



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

**Item 7.2.2**

**Harbour East - Marine Drive Community Council**

**June 6, 2013**

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

Original Signed

**SUBMITTED BY:**

Brad Anguish, Director, Community and Recreation Services

**DATE:** May 24, 2013

**SUBJECT:** **Case 18140: Appeal of Variance Refusal – 58-66 Stella Drive, Porters Lake**

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**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**

A variance request has been submitted for a property at 58-66 Stella Drive, Porters Lake, to permit an existing detached commercial building (Map 2) to have a reduced front yard setback. The building contains two businesses; Atlantic Carpets and Porters Lake Septic Services, as well as an apartment unit within its second storey. In order to facilitate the commercial use, a variance has been requested to relax the required front yard setback.

The building was constructed without the required permits from HRM 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. The apartment unit is unauthorized and must be removed from the building. Further action on the enforcement file is pending the outcome of the variance process.

**Site Details:**

**Zoning:** RE (Rural Enterprise) Zone, Planning Districts 8 & 9 Land Use By-Law

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Min. Front Yard:</b>	30 feet	18 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 Request:**

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.

Although the building contains a residential component, it also contains commercial uses which require a larger minimum front yard than do residential uses. Where by-law provisions conflict, the higher or more stringent requirements prevail. The Land Use By-law requires a minimum setback of 30 feet for commercial use. The setback of 30 feet is indicative of a suburban and rural setting which have larger lots and greater setbacks and all of the zones within the plan area for Planning Districts 8 & 9 have a setback requirement of either 20 or 30 feet in order to ensure a separation distance from the street. A reduction to 18 feet from the required 30 feet is a substantial request and 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 surrounding lots are located between two highways making the lots narrow with many of the existing lots having little room for future expansion of the existing buildings. The existing garage is situated on a lot with 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 area. The lot sizes in the neighbourhood 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 building was constructed and occupied in the absence of the necessary HRM permits. The applicant applied for and received permits for a **residential** garage in 1999, however, those permits lapsed without construction having taken place. Intentional disregard of Land Use By-law requirements was a consideration in the refusal of the variance request.

**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:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
The use of the garage complies with the RE zone uses.	The land use is irrelevant to the matter at hand. The commercial and residential uses within the garage are permitted within the RE Zone, but are subject to meeting the applicable requirements of the Land Use By-law.
The building is 20 feet from the boundary as required when constructed.	The surveyor's location certificate provided by the applicant shows the building as being situated 18 feet from the front property line. The minimum required front yard setback for commercial uses is 30 feet.
The building is consistent with all others in the area and has been for fourteen years.	The building is required to meet the requirements of the Land Use By-law which has been in effect since 1989.
Permits were obtained to construct the building and all of the setbacks were met for that use.	The applicant applied for and received permits for a detached residential garage in 1998. Those permits lapsed in 1999 without construction having begun. The original permit application indicates that the building was to be located so as to meet the 20 foot front yard setback required for a residential use. Based on a location certificate provided by the applicant, the existing building is 18 feet from the front property line at its nearest point. The building is used for commercial purposes which requires a minimum 30 foot front yard setback.
The building is not obnoxious and has been an asset to the community.	The uses in the building have not been determined to be obnoxious. That was not a consideration in refusal of the request for variance.
Taxes including business occupancy were paid.	Payment of property taxes is irrelevant to this matter and not applicable to the variance application.
Permits were obtained: building, electrical, engineered slab for this building.	See above comments relative to permits.

**Conclusion:**

Staff reviewed all the relevant information in this variance proposal. As a result of the review, the variance request was 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 A – Variance Refusal Letter

Attachment B – Letter of Appeal from the Applicant

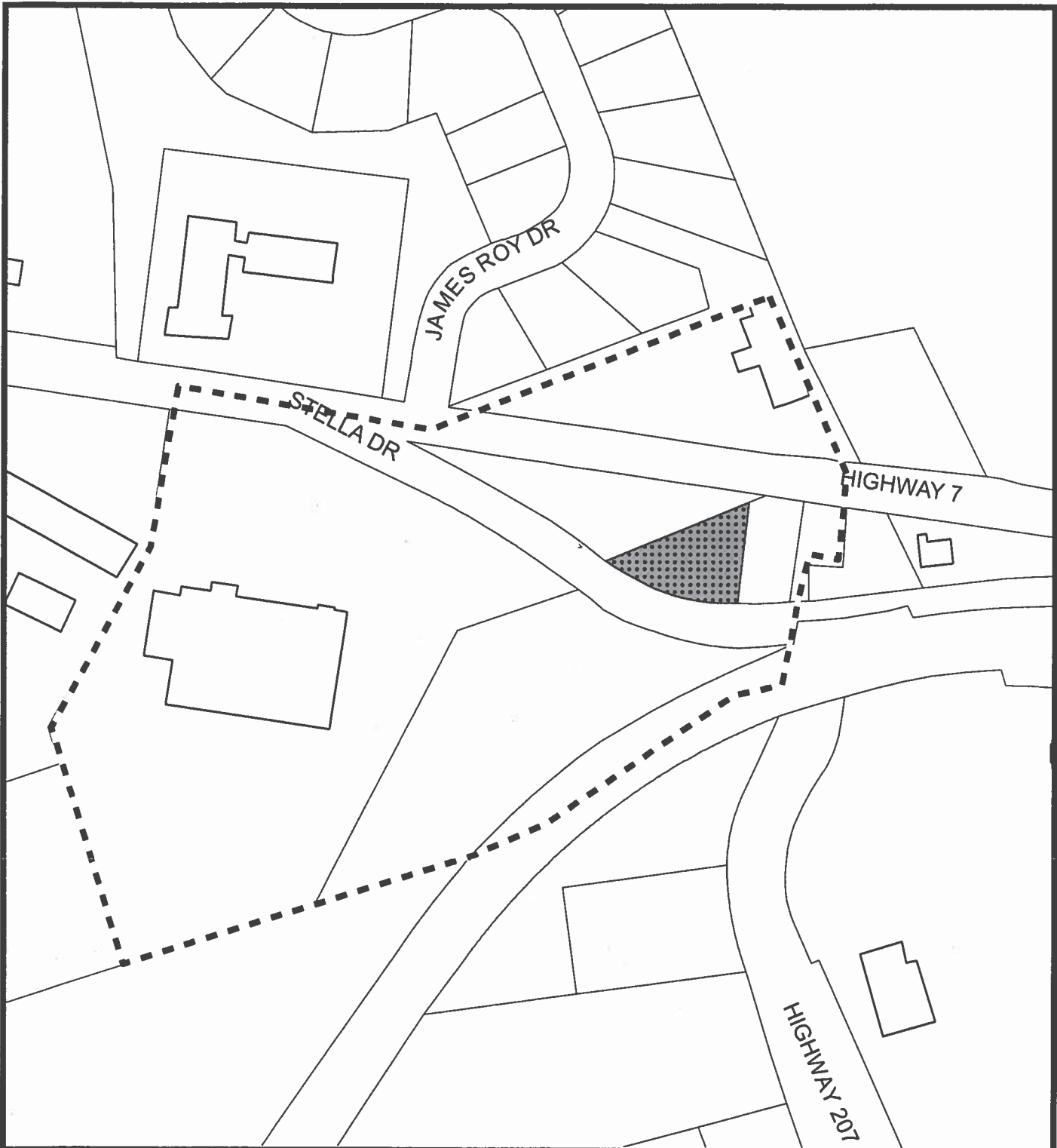
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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.



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

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

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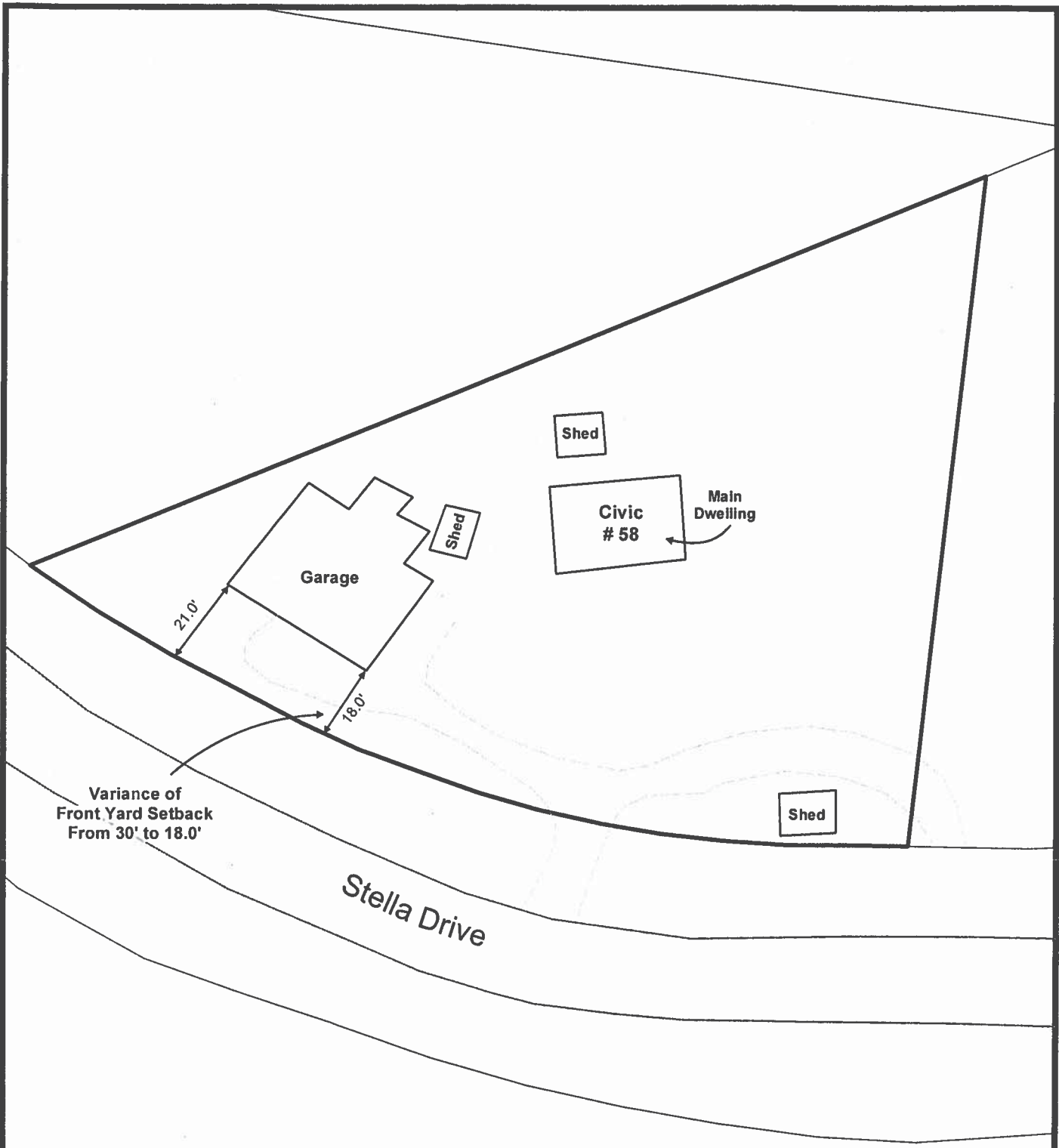


Map1  
 Notification  
 58 Stella Drive

-  Subject Property
-  Notification Area



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



Map 2  
 Site Plan  
 58 Stella Drive



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

## Attachment 1- Variance Refusal Letter



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. 18140 - 58 Stella Drive, Porter's 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 businesses (Septic services and Atlantic Carpets Concept Limited Services)  
**Variance Requested:** To reduce the front yard setback to 18 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:



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**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 existed 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

Wayrie Ubdegröve

[Redacted]

Second notice sent by fax  
DEC 19 2012  
J.U.

LANADA POST / POSTES CANADA

**REGISTERED DOMESTIC** CUSTOMER RECEIPT

**RECOMMANDÉ RÉGIME INTÉRIEUR** REÇU DU CLIENT

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33-086-584 (11-04)

Address: Andrew Faulstich, 1749, Box 133, SA, SK-S4N 1A7