HALIFAX
REGIONAL MUNICIPALITY

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

Item 7.2.1

Harbour East - Marine Drive Community Council
June 6, 2013

TO: Chair and Members of Harbour East - Marine Drive Community Council

SUBMITTED BY: Original Signed
Brad Anguish, Director, Community and Recreation Services

DATE: May 24, 2013

SUBJECT: **Case 18139: Appeal of Variance Refusal – 58-66 Stella Drive, Porters Lake**

ORIGIN

Appeal of the Development Officer's decision to refuse a request for variance.

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning and Development.

RECOMMENDATION

The question before Harbour East – Marine Drive Community Council is whether to allow or deny the appeal before them.

BACKGROUND

Proposal:
A variance request has been submitted for a property at 58-66 Stella Drive, Porters Lake (PID 40243081), to permit an existing accessory building, used as a commercial car wash, to have a reduced front yard setback. The building was constructed without a permit and there is an active by-law enforcement case against the property. In response, the applicant submitted this variance request as an approach to bring the property into compliance with the requirements of the Land Use By-law. Further action on the enforcement file is pending the outcome of the variance process.

Site Details:

Zoning: RE (Rural Enterprise) Zone, Planning District 8 & 9 Land Use By-law

	Zone Requirement	**Variance Requested**
Min. Front Yard:	30 feet	2 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variance (Attachment 1). The applicant subsequently filed an appeal of the refusal on November 21, 2012 (Attachment 2). The matter is now before Harbour East - Marine Drive Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Requests:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, *the HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

"250(3) A variance may not be granted if:
- *(a) the variance violates the intent of the development agreement or land use by-law;*
- *(b) the difficulty experienced is general to properties in the area;*
- *(c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law."*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

It is the Development Officer's opinion that the proposal does, in fact, violate the intent of the Land Use By-law. The Land Use By-law intends that front yard setbacks are in place for both aesthetic purposes and practical reasons; such as visual separation from the road, to provide area for future road expansion, and to provide adequate separation between buildings and vehicular traffic.

The Land Use By-law carries out this intent through the application of zones containing provisions respecting land use, building setbacks, lot size, lot area, height, and building mass relative to lot area. The Land Use By-law requires a minimum building setback of 30 feet for commercial uses. The setback of 30 feet is indicative of suburban and rural settings where larger lots allow for greater setbacks. Further, all of the zones within the Planning Districts 8 & 9 Plan Area require either a 20 or 30 foot minimum front yard setback. A reduction to 2 feet from the required 30 feet is a substantial request it is the opinion of the Development Officer that granting this variance would result in violation of the intent of the Land Use By-law.

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

The accessory building is situated on a lot 16,500 square feet in area and, although the lot does not meet the minimum lot area of 20,000 square feet, this lot is not the smallest lot in the immediate area. The lots sizes range from approximately 8,278 square feet to 33,367 square feet in area. The general area is developed with a mix of uses from commercial buildings to residential properties, most of which appear to meet the applicable zoning standards.

In comparing the site to the surrounding neighbourhood, the difficulty experienced appears to be general to properties in the area.

3. Is the difficulty experienced the result of intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the Land Use By-law relative to their proposal and then took deliberate action which was contrary to those requirements. The accessory building was constructed in the absence of the necessary HRM permits. A building permit is not required for an accessory building less than 215 square feet in area, however, a Development Permit is required. Staff only became aware of the accessory building when a complaint was made, and a land use compliance case was opened. Intentional disregard of Land Use By-law requirements was a consideration in the refusal of the variance requests.

Appellant's Appeal:
While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellant has raised certain points in their letter of appeal (Attachment 2) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
The use of the accessory building complies with the RE zone uses.	The land use is irrelevant to the matter. The commercial use of the accessory building is permitted as a car wash, but it is subject to meeting the applicable requirements of the Land Use By-law.
The building is less than 120 square feet.	The accessory building application shows a structure of 10 feet by 12 feet and regardless of the requirement for a construction permit, a Development Permit is required for all structures.
The building is used as a spray wash and was constructed to exceed the environmental requirement.	Environmental requirements are regulated by the province and are not a consideration in analyzing a variance request pursuant to the *Charter*.
The use and distance of the building is consistent with other properties in the immediate area.	There is a mix of commercial and residential uses in the area. The use is permitted in the zone and this was not a consideration in refusal of the variance.
The driveway was DOT approved for this use.	The driveway access is regulated by the province and is not a consideration in analyzing a variance request pursuant to the *Charter*.
The building has existed for 14 years without any problems and because of a complaint the building is now not in compliance.	This building was never in compliance with the Land Use By-law. The Land Use By-law came into effect in March 1989 and since that date, 24 years ago, all development has required a Development Permit.
There is at least one property joining that has a garage 1.5 feet from the property line and another commercial property at 30 Stella Drive that has recently built as close to the street as the car wash shed and runs three businesses from that location.	The property at 30 Stella Drive applied for a variance for a reduced front yard setback and this variance was denied by the Development Officer but his decision was overturned by Community Council.

Conclusion:
Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance requests were refused as it was determined that the proposal conflicts with the statutory criteria provided by the *HRM Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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*. Where a variance refusal decision is appealed, a hearing is held by Council to provide the opportunity for the applicant and all assessed owners within 30 metres of the variance to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Council may deny the appeal and uphold the decision of the Development Officer to refuse the variance.

2. Council may allow the appeal and overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

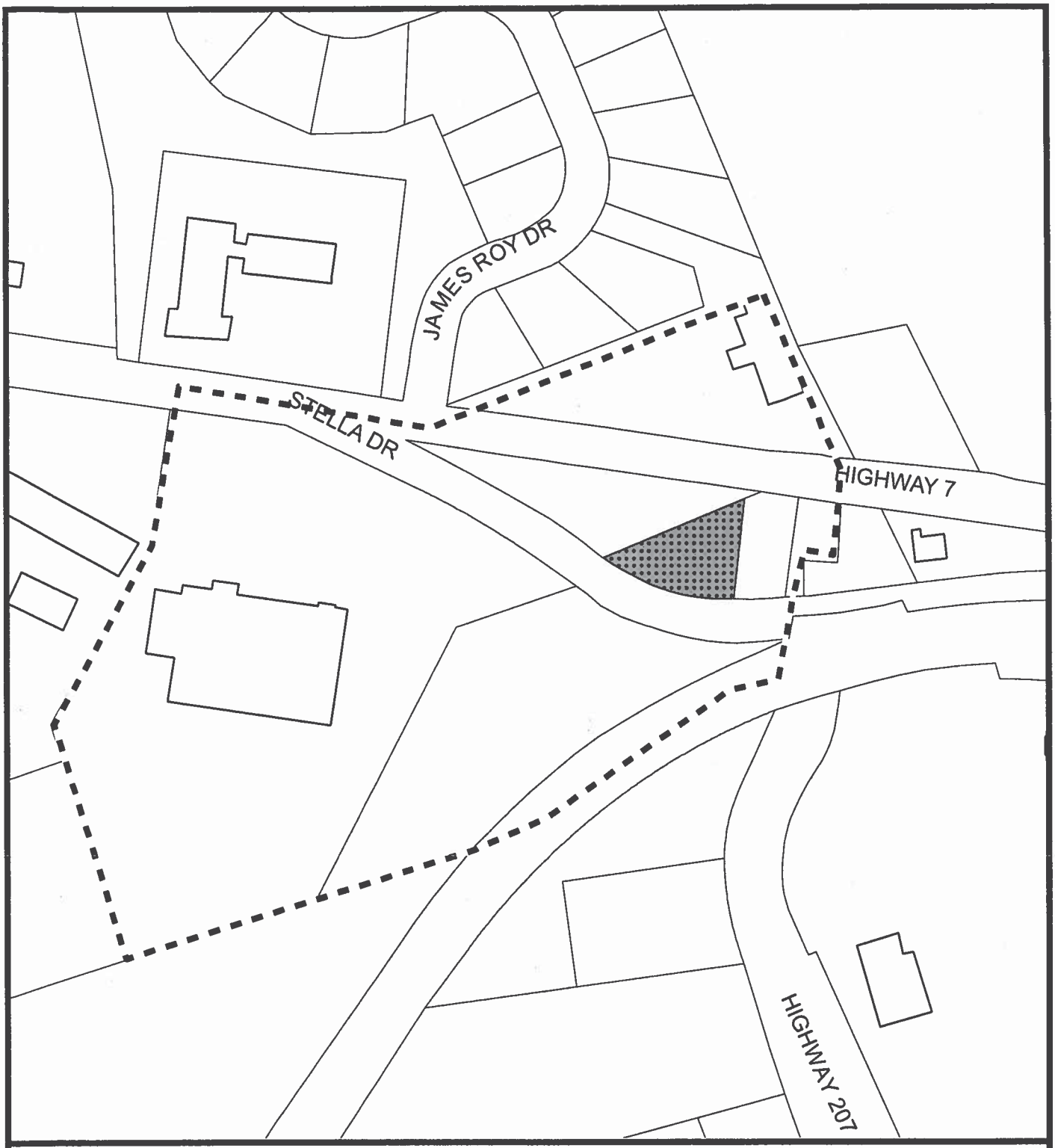
Map 1 – Notification Area
Map 2 – Site Plan
Attachment 1 - Variance Refusal Letter
Attachment 2 – Letter of Appeal from the Applicant

A copy of this report can be obtained online at http://www.halifax.ca/commcoun/cc.html then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Laura Walsh, Development Technician, 490-4462 and
Andrew Faulkner, Development Officer, 490-4341

Original Signed

Report Approved by: Kelly Denty, Manager, Development Approvals, 490-4800



Map1
Notification
58 Stella Drive

Subject Property

Notification Area

HALIFAX
REGIONAL MUNICIPALITY
Community & Recreation Services
Development Approvals

HRM does not guarantee the accuracy of any base map information on this plan.

March 26, 2013

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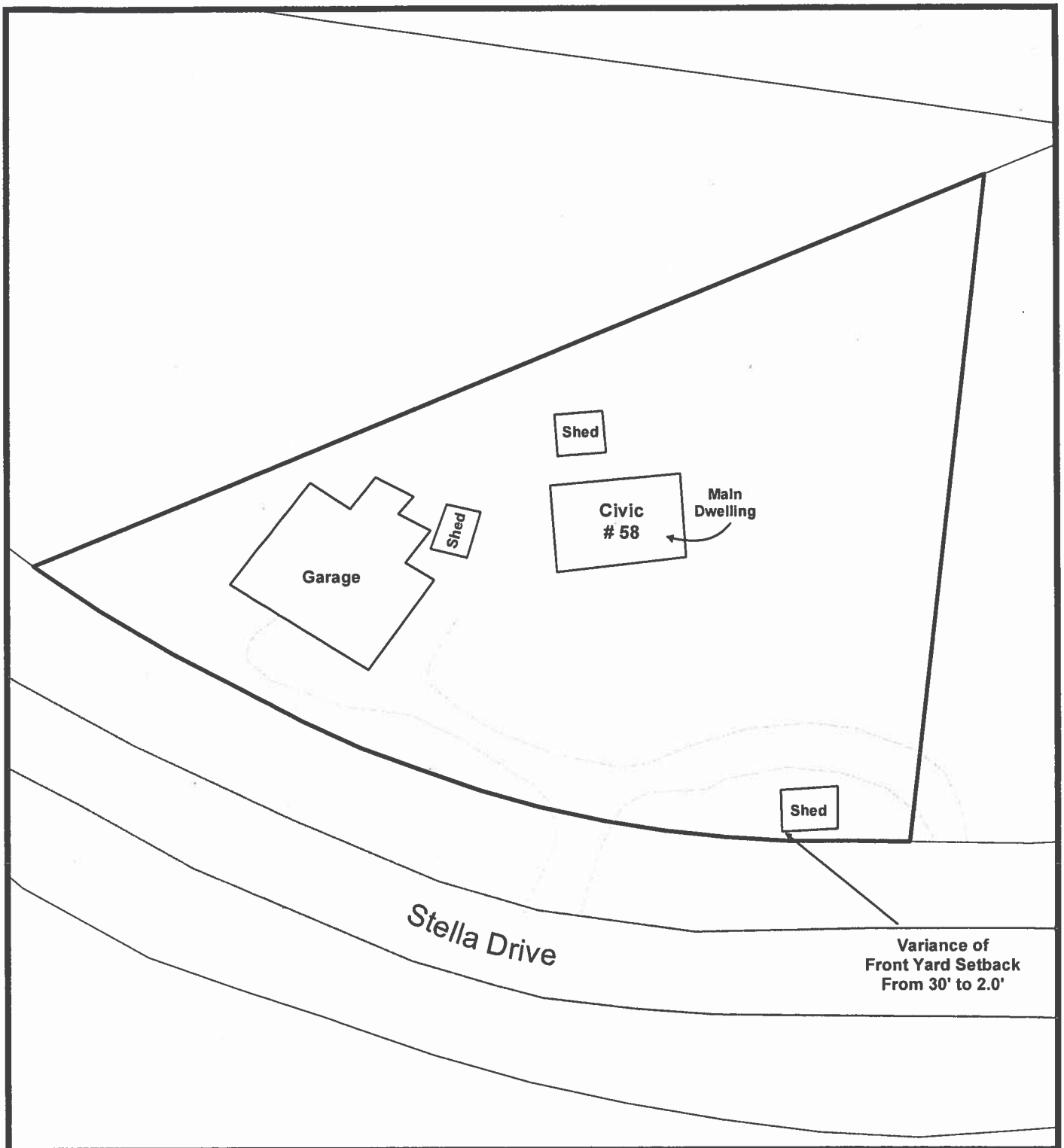

Map 2
Site Plan
58 Stella Drive

HALIFAX
REGIONAL MUNICIPALITY
Community & Recreation Services
Development Approvals

HRM does not guarantee the accuracy of any base map information on this plan.

March 26, 2013

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Attachment 1- Variance Refusal Letter

HALIFAX
REGIONAL MUNICIPALITY

PO Box 1749
Halifax, Nova Scotia
B3J 3A5

Development Approvals - Eastern Region

Telephone: 902-490-4490
Fax: 902-490-4661

December 13, 2012

Wayne Ubdegrove
66 Stella Drive
Porters Lake, Nova Scotia
B0J 1N0

Dear Mr. Ubdegrove:

RE: Application for Variance, File No. 18139 – 58 Stella Drive, Porters Lake, NS

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for Planning Districts 8 & 9 as follows:

Location: 58 Stella Drive, Porters Lake
Project Proposal: Occupancy permit for business (car wash)
Variance Requested: To reduce the front yard setback to 2 feet from the required 30 feet for a commercial building

Section 250(3) of the Halifax Regional Municipality Charter states that:

A variance may not be granted if:

(a) the variance violates the intent of the development agreement or land use by- law;

(b) the difficulty experienced is general to properties in the area; or

(c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.

It is the opinion of the Development Officer that the variance violates the intent of the land use by- law and the difficulty experienced results from an intentional disregard for the requirements of the land use by-law.; therefore your request for a variance has been refused.

Pursuant to Section 251(4) of the Halifax Regional Municipality Charter 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:

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

Your appeal must be filed on or before December 27, 2012.

If you have any questions or require additional information, please contact Laura Walsh at 490-4462.

Sincerely,

Original Signed

Andrew Faulkner
Development Officer

cc Cathy Mellett - Municipal Clerk
Councilor David Hendsbee

Attachment 2 - Letter of Appeal from the Applicant

Wayne & Seymona Ubdegrove
November 21 2012

66 Stella Drive
Head of Chezzetcook
Halifax N.S.
BOJ 1N0

Dear Mr Faulkner

RE; LETTER RECIEVED NOVEMBER 21 2012 REGARDING APPEAL OF VARIANCE #18139 &18140 ABOVE ADDRESS.

I recieved your letter dated Nov 9 2012 on Nov 21 2012 it stated I was denied the variances applied for and to appeal by November 19 2012 however I can only respond in a reasonable amount of time.Therefore I am responding immedeatley upon recieving this notice and I wish to appeal for the following reasons.

FILE 181139

1) The use of the building complies with the RE zone uses.

2)The building is under 120 square ft.

3)The building used as a spray wash was constructed to exceed the environmental requirement.

4)The use and distance of building is consistant with other properties and there uses in the immediate area including one newly constructed (built on the same street this past summer).

5) The driveway was DOT approved for this use.

6) The building has exsisted for 14 yrs with no problems until this year when I had to place a Protection Of Property Order on a disorderly neighbor then it was all sudden not in compliance and was no longer a community service .

7) There at least one property joining ours that has a garage 11/2 ft from my line and another commercial property at 30 Stella Dr that has recently built as close to the street as my car wash shed and runs three businesses from that location.

FILE 18140

1)The use of the building complies with the Re zone uses.

2)The building is 20 ft plus from the boundry as required when constructed.

3)The use of the building is consistant with all others in the area and has been for fourteen years.

4) Permits were obtained to construct the building and all setbacks were met for that use.

5)I feel the use of the building has not been in any way obnoxious and has been more of an asset and provided community services.

6) Taxes including business occupancy were paid and we feel we did regard the land by-law use.

7) Permits were obtained building, electrical. engineered slab for this structure.

Sincerely

Original signed by

Wayne Ubdegrove

[redacted]

Second notice sent by fax

DEC 19/2012

J.U.