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Chebucto Community Council
September 14, 2009

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: Andrew Faulkner
Andrew Faulkner - Development Officer

DATE: August 27, 2008

SUBJECT: Appeal of the Development Officer's decision to approve an application for a Variance - 31 Southill Drive, Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance for the front yard setback of the Halifax Peninsula Land Use Bylaw to permit a deck.

RECOMMENDATION

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

BACKGROUND

Currently the front yard setback from the house to the front property line is 26.3 feet. The applicant proposes to construct a deck on the left side and front of the house. The proposed deck will be 4.6 feet from the left side yard. A variance was granted in 1987 to relax the left side yard from 8 feet to 4.6 feet. Although a deck was not constructed in the left side yard, the variance from 1987 is still valid. Therefore, this variance is for front yard setback only. The existing building is located 26.3 feet from the front property line and the required setback is 20 feet. The proposed deck is 10 feet deep and therefore a relaxation of 3.7 feet was requested. The Development Officer believes this relaxation of 3.7 feet is not significant and approved the variance.

DISCUSSION

The *Halifax Regional Municipal Charter* 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.

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

The intent of the front yard setback in the Land Use Bylaw is to provide adequate room for parking and uniform street lines. The deck proposed is to the left side of the house and does not interfere with parking. The setback of existing houses in the neighbourhood is fairly similar. In this area, it appears that the main buildings are not directly parallel with the street, they are at an angle. The setback varies from what appears to be approximately 20 feet to 25 feet. The proposed deck is located on the farthest corner of the residence from the street. The Development Officer believes a relaxation of 3.7 feet is not inconsistent with the surrounding neighbourhood and does not violate the intent of the Land Use Bylaw.

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

The setbacks vary in the neighbourhood and some properties may require a variance. However, it is not apparent that this difficulty 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 is no intentional disregard. The applicant applied for a permit to construct the deck.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

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 grant the variance.

ATTACHMENTS

1. Location Map
2. Appeal letter
3. Site Plan
4. Elevations

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.

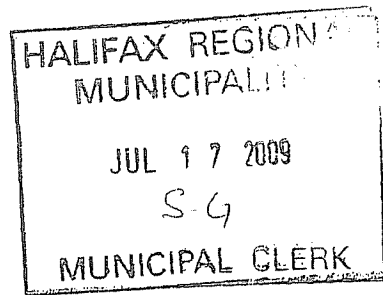
Report Prepared by: Andrew Faulkner - Development Officer (490-4402)

DATE: August 27, 2009

SUBJECT: Development Officer's decision to approve an application for a variance - front yard deck at 31 Southhill Drive, Halifax.

LOCATION MAP





Patrick and Kathleen Keast
33 Southhill Drive
Halifax, Nova Scotia, B3M2X9
July 15, 2009

RE: Application for Variance, File No. 15439 - 31 Southhill Dr., Halifax

The letter we received from the Municipal Clerk notifying us of the approval of a variance to allow for the owner of 31 Southhill Drive to add a front deck to an existing side deck puzzles us. There is *no* side deck on that house, and there has never been one. The owner of the property plans to erect a new side deck leading around to a new front deck. Before the house changed hands in the Fall of 2008, there was a side kitchen door leading to the side yard. This door opened onto a landing about 1 metre square and steps led down to the side yard. The small landing could in no way be considered as a deck; with even one garden chair on it, the kitchen screen door could not be opened. In April 2009 the new owner removed the side door and the stairs and installed patio doors opening from his living room onto the side of the house facing our bedroom window, and just over 4 metres away from us. This work was done without planning permission.

My wife and I wish to appeal the decision of the Development Office on the following grounds:

- (1) that the new deck will result in a loss of privacy to us and unreasonable noise outside our bedroom window;
- (2) that the new construction will have a negative effect on the resale value of our property;
- (3) that the decision to grant a variance was based on false information in that there is no existing side deck to which the addition will be added.
- (4) that the work was begun before any request for a variance was made.

Sincerely,

Pat Keast

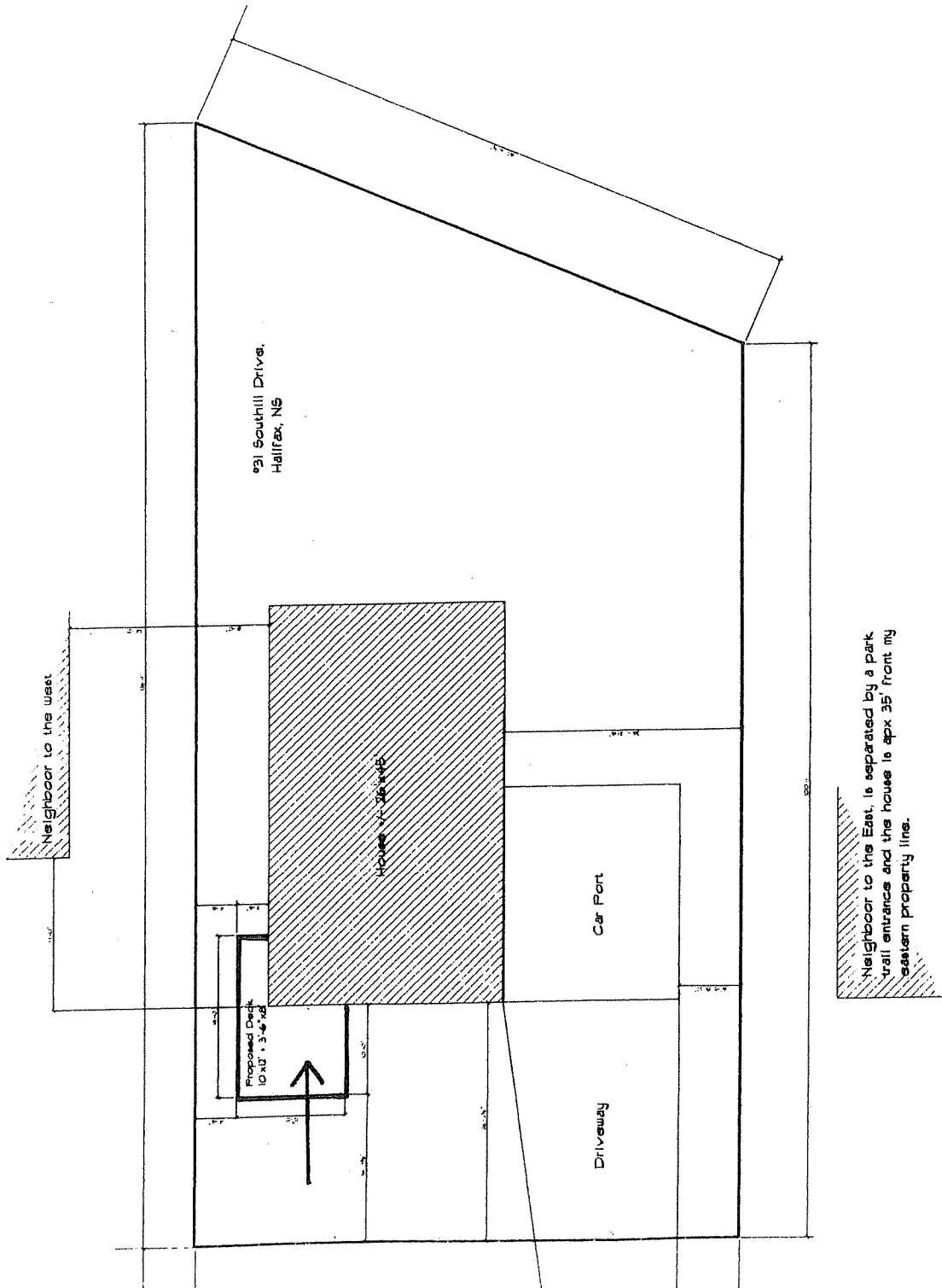
Kathleen Keast

cc. Julia Horncastle, Acting Municipal Clerk; Council Russell Walker, District 15

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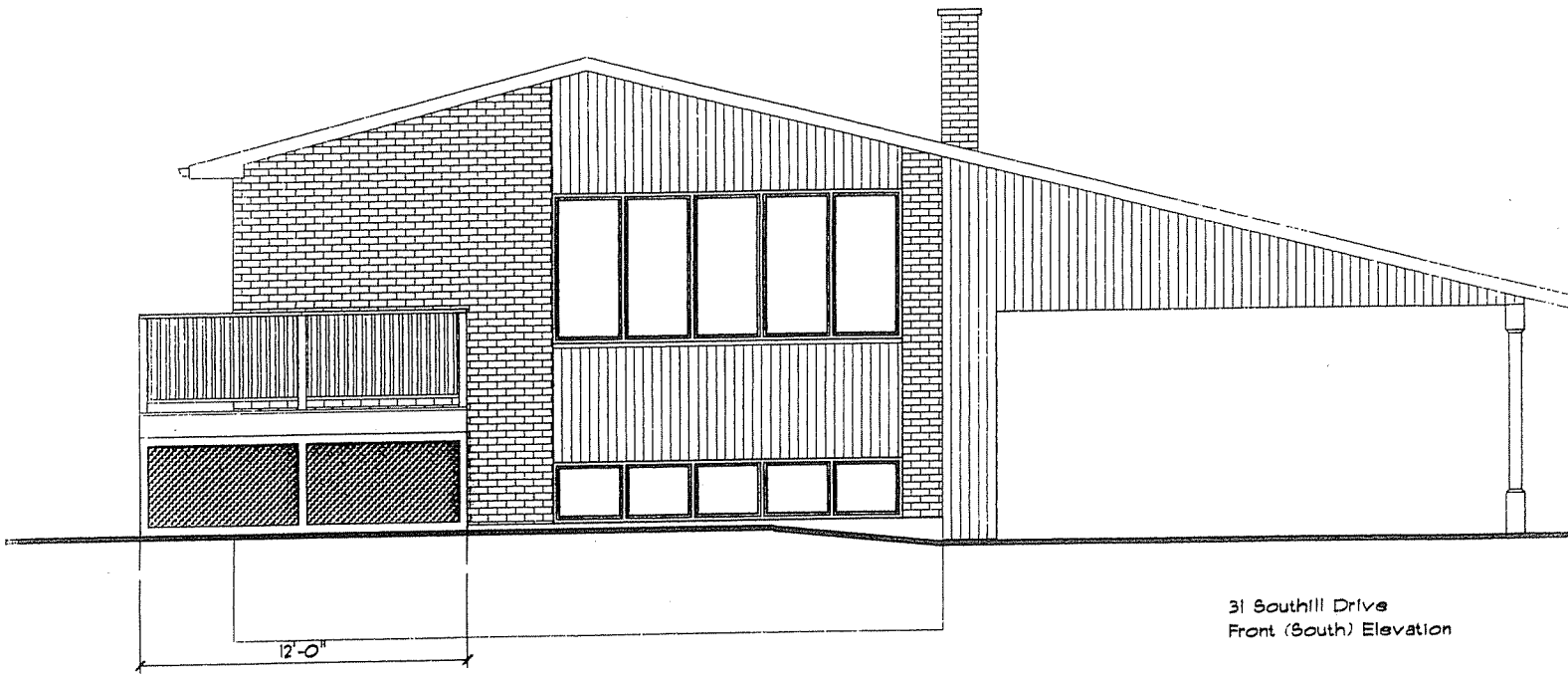
SITE PLAN



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FRONT (SOUTH) ELEVATION



31 Southhill Drive
Front (South) Elevation