

Harbour East - Marine Drive Community Council
October 3, 2013

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

Original signed

SUBMITTED BY: _____
Brad Anguish, Director, Community and Recreation Services

DATE: August 26, 2013

SUBJECT: **Case 18672: 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 to have a reduced front yard setback. The applicant had previously applied for a variance for the same structure but for a different land use (commercial car wash). The previous variance application, Case 18139, was refused by the Development Officer. The applicant appealed the refusal and on June 6, 2013 the Development Officer's decision was upheld by Harbour East – Marine Drive Community Council.

The current request is to allow the building to be used as a residential accessory building. The building was constructed without a permit and there is an active by-law enforcement case against the property. To respond to the by-law enforcement matter, the applicant submitted this variance request as an approach to bring the property into compliance with the requirements of the Land Use By-law.

Site Details:

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

	Zone Requirement	Variance Requested
Min. Front Yard:	20 feet	2 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer denied the requested variance (Attachment A). The applicant subsequently filed an appeal of the refusal on July 19, 2013 (Attachment B). 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 20 feet for residential uses. The setback of 20 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 for residential uses. A reduction to 2 feet from the required 20 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?

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

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 B) 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 Building is not and has not affected any party in any way.	The land use requirements must be met; whether the building appears not to affect any party is irrelevant to the matter. The accessory building is subject to meeting the applicable requirements of the Land Use By-law unless <i>the structure falls within the criteria of the HRM Charter</i> where a variance can be granted.
The building is similar to others with the same setbacks on this street.	There is a mix of commercial and residential uses in the area with various accessory buildings. The accessory building is permitted under the RE Zone applied to the property but the zone requirements must be met. Similarity to other building placement in the area was not a consideration in refusal of the variance.
The building can only be accessed by my driveway.	The buildings access is not a consideration in analyzing a variance request pursuant to the <i>Charter</i> .
Every property on this street either has been granted a variance or needs one for setbacks , making mine no different than others adjoining my property.	The property owner at 30 Stella Drive applied for a variance for a reduced front yard setback which was denied by the Development Officer, but this decision was overturned by Community Council. The accessory building setback for the subject site has been denied by Community Council once before. The structure has not been brought into compliance; instead the applicant has chosen to reapply for another variance.
The driveway that is partly owned by the Falles is no longer used and blocked off.	The driveway access is regulated by the province and is not a consideration in analyzing a variance request pursuant to the <i>Charter</i> . The driveway access is not a consideration in analyzing a variance request pursuant to the <i>Charter</i> .

A list of properties that granted variances or need them.	The properties where a variance has been granted are assessed on a case by case decision. Staff will review the list provided to determine whether appropriate approvals are in place and take action as appropriate.
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Conclusion:

Staff has reviewed all the relevant information in this variance proposal. As a result of that 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 uphold the decision of the Development Officer to deny the variance.
2. Council may overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

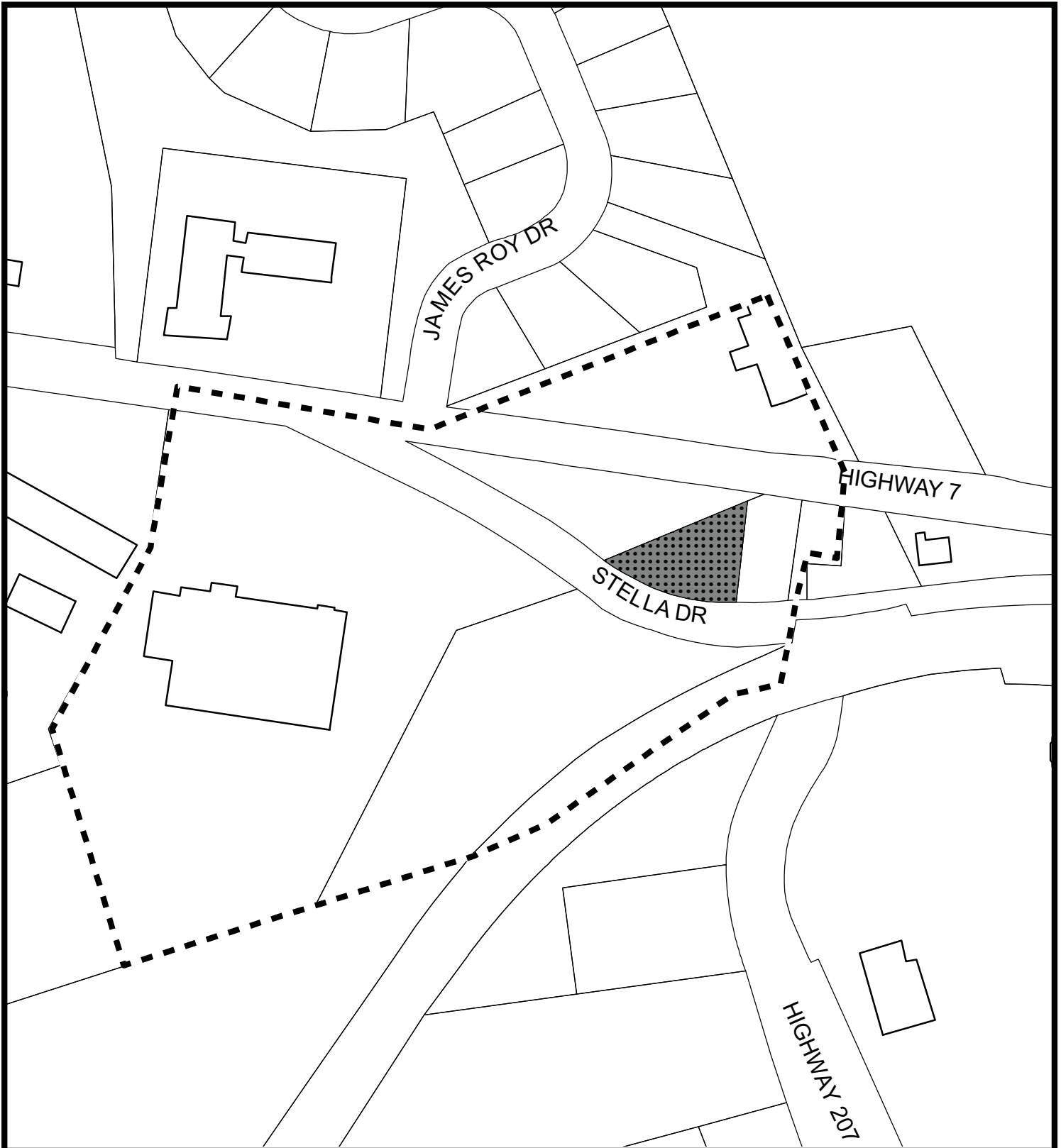
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Refusal Letter
Attachment B	Letter of Appeal from the Applicant

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.

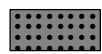
Report Prepared by: Laura Walsh, Development Technician, 490-4462 and
 Andrew Faulkner, Development Officer, 490-4341

Original signed

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



Map1
 Notification
 58 Stella Drive



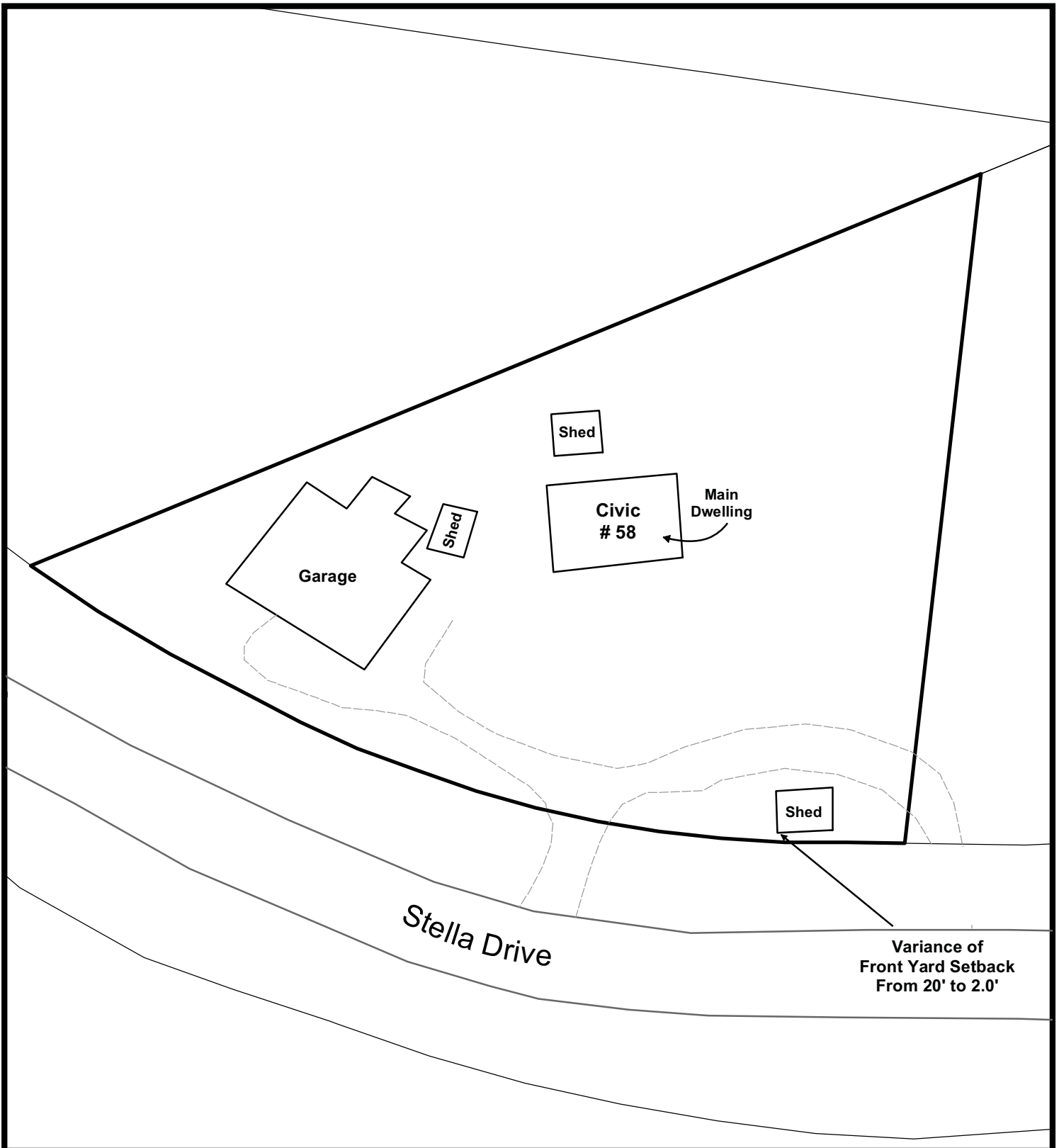
Subject Property



Notification Area

HALIFAX
 REGIONAL MUNICIPALITY
 Community & Recreation Services
 Development Approvals

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



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.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5

Development Approvals – Eastern Region

Telephone: 902-490-4490

Fax: 902-490-4661

July 9, 2013

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

Dear Mr. Ubdegrove:

RE: Application for Variance, File No. 18672– 58 Stella Drive, Dartmouth, 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: Allow an existing accessory building
Variance Requested: To reduce the front yard setback to 2 feet from the required 20 feet.

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 July 26, 2013.

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

Atlantic Carpet Concepts
July 19,2013
66 Stella Drive
Porters Lake, Nova Scotia
BOJ 1N0

Andrew Faulkner, Development Officer
c/o Development Services-Eastern Region
P.O.Box 1749
Halifax, NS B3J 3A5
July 19,2013

Dear Mr Faulkner

RE; Variance Application # 18672

I am appealing your decision to deny my application for the following reasons.

- 1) The building is not and has not affected any party in any way.
- 2) The building is similar to others with the same set backs on this street.
- 3) The building can only be accessed by my driveway.
- 4) Every property on this street either has been granted a variance or needs one for setbacks, making mine no different than others adjoining my property.
- 5) The driveway that is partly owned by the Falles is no longer used by me for over a year and has been blocked off. Also counselor Lorelei Nicoll was under the impression that this was thier only useable driveway infact there is two others.

Here is a list of properties that have been granted variances or need them. (See attached map)

- 1) 40243107 the complaintant Debra Falle has 2 buildings 2ft apart one is 20 x20 the other 10 x12 aproxx they were moved within 2.5 ft of my side boundry. When the Falles moved in in 98 they were aware of the problem and moved one off my property and we verbally agreed that if they allowed common use of the shared driveway, the building 20 x20 could remain. However they did not abide by the agreement and continually caused problems. They should have variances or move the buildings to the proper set back .

2) 40557464 Geard Dugas & 402431 Tony Johnson these two properties recieved a variance to have (one septic field located on the adjoining property accomodate both houses.)

3) 40557464 was in 2005 granted a renovation permit and added an other apartment onto the variated septic field making it a total of three dwellings on the variated septic.

4) On the other side of Tony Johnson 402431 Geard Dugas owns a bottle exchange,also runs a used car business and a automotive repair shop . Approx 18 months ago he was granted a permit to build 30 x40 addition on to the existing bottle exchange and got a variance to build just as close to the front yard set back as my little 10x 12 building.

5) After building this 30 x 40 structure he did,t have enough room for a driveway and was granted an other variance to put in the driveway by cutting into the bank of the all ready variated septic.

6) On this enviro depot property there are three other buildings bigger than mine and with similar set backs. (close to the lines)

7)Mr. Dugas bought a 5 acre parcel directly across the street from my building a few years ago. The previous owners were told they could not get permits to fill in a swamp on the property and sold it for a huge loss. Last summer Mr Dugas filled half it in without the proper permits and was stopped. This year alot of the fill had to be removed and replaced with the required material and he proceeded to fill in.

8) Your office has been informed of the Falles setbacks since June 2012.

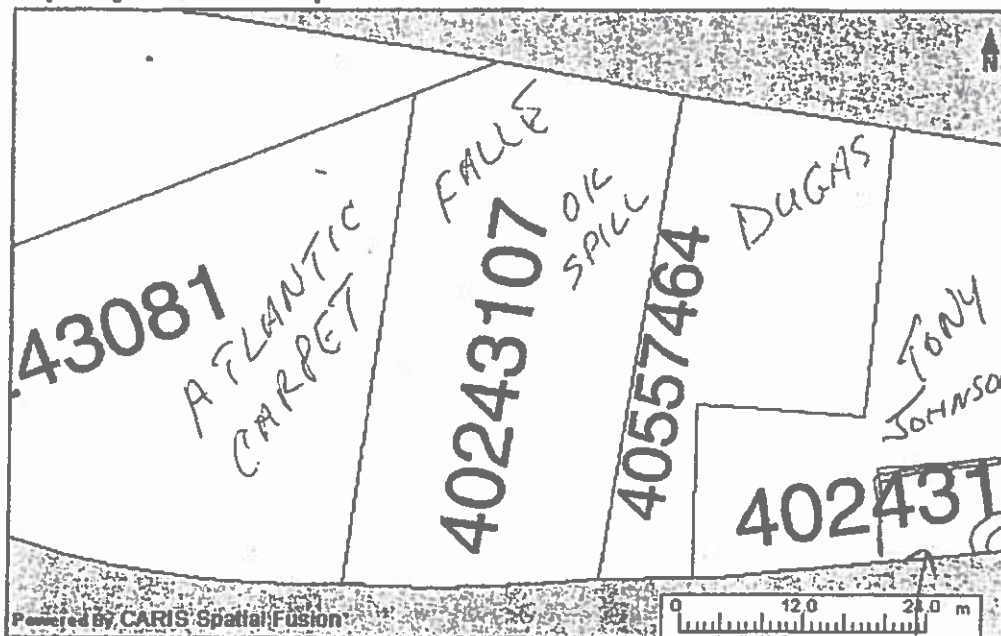
With all these considerations all parties should apply for variances as to not be predjustice to one. Therefore I request you grant mine as it is not experiencing any difficulty (general) to the properties in the area.

Sincerely
Wayne Ubdegrove
58 Stella Drive
Porters Lake N.S.
BOJ 1NO



Property Online Map

Date: Jan 4, 2013 3:59:19 PM



PID: 40243107 Owner: AAN: 04036816
 County: HALIFAX COUNTY Value: \$86,400 (2012 RESIDENTIAL TAXABLE)
 LR Status: LAND REGISTRATION Address: 5300 HIGHWAY 7
 PORTERS LAKE

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [Land Registration Act subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

Property Online version 2.0

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↑
 4 BUSINESS ON LOT.

SEPTIC FOR
 40557464
 AND 402431
 3 RESIDENCES

Longstaff-Parker Surveys

111 Tacoma Drive, Dartmouth, N.S., B2W 3E8

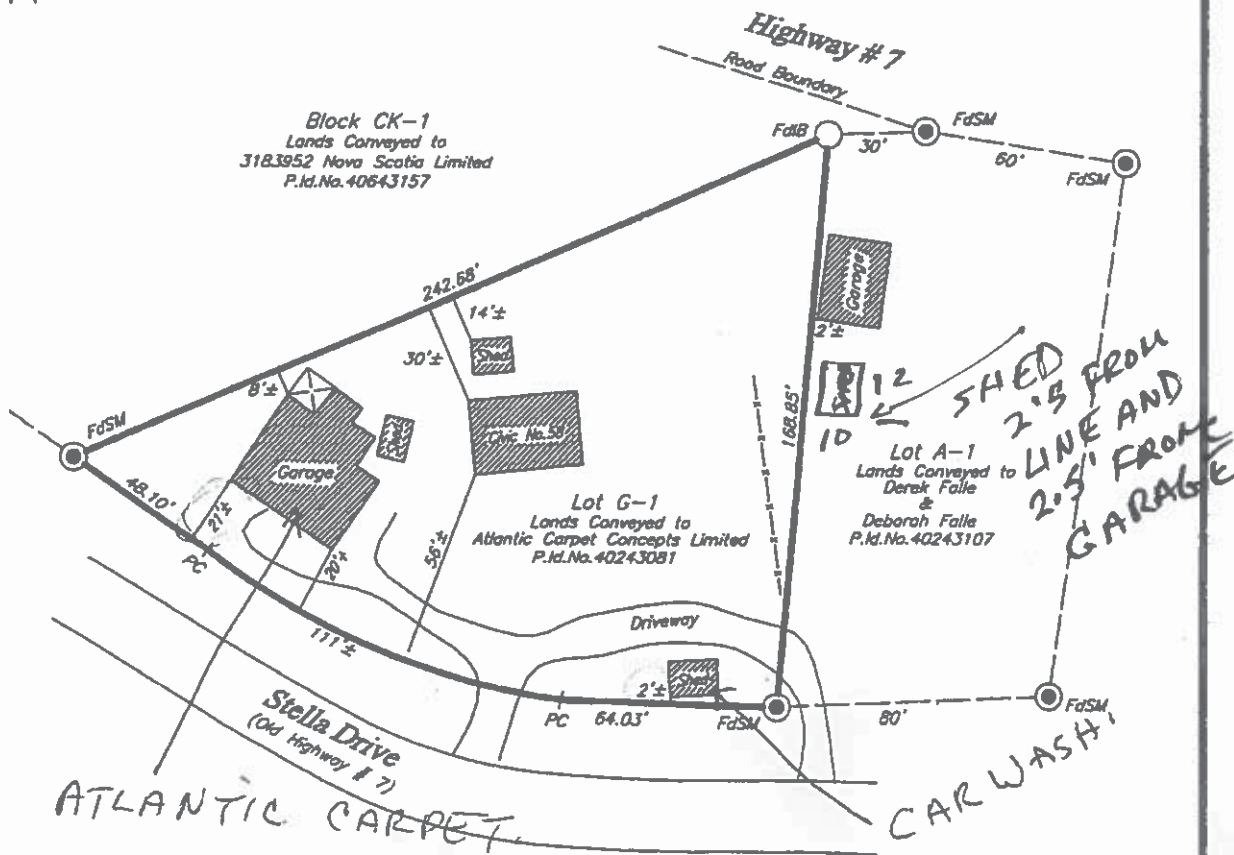
Ph: (902) 466-2176

Fax: (902) 466-2177



Plan Reference:

(1) See Plan showing Lands of John & Mary Ranno, at West Chezzetcook, Halifax County, Nova Scotia, signed by Allison B. Grant, N.S.L.S., dated October 30th, 1973 and approved December 10th, 1973.



(All Distances are subject to full Boundary Survey)

Revised August 29th, 2012 - Distance to garage

Certified To: Atlantic Carpet Concepts Limited

RE: Location of Buildings on Lot G1, at 58 Stella Drive, Porters Lake, Halifax County, Nova Scotia.

To assure accuracy and original copies this plan must bear the embossed survey stamp of Frank Longstaff, N.S.L.S.

Surveyor's Location Certificate

I, Frank Longstaff, Nova Scotia Land Surveyor, hereby certify that this Surveyor's Location Certificate was prepared under my supervision and in accordance with Part VII of the Nova Scotia Land Surveyor's regulations made pursuant to Section