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**Chebucto Community Council**  
March 1, 2010

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

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

**DATE:** February 19, 2010

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a Variance - 25 Kirk Road, Halifax

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to approve a variance from the right side yard setback of the Halifax Mainland Land Use Bylaw to permit an addition to a single unit dwelling.

**RECOMMENDATION**

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

## **BACKGROUND**

The subject property is located at 25 Kirk Road, Halifax (see Attachment 1- Location Map). The property is zoned R-1 (Single Family Dwelling Zone) under the Halifax Mainland Land Use Bylaw. On December 29, 2009, the applicant submitted plans in support of a variance to the right side yard setback of the Land Use Bylaw to permit two small additions to the home. The requirement under the bylaw is 8 feet, but the house currently sits at a non-conforming 2.9 feet from the right side property line. This 2.9 foot setback is effectively the setback for additions from that property line.

The property lines are not parallel to the house on the right side (See Attachment 2 - Site Plan). They are angled back towards the house. The application is to 'fill in' the front and rear right corners of the house and square up the footprint, but as the property lines angle back towards the house, it is impossible to maintain the non-conforming 2.9 feet from the property line. The resulting setback will be 1.6 feet, a reduction of 1.3 feet from what is required to build without the variance. The property slopes considerably on the other three sides of the property, making additions to those sides impractical.

## **DISCUSSION**

The *Municipal Government Act* 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 ?**

As the bylaw provides for the house's existing non-conforming setback of 2.9 feet, and the proposed reduction of 1.3 feet to 1.6 feet from the property line is minimal, the proposed variance does not violate the intent of the land use bylaw.

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

The house's current footprint, the topography of the property, the house's close proximity to the property lines in question and the angled characteristic of the property lines make this a unique situation. The difficulty experienced is not general to the area.

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

There is no intentional disregard for the requirements of the land use bylaw.

**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.

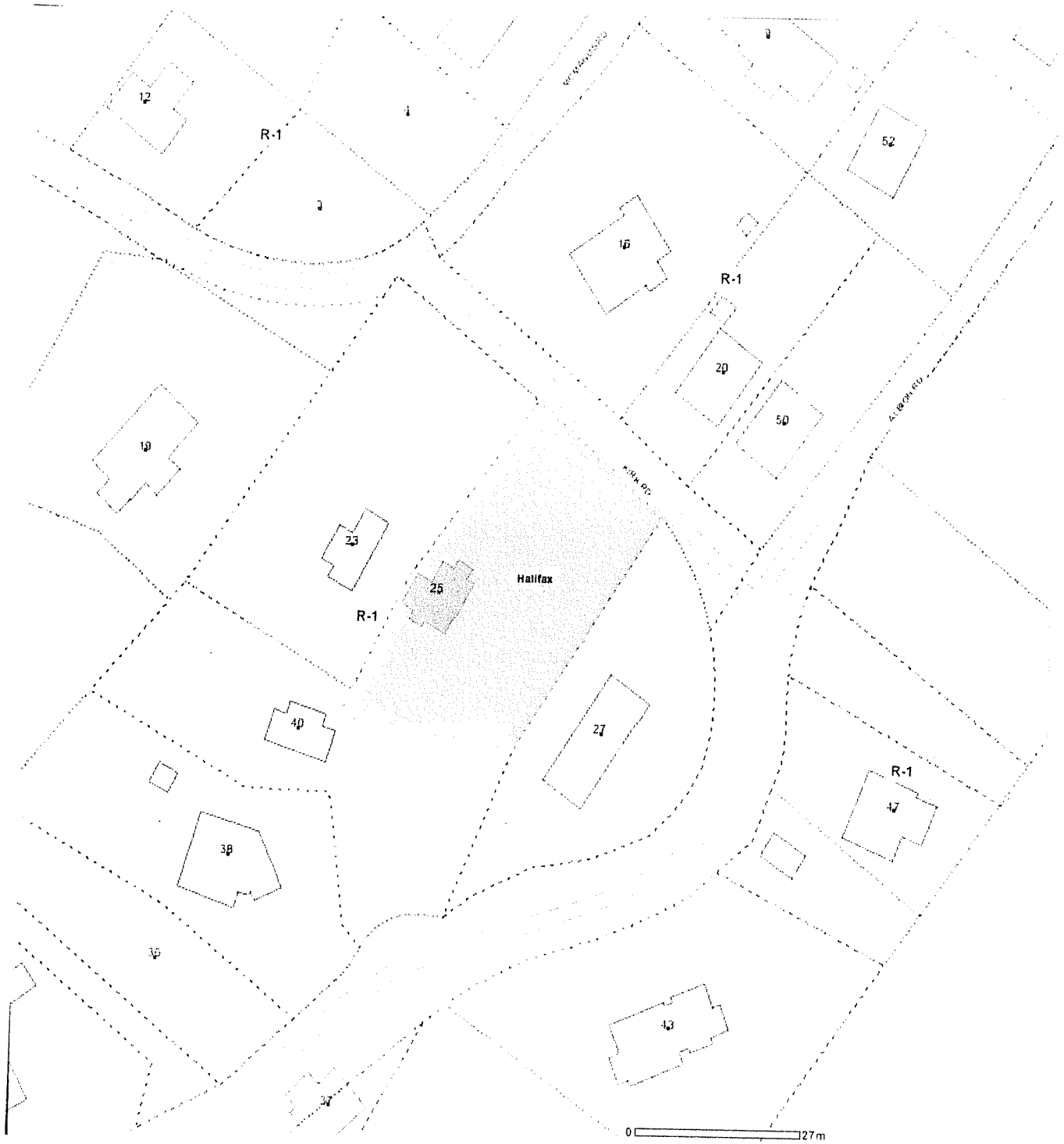
**ATTACHMENTS**

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

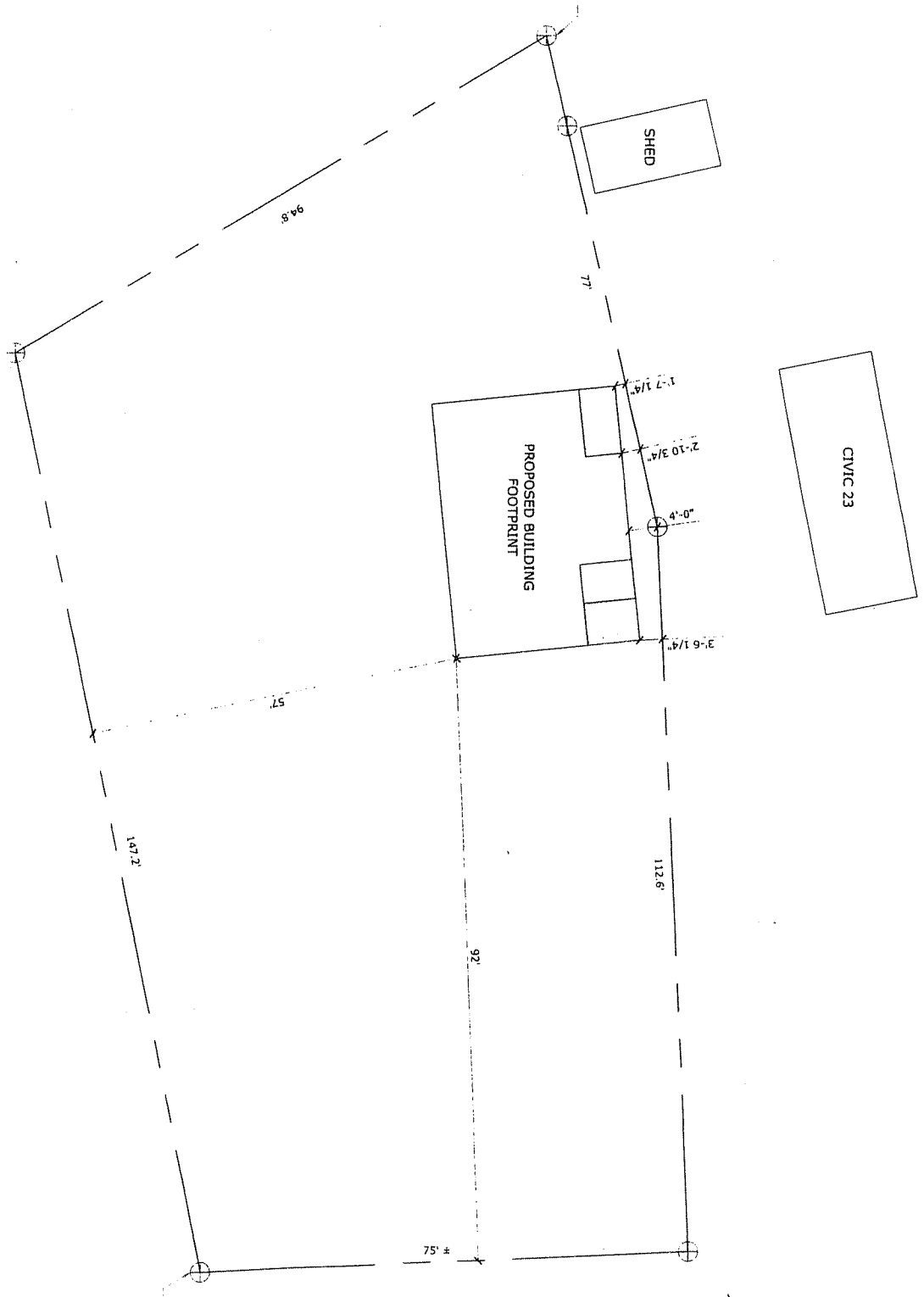
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Erin MacIntyre - Development Technician (490-4338)

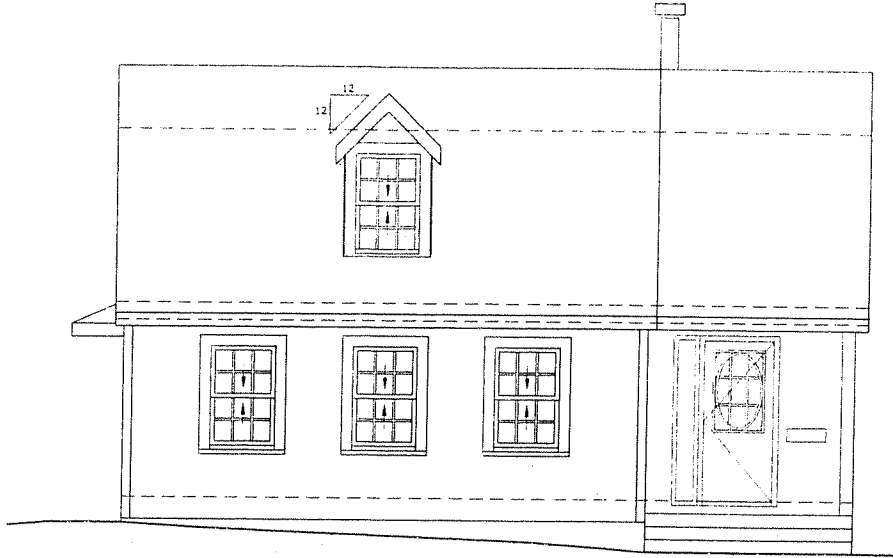
**ATTACHMENT 1- Location Map**



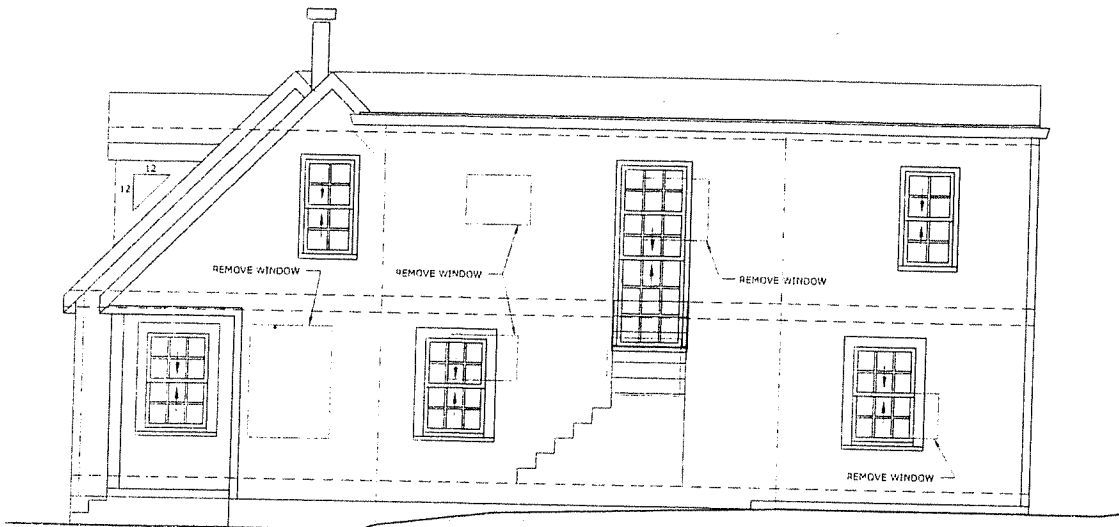
**ATTACHMENT 2 - Site Plan**



ATTACHMENT 3 - Elevations



FRONT



RIGHT SIDE

ATTACHMENT 4 - Appeal Letter

Emanuel Jannasch  
23 Kirk Rd.  
Halifax Regional Municipality  
B3P 1A5

RECEIVED

JAN 29 2010

January 21, 2010

Municipal Clerk,  
c/o Andrew Faulkner, Development Officer  
Halifax Regional Municipality,  
Planning and Development – Western Region,  
P.O. Box 1749, Halifax, N.S.  
B3J 3A5

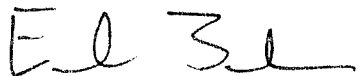
RE: Variance Application No. 15808, 25 Kirk Rd. Halifax, NS, PID: 00309963

To whom it may concern:

This letter is a request to appeal the variance described above.

I look forward to further instructions.

Yours truly,

A handwritten signature in black ink, appearing to read 'E Jannasch', written in a cursive style.

Emanuel Jannasch