letter dated August 26, 2005 from the Halifax Regional Municipality is incomplete. The letter indicates that a garage is being built yet we have learned that the intent is not simply to build a garage but to add a sunroom atop the structure. The addition of the 2<sup>nd</sup> story will add to the perceived encroachment to our property and our enjoyment of it. For example, the height will cast deeper shadows onto our property made perceivably greater when the structure is that much closer. To exclude this information is unfair.

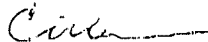
Further, there is no information given as to how much of the property line is affected by the variance request. This should not be left to assumption on our part.

Most single garages do not require a 14.5 foot frontage so a useful garage can be built within the confines of an eight foot easement. The overall dimension of the property also offers other alternatives. We understand that the owners of 642 Ketch Harbour Road have a desire to have their preferences met. On the other hand, we are obliged to protect our property in every respect.

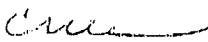
We also wish to advise you that the appeal process appears unjust. Given the seriousness to both parties, the opportunity to respond within the time frame is exceedingly short. The official notice was not received until September 1<sup>st</sup>, 2005, allowing only 8 business days to prepare our appeal. One of the owners of the property resides out of province and, bearing in mind postal delays, we recommend that the department give consideration to timing in the interest of fairness. No options for the appeal are offered, not fax, nor e-mail, nor even a civic address is given. Even the named contact is not available as it appears she is on leave.

Thank you for considering this appeal.

Yours truly,



Christine Ulan



 Patricia Ulan

cc: Councillor Steven Adams, District 18