


Chebucto Community Council
May 2, 2011

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY:



Trevor Creaser - Development Officer

DATE: April 21, 2011

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance #16863 -7107 Scot St., Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance for the side yard setback of the Halifax Peninsula Land Use Bylaw to convert a single unit dwelling to a two unit dwelling.

RECOMMENDATION

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

BACKGROUND

The property is zoned R-2 (General Residential) under the Halifax Peninsula Land Use Bylaw. A variance application for a reduced side yard (3.6') was received as a result of a land use bylaw investigation which was initiated based on a complaint regarding an illegal dwelling unit. A follow up inspection by the Land Use Compliance section confirmed the presence a basement apartment. The authorized use is a single unit dwelling.

The current owner purchased the property in July of 2009. The owner explained the basement was framed and had a bathroom in it when she purchased the property. The owner informed HRM staff that she installed a kitchen in the basement in May 2010.

Records indicate the owner had inquired about a second unit August 2010, after the dwelling unit was installed for which no permits were issued. A complaint regarding the illegal unit was received in November 2010.

Two units are permitted in the R-2 Zone subject to meeting the following requirements:

	Required	Existing
Min. Lot Frontage	50 feet	50 feet
Min. Lot Area	5000 sqft.	6250 sqft.
Min. Side Yard	5 feet	3.6 feet

The variance application was refused by the Development Officer on April 4, 2011 and was subsequently appealed on April 12.

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?

Setbacks from property lines are intended to provide adequate building separation to maintain access, safety and privacy. The bylaw requires addition building separation as density increases. The existing setback does not meet the requirements for a single family unit. The addition of a second dwelling unit further decreases the intended separation distances required. The reduction of the side yard setback violates the intent of the land use bylaw.

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

The homes in the area appear to be single unit dwelling and based on the residential lot size and configuration and position of buildings in the immediate neighborhood, the difficulty experienced is general to many of the properties in the area.

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

The property owner installed the unit without the necessary approvals and then later inquired after the fact as to the requirements. Given this issue was only brought light as a result of a complaint, this constitutes an intention disregard for the requirements of the land use bylaw.

BUDGET IMPLICATIONS

None

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.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. If the Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to speak to staff's recommendation.

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 approve the variance.

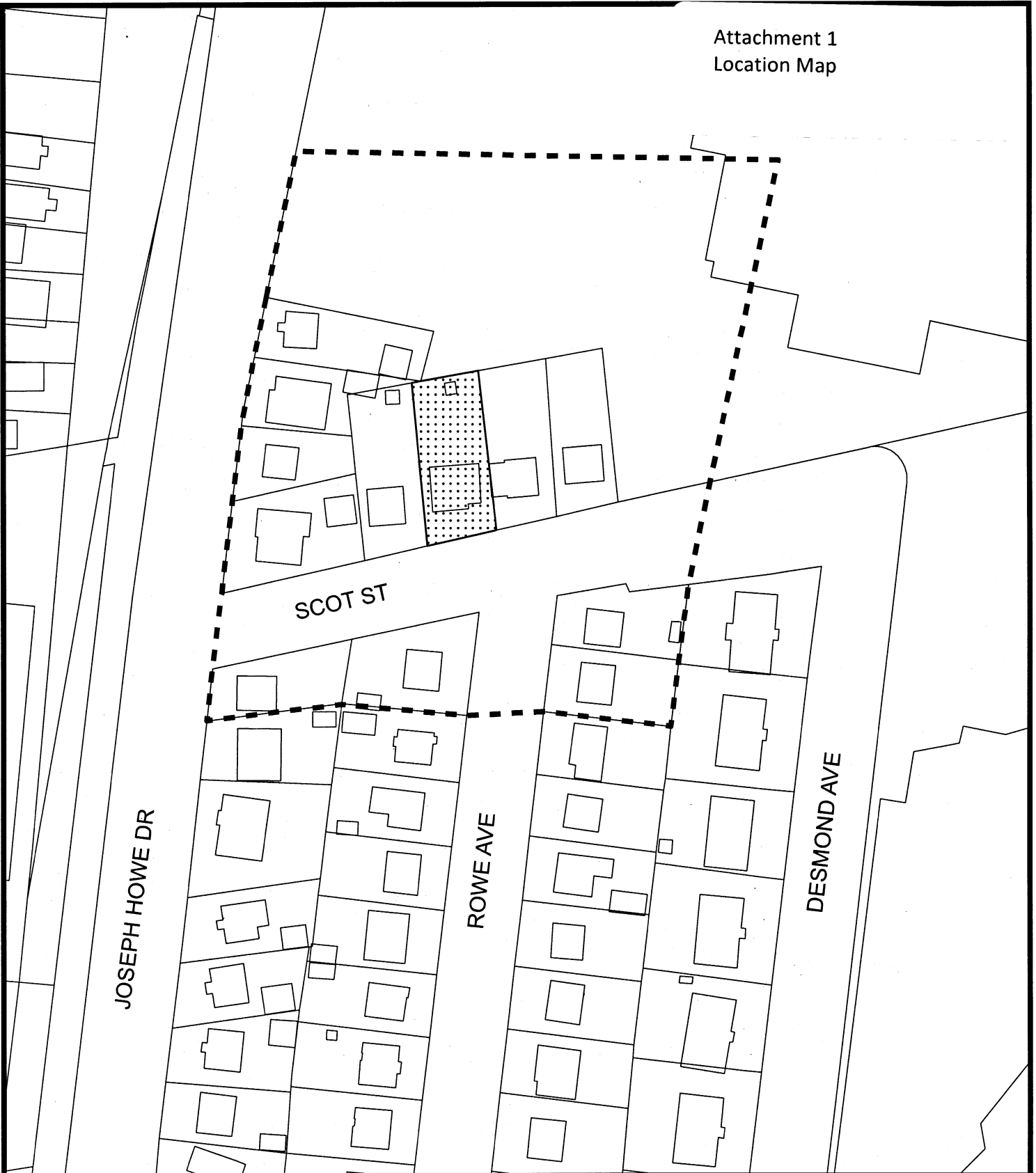
ATTACHMENTS

1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal letter

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc/agenda.html>, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

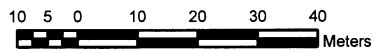
Report Prepared by: Brenda Seymour
Brenda Seymour - Development Technician (869-0064)

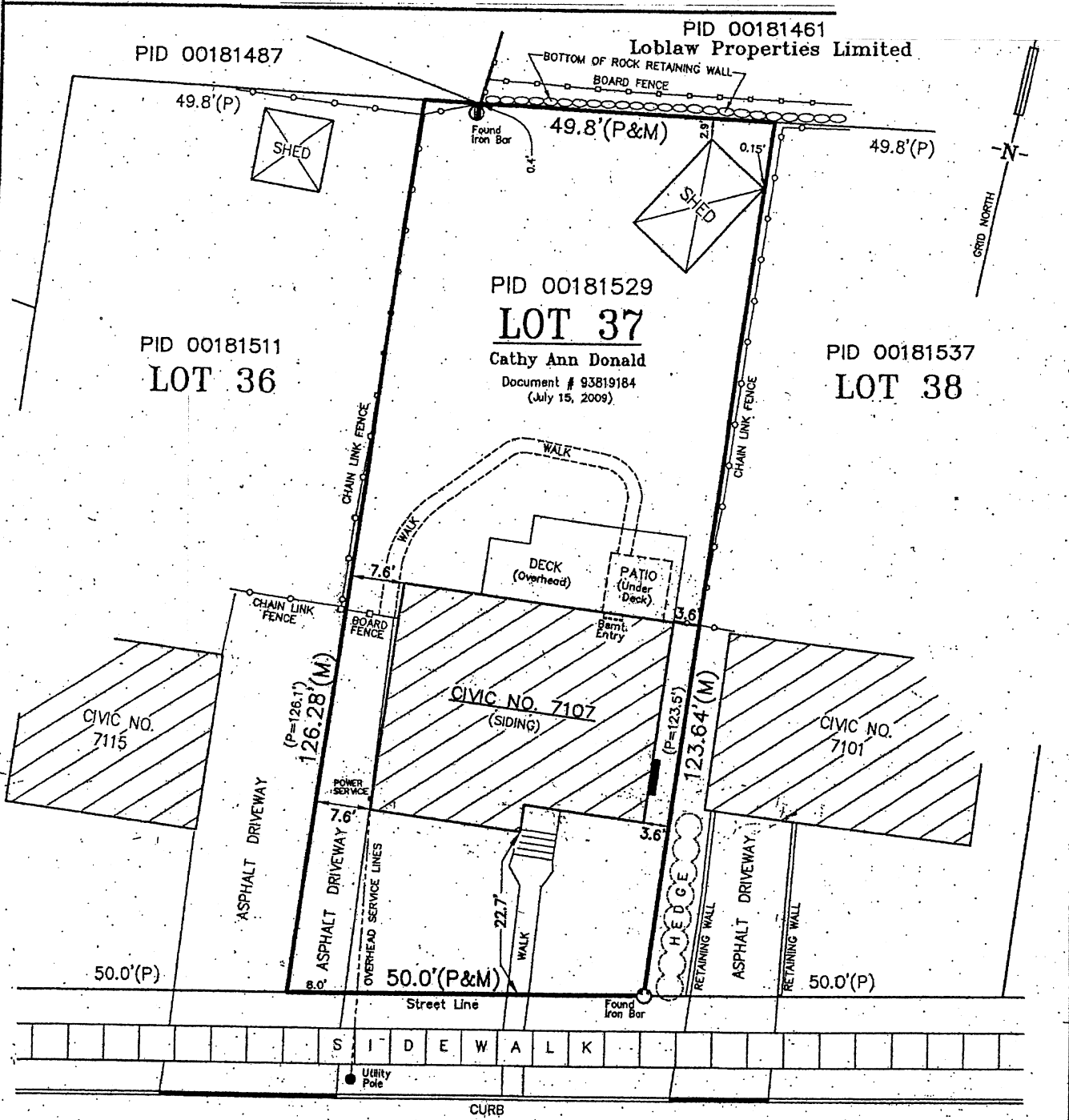
Report Approved by: _____
Trevor Creaser - Development Officer (869-4235)



Map 1
Notification Area

- - - - - Notification Area
- Subject Area





LEGEND
P - Plan
Bsmt. - Basement

SCOT STREET
(60' WIDE)

SURVEY REVIEW
DEPARTMENT
SLC 80731



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

April 4, 2011

Cathy Ann Donald
7107 Scot St
Halifax, N.S. B3L 2R4

Dear Ms. Donald;

**Re: Variance Application No. 16863
Property at 7107 Scot St., Halifax**

This will advise that as the Development Officer for the Halifax Regional Municipality, I have refused your request for a variance from the requirements of the *Halifax Peninsula Land Use Bylaw* as follows:

Location: 7107 Scot St, Halifax
Project Proposal: Convert from single unit dwelling to two unit dwelling
Variance Requested: Vary left side yard setback from 5 ft. to 3 ft. 6 inches

Section 250 (3) of the **Halifax Regional Municipality Charter 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.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use Bylaw; (b) the difficulty experienced is general to properties in the area, and (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw, therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the **Halifax Regional Municipality Charter Act**, you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

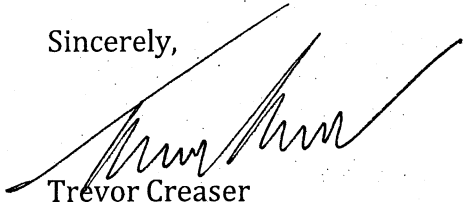
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April 4, 2011
Cathy Ann Donald

Your appeal must be filed on or before April 14th, 2010

If you have any questions or require additional information, you may contact Brenda Seymour at 869-0064.

Sincerely,



Trevor Creaser
Development Officer

cc Cathy Mellett, Municipal Clerk
Councilor Russell Walker (District 15)

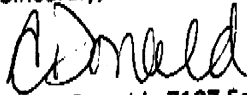
April 12, 2011

Trevor Creaser, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Development Services – Central Region
P.O. Box 1749
Halifax, NS B3J 3A5
Tel 869-4235
Fax 869-4254

Dear Mr. Creaser,

Please accept this as my appeal of the refusal of Variance Application No 16863 involving the property at 7107 Scot St.

Sincerely,



Cathy Donald, 7107 Scot St property owner