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Halifax, Nova Scotia  
B3J 3A5 Canada

**Harbour East Community Council**  
**May 11, 2009**

**TO:** Chairman and Members of Harbour East Community Council

**SUBMITTED BY:**

  
Sean Audas - Development Officer

**DATE:** April 30, 2009

**SUBJECT:** Appeal of the Development Officers decision to approve a Variance application at 23 Brookside Avenue, Dartmouth

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**ORIGIN**

This report deals with an appeal of the Development Officers decision to approve a variance for lot coverage at 23 Brookside Avenue, Dartmouth

**RECOMMENDATION**

It is recommended that Council uphold the Development Officers decision to approve the variance.

**BACKGROUND**

The property is zoned R-1 Zone - Single Family Residential Zone under the Land Use By-Law for Dartmouth.

**Proposed Use:**

The property contains a single unit dwelling. An application was received to construct a rear addition to the existing dwelling. The existing lot coverage is 36.65%. The proposal would increase the footprint of the dwelling by 165 sqft. The addition would be two stories in height and would include a new kitchen and mud room on the lower floor and a studio and bathroom on the upper level. Should the variance be approved the lot coverage would be increased to 41.86%.

**DISCUSSION**

The *Halifax Regional Municipal Charter* sets out criteria in part 250(1) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria 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 criteria. 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 ?**

- The Land Use Bylaw sets out standards relative to yards and street frontage.
- The setback for lot coverage in the R-1 Zone is 35%. This is a standard requirement which is consistent with many residential zones within HRM.
- The lots in this area of Brookside Avenue are undersized from today’s standard and measure around 3000 sqft.
- ***The proposal is for a small addition and it is not felt that the increase in lot coverage violates the intent of the Land Use By-Law.***

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

- The lots in the immediate area are of similar size.
- It can certainly be argued that the properties share similar constraints because they are undersized.
- A few properties in the nearby area currently exceed the lot coverage requirements. Because some existing properties exceed the current requirements for lot coverage it was felt that this application should be given consideration and was approved.

- *Based on this assessment it is not felt that the difficulties associated with this proposal is general to properties in the area*

**Does the difficulty experienced results from an intentional disregard for the requirements of the land use bylaw?**

- *Whereas, the property owner has applied for the Variance prior to any construction, the difficulties are not a result of intentional disregard of the requirements of the land use by-law.*

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the Variance was approved and notification sent in accordance with the provisions of the Halifax Regional Municipal Charter.

An appeal was received and is included in the staff report (Attachment 4). The appellants concern is the effect the addition will have in preventing direct sun exposure to the south-west side of their dwelling. The appellant feels that the addition could potentially negatively affect their property from natural lighting, solar gain (insolation), drainage, ventilation, freeze/thaw of snow/ice, overall building performance and quality and enjoyment of their property.

While the construction of the addition may or may not affect the adjacent property for the issues raised in the appeal letter the Development Officer's decision is based on the criteria outlined in Halifax Regional Municipal Charter. It was not felt that these issues conflict with the criteria that was used in the Variance approval.

### **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**

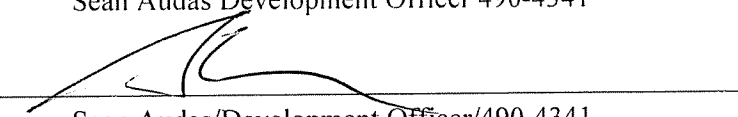
1. Council could uphold the decision of the Development Officer to approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance request.

**ATTACHMENTS**

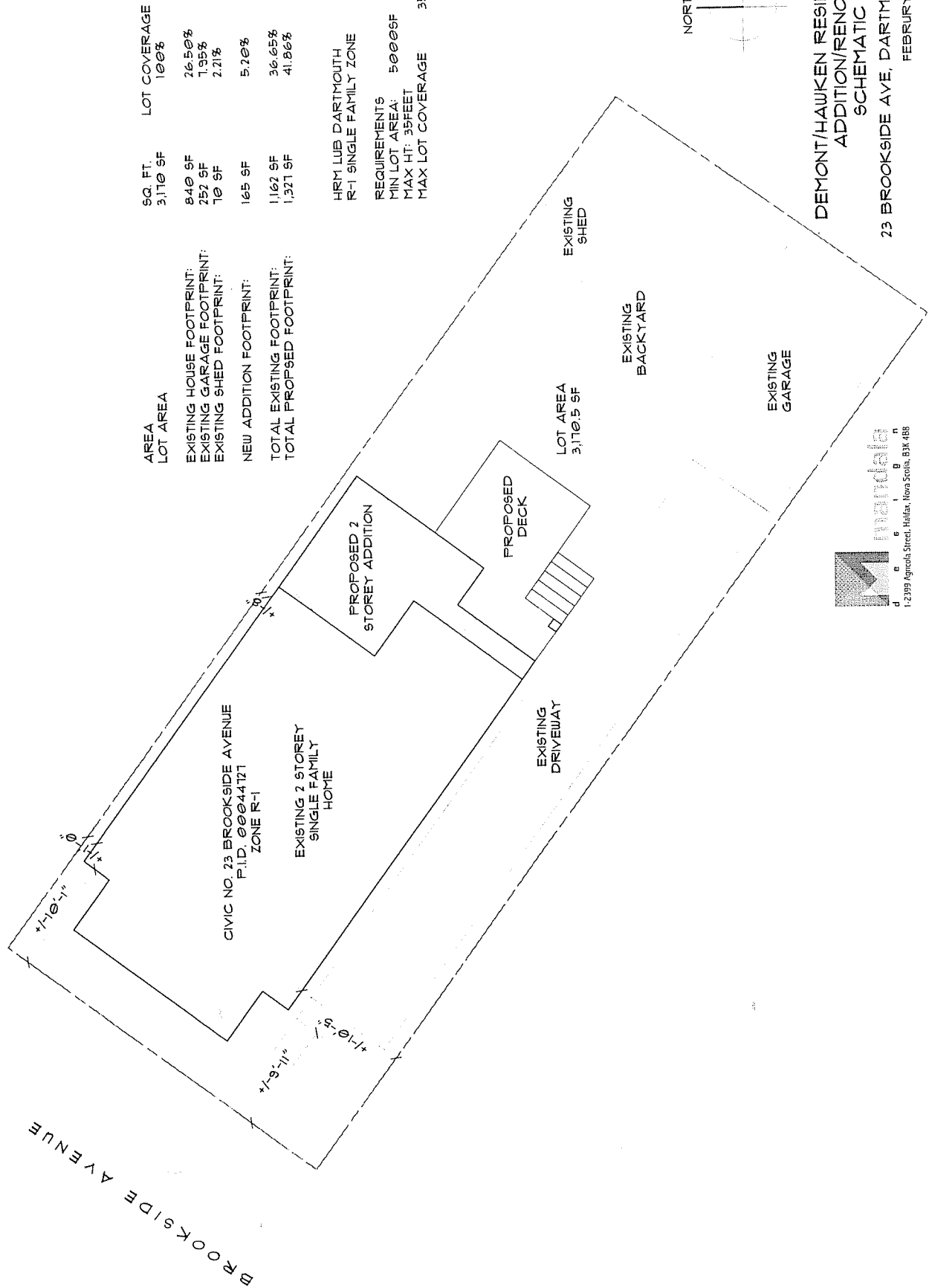
1. Site plan
2. Location Map
3. Approval Letter
4. Appeal Letter

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

Report Prepared by: Sean Audas Development Officer 490-4341

Report Approved by:   
Sean Audas/Development Officer/490-4341

# ATTACHMENT #1



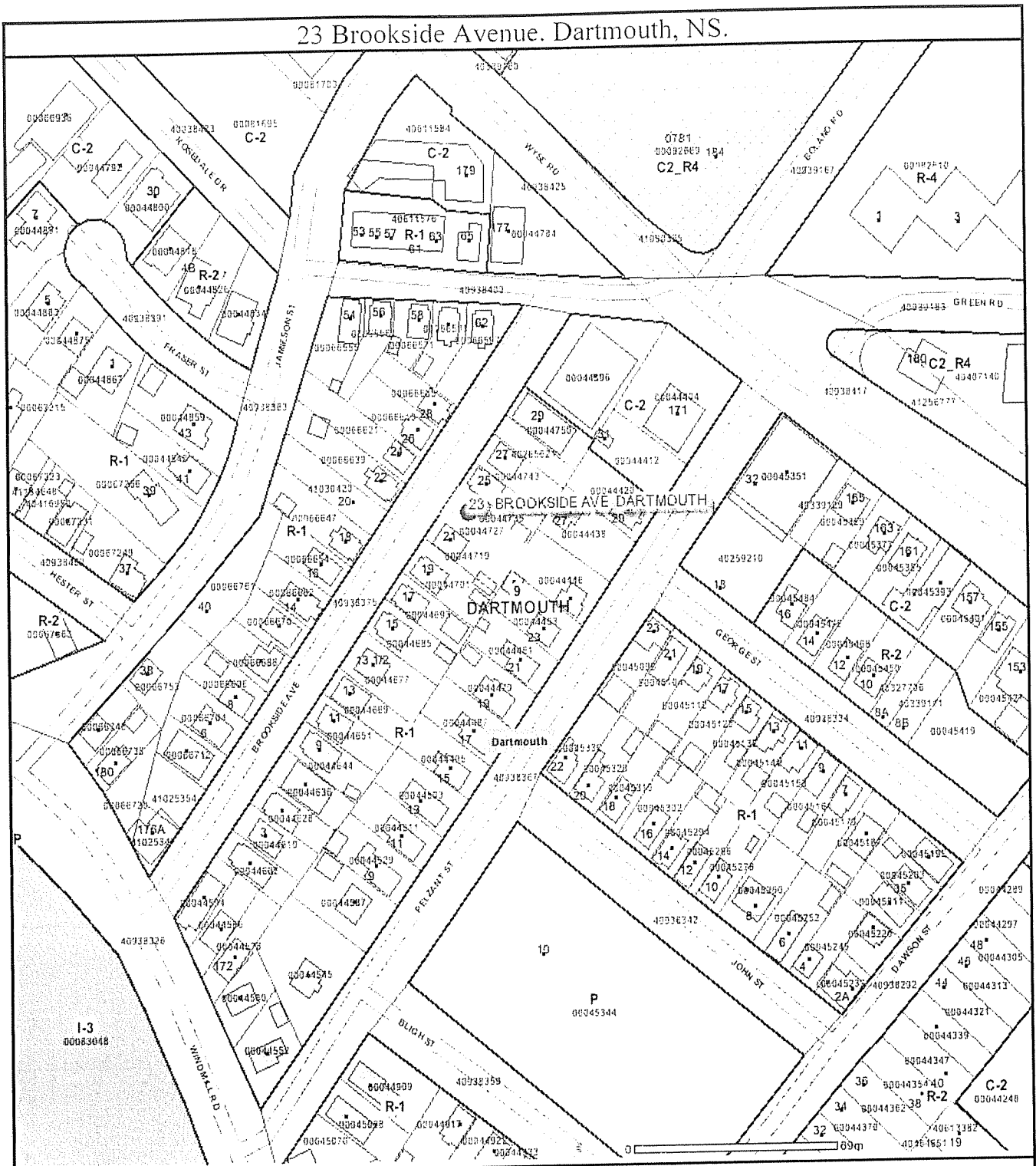
DEMONT/HAWKEN RESIDENCE  
ADDITION/RENOVATION  
SCHEMATIC DESIGN

23 BROOKSIDE AVE, DARTMOUTH, NS  
FEBRUARY 10, 2009



# ATTACHMENT #2

23 Brookside Avenue. Dartmouth, NS.



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email [civicadd@halifax.ca](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of data creation.

ATTACHMENT #3

**HALIFAX REGIONAL MUNICIPALITY**

Planning & Development Services  
Eastern District, Alderney Gate

PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5  
Telephone: 902-490-4435  
Fax: 902-490-4661

March 10<sup>th</sup>, 2009.

**Garth James Demont**  
**23 Brookside Avenue.**  
**Dartmouth, NS**  
**B3A-3B4**

**COPY**

Dear Mr. Demont,

**Re: Case No. 15222- Variance at 23 Brookside Avenue**

As a Development Officer for the Halifax Regional Municipality, I have approved your request for a variance from the requirement(s) of the land use bylaw as follows:


<b>Location:</b>	<b>23 Brookside Avenue</b>
<b>Project proposal:</b>	<b>Construct an Addition to a Single Unit Dwelling</b>
<b>Required (max. lot coverage):</b>	<b>35%</b>
<b>Approved (i.e. lot coverage):</b>	<b>41.86%</b>

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before Mar 27<sup>th</sup>, 2009.

PERMITS WILL NOT BE ISSUED UNTIL ANY APPEAL HAS BEEN DISPOSED OF OR THE APPEAL PERIOD HAS EXPIRED. YOU ARE FURTHER ADVISED THAT CONSTRUCTION OF THE DWELLING IS NOT TO PROCEED UNTIL THE APPEAL PERIOD HAS LAPSED AND ANY APPEALS HAVE BEEN DISPOSED OF.

If you have any questions or require clarification of any of the above, please call Mark Inness at 490-6257.

Yours truly,

  
Sean Audas, Development Officer  
Halifax Regional Municipality

copy to: J. Horncastle, Municipal Clerk  
Councillor Jim Smith, Councillor for District 09

## ATTACHMENT #4

Municipal Clerk  
c/o Sean Audas, Development Officer  
Halifax Regional Municipality  
Planning & Development - Eastern Region  
PO Box 1749  
Halifax, NS B3J 3A5

FAX: 902.490.4208  
email: clerks@halifax.ca

**RE: Appeal of decision to approval of request for Variance at 23 Brookside Ave., Dartmouth Case No. 15222**

I write to appeal the decision of the Development Officer to approve a request for variance from the requirements of land use bylaws by Mr. Garth Demont, 23 Brookside Avenue, Dartmouth with regard to the proposed construction of an addition to a single unit dwelling (Case No. 15222).

I am Demont's neighbour on the North-East side, at 25 Brookside Ave. He has shown me architect drawings for the proposed development (about 10 days ago), and I have expressed that my main concern is about obstruction of the direct sun exposure of the South-West side of my house. We are both looking into this aspect of effects of the project. However, as the appeal deadline is today and there has been little time to discuss a resolution, so I submit this. Demont and I may have resolved things to our mutual satisfaction before the hearing date, in which case I would withdraw the appeal.

### **Summary**

This appeal presents some concerns I have regarding the proposed development, and briefly explains how I believe it will affect me or my property. If needed, I can prepare to expand on this for a hearing.

A large part of the proposed development entails altering the roofline along the North-East edge of the Demont house. The new roofline will extend from the current ridgeline out to the NE eaves, and extend further into the yard to the SE. The result would block the sun from the South-West face of my house during late autumn and winter months. I am concerned about the negative effects on:

- natural lighting
- solar gain (insolation)
- ventilation
- freeze/thaw of snow/ice
- overall building performance (due to above)
- quality and enjoyment of my property

Additionally, I understand there will be excavation for a below-grade foundation for the extension of the house back into the Demont yard. Whether this may affect drainage, and how, also concerns me, and likely Demont as well. It is not unusual for our basements to flood after heavy rain and snow melt.

### **Context**

Buildings along this side of the street are, like ours, built as 1-1/2 storey single-family dwellings with steeply pitched roofs (~ 8/12), and narrow lots, all oriented on a NW-SE axis. Typically, the main living spaces are on the SW face, taking advantage of direct midday sun exposure. Stairways, bathrooms, and such are typically toward the NE face. Of the few houses that have been modified, only one has built up, and it is separated from the adjacent NE property by over 20 ft (i.e. two driveway widths, side by side). The proposed project is unusual in this regard, as well as exceeding the lot coverage specified in the Dartmouth Land Use By-laws.



## Concerns

During fall and winter months (approx Oct-Mar), including mid-day in the middle months of that period:

- The addition roofline will overshadow the South-West face of my house and block sunlight.
- The addition roofline will obstruct passive solar insolation to the adjacent face of my house.
- The addition roofline will eliminate the view of the skyline from the SW windows of my house.
- The addition roofline and NE facing windows may affect the quality and enjoyment of my property

Also worth consideration to me is whether:

- The extension of concrete sub-grade foundation may impede or alter current drainage flow in some way that may affect my property. My NE lot line is approximately 1 m (3'3") higher than the 26 m elevation at the site of the new foundation (approx. 10% slope).

Please note that I have no great concern regarding exceeding the 35% lot coverage maximum.

A key consideration is that the orientation of houses on this street is very good for passive solar energy capture (light and heat). This effect can be enhanced through the use of well-placed windows and heat-absorbing materials. These are strategies that I am planning on integrating into my own renovation process. The proposed Demont development would permanently preclude that possibility along the most likely face of my house.

An important thing for me is spending weekend afternoons at home, especially in the autumn and winter months. I find great enjoyment coming in from the chill and enjoying the direct sunlight shining through the windows. Mid-day to early afternoon sun spilling into the kitchen on the SW side is the best. While it may be only three or four hours a day, it can be intense even in December, and unlike that in any of the other rooms. Indeed, I spend much more than half of my time at home on this side of the house. The proposed development would eliminate that sunlight during a period when sun would be most welcome, most needed--late autumn into winter.

Demont has supplied from his architect sun/shadow studies for solstice and equinox dates, and they confirm my concern that the proposed project will overshadow the SW face of my house during the late autumn – winter months. In an attempt to depict and quantify the current and proposed situations, I too am working up solar charts and insolation values using the following location parameters:

- **Location** (decimal degrees): 44.67 N Lat, -65.58 W Long
- **Time Zone**: Atlantic (GMT -3)
- **Ground elevation** (Fritz driveway): 26 m (85 ft) above sea level
- **Distance between houses** (SW Fritz to NE Demont): approx. 3 m (10-11 ft)

Thank you for your consideration,

Ron Fritz  
25 Brookside Ave  
Dartmouth, NS B3J 3B4  
Tel: 902.461.1398 h / 494.3256 w  
email: [rfritz@dal.ca](mailto:rfritz@dal.ca)

cc. Garth Demont